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CHAPTER 608

An act to amend Sections 73560, 73562, 73565, 73566, 73567, 73568, 74691, 74693, and 74693.1 of the Government Code, relating to courts.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 73560 of the Government Code is amended to read:

73560. This article applies to the Monterey County Municipal Court District, which encompasses the entire County of Monterey.

SEC. 2. Section 73562 of the Government Code is amended to read:

73562. There are 10 judges of the Monterey County Municipal Court District.

SEC. 3. Section 73565 of the Government Code is amended to read:

73565. The municipal court judges may, by a majority vote, appoint a municipal court administrator who shall be the clerk of the municipal court. The municipal court administrator shall serve at the pleasure of a majority of the judges He or she shall receive a salary of four thousand two hundred fifty-five dollars ($4,255), provided, however, that the salary may be adjusted pursuant to Section 73568. He or she shall be the appointing authority for those positions listed in Section 73566.

The municipal court judges shall prescribe and regulate by majority vote the duties and authority of the municipal court administrator among which shall be:

(a) To direct and coordinate the nonjudicial activities of the district.

(b) To coordinate the personnel practices in compliance with rules of the district and those of the County of Monterey.

(c) To prepare and administer the budget of the district.

(d) To coordinate with county agencies, the acquisition, utilization, maintenance, and disposition of facilities, equipment, and supplies necessary for the operation of the district.

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge and judges relating to the business of the district, including, but not limited to, such matters as

standardization of forms, procedures, and of classification and compensation of court attachés.

(f) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial business of the district and to prepare periodic reports and recommendations based on such data.

(g) To provide for and conduct a program of in-service training for the personnel of the municipal court.

(h) To prepare procedural guides for the personnel of the municipal court.

(i) To make arrangements for and attend all meetings of the judges, to assist in the preparation of the agenda, and to prepare minutes of the meetings of the judges.

(j) To serve as liaison for the district with other persons, committee boards, groups, and associations as directed by the presiding judge.

SEC. 4. Section 73566 of the Government Code is amended to read:

73566. The number of positions within each job classification which may be filled by appointment by the municipal court administrator, and the salary which constitutes the compensation for each job classification, are as follows; provided, however, that the board of supervisors may adjust the monthly salary pursuant to Section 73568, and may adjust the number and classification of positions pursuant to Section 73569:

Number	Classification	Monthly salary
1	Assistant Municipal Court Clerk/ Administrator	$3,336
1	Municipal Court Division Manager II	$2,639–$3,270
1	Administrative Assistant	$2,238–$2,773
1	Municipal Court Division Manager I	$2,238–$2,773
2	Municipal Court Calendar Coordinator	$1,779–$2,204
1	Supervising Departmental Data-Processing Coordinator	$1,908–$2,364
1	Accounting Technician	$1,735–$2,150
2	Senior Account Clerk	$1,494–$1,851
6	Account Clerk	$1,306–$1,618
7	Municipal Court Clerk IV	$1,718–$2,128
7	Municipal Court Clerk III	$1,472–$1,823
39.5	Municipal Court Clerk II	$1,306–$1,618
12	Courtroom Clerk	$1,684–$2,086
5	Court Interpreter	$1,555–$1,926
1	Senior Court Interpreter	$1,718–$2,128
2	Senior Secretary	$1,684–$2,086
1	Secretary	$1,524–$1,888
2	Senior Data Entry Operator	$1,450–$1,796
6	Data Entry Operator II	$1,267–$1,570

SEC. 4.5. Section 73567 of the Government Code is amended to read:

73567. Whenever reference to a salary other than that of commissioner is made in any section of this article, the schedule of salaries found in the salary and benefits resolution of the County of Monterey in effect on January 1, 1988, shall apply; provided, however, that adjustments to such salaries may be made pursuant to Section 73568.

SEC. 5. Section 73568 of the Government Code is amended to read:

73568. Certain classes of positions prescribed in this article are deemed to be equivalent in job and salary level to certain classes of positions of Monterey County. In order to maintain parity of compensation and employee benefits between attachés of the municipal court and county employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee benefits for related classes of court positions the provisions of this section shall govern salary adjustments and employee benefits for attachés of the municipal court in Monterey County.

On the effective date of any amendment to such resolution adjusting the salary of a county employee classification listed in the table of positions set forth in this section, the salary of the equivalent court position listed opposite thereto shall be adjusted an equivalent amount.

Any adjustments made pursuant to this section shall be effective on the operative date of the county salary and benefits resolution and shall remain in effect only until January 1, of the second year following the year in which such change is made, unless subsequently ratified by the Legislature.

Table of Positions

Court Classification	County Classification
Municipal Court Clerk/ Administrator	
Assistant Municipal Court Clerk/Administrator	
Administrative Assistant	Administrative Assistant
Municipal Court Division Manager II	Administrative Assistant, plus 33 ranges
Municipal Court Division Manager I	Administrative Assistant
Municipal Court Calendar Coordinator	Legal Process Clerk, plus 62 ranges
Supervising Departmental Data-Processing Coordinator	Supervising Departmental Data-Processing Coordinator
Accounting Technician	Accounting Technician

Senior Account Clerk	Senior Account Clerk
Account Clerk	Account Clerk
Municipal Court Clerk IV	Legal Process Clerk, plus 55 ranges
Municipal Court Clerk III	Legal Process Clerk, plus 24 ranges
Municipal Court Clerk II	Legal Process Clerk
Courtroom Clerk	Courtroom Clerk
Court Interpreter	Legal Process Clerk, plus 35 ranges
Senior Court Interpreter	Legal Process Clerk, plus 55 ranges
Senior Secretary	Senior Secretary
Secretary	Secretary
Senior Data Entry Operator	Senior Data Entry Operator
Data Entry Operator II	Data Entry Operator II

Attachés of the municipal court district shall be entitled to all employee benefits that are provided for or made applicable to the equivalent Monterey County employee classification, including, but not limited to, anniversary dates, changes thereto, and step advancements.

Whenever reference is made to a number of salary ranges in any section of this article, such reference shall be to ranges listed in the salary and benefits resolution of the County of Monterey in effect January 1, 1988.

SEC. 6. Section 74691 of the Government Code is amended to read:

74691. There are five judges.

SEC. 7. Section 74693 of the Government Code is amended to read:

74693. The court administrator-clerk of the municipal court may appoint:

(a) One assistant court administrator-clerk of the municipal court, who shall receive a salary at a rate specified in range MT of the salary schedule.

(b) One supervising deputy court clerk, grade II, who shall receive a salary at the rate specified in range M9 of the salary schedule.

(c) Six supervising deputy court clerks, grade I, who shall receive a salary at the rate specified in range JM of the salary schedule.

(d) Seven senior municipal courtroom clerks who shall receive a salary at the rate specified in range JN of the salary schedule.

(e) Nine municipal courtroom clerks who shall receive a salary at the rate specified in range D6 of the salary schedule.

(f) Twenty-nine clerks, grade II or deputy court clerks. Clerks, grade II shall receive a salary at the rate specified in range 28 of the salary schedule. Deputy court clerks shall receive a salary at the rate specified in range 32 of the salary schedule.

(g) Two clerks, grade II, who shall receive a salary at the rate specified in range 27 of the salary schedule.

(h) Three typist clerks, each of whom shall be either grade I or grade II. Grade I typist clerks shall receive a salary at the rate specified in range J7 of the salary schedule. Grade II typist clerks shall receive a salary at the rate specified in range J8 of the salary schedule.

(i) One secretary, who shall receive a salary at the rate specified in range D4 of the salary schedule.

(j) One departmental systems analyst, who shall receive a salary at the rate specified in range KF of the salary schedule.

(k) One supervising accountant, grade I, who shall receive a salary at the rate specified in range FX of the salary schedule.

(*l*) Two account clerks, grade III, who shall receive a salary at the rate specified in range FH of the salary schedule.

(m) .50 payroll clerk, who shall receive a salary at the rate specified in range FN of the salary schedule.

(n) 1.50 receptionists, who shall receive a salary at the rate specified in range 27 of the salary schedule.

(o) .70 assistant departmental administrative analyst, who shall receive a salary at the rate specified in range M8 of the salary schedule.

(p) One data entry operator, grade II, who shall receive a salary at the rate specified in range D2 of the salary schedule.

(q) Seven court reporters, who shall receive a salary at the rate specified in range 62 of the salary schedule.

(r) One traffic commissioner, who shall receive a salary at the rate specified in range DO of the salary schedule.

(s) Two court interpreters, who shall receive a salary at a rate specified in range WC of the salary schedule.

SEC. 8. Section 74693.1 of the Government Code is amended to read:

74693.1. Whenever reference to a numbered salary range is made in any section of this article, the schedule of salaries adopted by resolution of the Board of Supervisors of Santa Cruz County in effect on January 1, 1988, shall apply.

Unless otherwise specifically provided, each person appointed to a position, the compensation of which is fixed by reference to a salary range incorporated by this section, shall be placed in the step of the specified salary range and advanced in step in the specified salary range in accordance with the personnel practices of the County of Santa Cruz.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 609

An act to amend Section 44320 of, and to add Section 44324 to, the Education Code, relating to education.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

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

(a) Truancy and dropout rates have reached unacceptable levels in California schools, and all available resources must be fully utilized to address this serious problem.

(b) There exists, within the colleges and universities of California, a largely untapped resource that may be applied to that problem: students, especially those pursuing credentials and degrees in education, counseling, and related programs.

SEC. 2. Section 44320 of the Education Code is amended to read:

44320. (a) Professional preparation, including student teaching, shall be made available in the upper division course offerings at all California public institutions of higher learning. No more than nine semester units or equivalent units of professional education courses may be designated prerequisites for purposes of admission to student teaching, except that in the case of candidates who elect to satisfy the reading requirement as set forth in subdivision (e) of Section 44259 by an approved program of study rather than by an approved examination may be required to take 12 semester units, or the equivalent, as prerequisites to student teaching.

(b) Prior to admission to either student teaching under any professional preparation program approved by the commission, or participation in a field experience program as described in Section 44324, a candidate for a credential shall obtain a certificate of clearance from the commission which shall be issued when the commission has verified the candidate's personal identification and health status. The fee for the certificate of clearance shall not exceed one-half of the regular fee for a credential and shall be deducted from the fee for the initial credential applied for by the certificate holder.

SEC. 3. Section 44324 is added to the Education Code, to read:

44324. (a) The Legislature encourages any public or private institution of higher education that conducts any program of professional preparation for a teaching or services credential to operate and supervise, within that program, a field experience program, and to grant up to and including three semester units, or the equivalent, to any student who participates in that field experience program, whether that participation occurs before or after the granting of a credential. For purposes of this section, "field

experience program" means a program under which students work with truant, habitual truant, or other at-risk pupils enrolled in any public elementary or secondary school, and may include student participation in home-school conferences and home referrals.

(b) School districts are encouraged to cooperate with public and private institutions of higher education in the operation of the field experience programs described in subdivision (a).

CHAPTER 610

An act to amend Section 10613 of, and to add Article 3.5 (commencing with Section 10425) to Chapter 8 of Division 9 of, the Health and Safety Code, relating to vital statistics.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Article 3.5 (commencing with Section 10425) is added to Chapter 8 of Division 9 of the Health and Safety Code, to read:

Article 3.5. Amendment of Birth Certificate to Delete Racial Slurs

10425. The purpose of this article is to provide a remedy for correction of birth certificates which contain entries regarding race or color which, in the opinion of the registrant, constitute racial slurs or are otherwise offensive.

10425.5. Any person who was born in this state and whose birth is registered in this state may apply to the State Registrar for the establishment and issuance of a new birth certificate and the sealing of the original if the person certifies that the entry or entries in the original birth certificate regarding race or color contain a term or terms which in the opinion of the registrant, constitute racial slurs or are otherwise offensive. The application shall identify the offensive terms to be deleted and indicate the proper entries for race or color to be substituted. The determination as to whether the entries to be deleted are offensive shall be left to the judgment of the applicant and the State Registrar shall give deference to that determination.

10426. Upon receipt of the application and payment of the required fee, the State Registrar shall establish a new birth certificate for the person.

10426.5. The entry for race or color in the new certificate shall be as indicated in the application. No reference shall be made in the new birth certificate that it is not the original birth certificate of the registrant. The new birth certificate shall supplant any birth

certificate previously registered for the registrant and shall be the only birth certificate open to public inspection.

10427. The State Registrar shall transmit a certified copy of a birth certificate newly established under this article to the registrant without additional charge.

10427.5. When a new birth certificate is established pursuant to this article, the State Registrar shall inform the local registrar and the county recorder whose records contain copies of the original certificate, who shall forward the copies to the State Registrar for filing with the original certificate, if it is practical for him or her to do so. If it is impractical for him or her to forward the copy to the State Registrar, he or she shall effectually seal a cover over the copy in a manner as not to deface or destroy the copy and forward a verified statement of his or her action to the State Registrar.

SEC. 2. Section 10613 of the Health and Safety Code is amended to read:

10613. A fee of eleven dollars ($11) shall be paid to the State Registrar by the applicant for an amendment to a birth, death, or marriage record under provisions of Articles 1 (commencing with Section 10400), 3 (commencing with Section 10420), and 3.5 (commencing with Section 10425) of Chapter 8, except for those amendments which are filed within one year of the date of occurrence of the event.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 611

An act to amend Section 14838 of, and to add Section 14838.6 to, the Government Code, relating to state contracts.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Our nation and state owe a great debt to those men and

women who have honorably served their country, often at great personal risk and cost, in the armed forces.

(b) Upon discharge, disabled veterans must make an often difficult readjustment to civilian life.

(c) California's disabled veterans are a valuable resource whose development should be encouraged and enhanced for the benefit of the entire state.

(d) Small businesses are a powerful source of economic growth, jobs, and new products.

(e) Small businesses owned and operated by disabled veterans should be encouraged by state government.

SEC. 2. Section 14838 of the Government Code is amended to read:

14838. In order to facilitate the participation of small business in state procurement and in construction contracts under the Office of the State Architect or other state agencies which contract for the construction (including alteration, demolition, repair, or improvement) of state facilities, the directors of General Services and of such other agencies, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small and Minority Business, for the extent of participation of small businesses in state procurement and in construction contracts.

(b) Provide for small business preference in construction or the procurement of goods where responsibility and quality are equal. The preference to small business shall be 5 percent of the lowest responsible bidder meeting specifications. However, the small business preference shall not exceed fifty thousand dollars ($50,000) for any bid, and the combined cost of preferences granted pursuant to this chapter and any other provision of law shall not exceed one hundred thousand dollars ($100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar ($50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses in the contract award.

(c) Give special consideration to small businesses by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses in their preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 14311, make awards, whenever feasible, to small business bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business contractor to qualify to bid on these subprojects.

(f) Except as provided in Sections 10392 and 10398 of the Public Contract Code, small business bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall

business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under any other provision of law shall not result in the denial of the award to a small business bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business, the contract shall be awarded to the disabled veteran-owned small business. This provision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference granted by subdivision (b).

SEC. 3. Section 14838.6 is added to the Government Code, to read:

14838.6. (a) For purposes of this chapter, "disabled veteran-owned small business" means a small business concern which is all of the following:

(1) At least 51 percent owned by one or more disabled veterans.

(2) Managed by, and the daily business operations are controlled by, one or more disabled veterans.

(b) For purposes of this section, "disabled veteran" means a person to whom both of the following apply:

(1) The person has served in the United States Air Force, Army, Navy, Marine Corps, or Coast Guard in time of war, or national emergency declared by the President of the United States of America, and who has been discharged or released under honorable conditions.

(2) The person is currently declared by the United States Veterans Administration to be 10 percent or more disabled as a result of service in the armed forces.

CHAPTER 612

An act to amend Section 65943, as amended by Section 3 of Chapter 985 of the Statutes of 1987 of, and to repeal Section 65943, as added by Section 4 of Chapter 985 of the Statutes of 1987 of, the Government Code, relating to development projects.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 65943 of the Government Code, as amended by Section 3 of Chapter 985 of the Statutes of 1987, is amended to read:

65943. (a) Not later than 30 calendar days after any public

agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

SEC. 2. Section 65943 of the Government Code, as added by

Section 4 of Chapter 985 of the Statutes of 1987, 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 local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 613

An act to amend Section 1952.6 of the Civil Code, relating to tenancies.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 1952.6 of the Civil Code is amended to read:

1952.6. (a) Sections 1951 to 1952.2, inclusive, shall not apply to any lease or agreement for a lease of real property between any public entity and any nonprofit corporation whose title or interest in the property is subject to reversion to or vesting in a public entity and which issues bonds or other evidences of indebtedness, the interest on which is exempt from federal income taxes for the purpose of acquiring, constructing, or improving the property or a building or other facility thereon, or between any public entity and any other public entity, unless the lease or the agreement shall specifically provide that Sections 1951 to 1952.2, inclusive, or any portions thereof, are applicable to the lease or the agreement.

(b) Except as provided in subdivision (a), a public entity lessee in a contract for a capital lease of real property involving the payment of rents of one million dollars ($1,000,000) or more may elect to waive any of the remedies for a breach of the lease provided in Sections 1951 to 1952.2, inclusive, and contract instead for any other remedy permitted by law. As used in this subdivision, "capital lease" refers to a lease entered into for the purpose of acquiring, constructing, or improving the property or a building or other facility thereon.

(c) As used in this section, "public entity" includes the state, a county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation.

CHAPTER 614

An act to amend Sections 49531 and 49553 of, and to add Section 49531.1 to, the Education Code, relating to education.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 49531 of the Education Code is amended to read:

49531. Any child nutrition entity may apply to the State Department of Education for all available federal and state funds so that a nutritionally adequate breakfast or lunch, or both, may be provided to pupils each schoolday at each school in the districts or maintained by the county superintendents of schools, or at private schools and parochial schools and to children receiving child development services. The State Board of Education shall adopt rules and regulations for the operation of lunch and breakfast programs in school districts. A child nutrition entity which receives state funds pursuant to this article, shall provide breakfasts and lunches in accordance with state and federal guidelines.

A nutritionally adequate breakfast, for the purposes of this article, is one that qualifies for reimbursement under the federal child nutrition program regulations. A nutritionally adequate lunch is one that qualifies for reimbursement under the federal child nutrition program regulations, meets one-third of the Recommended Dietary Allowance established by the National Research Council in effect on January 1, 1990.

State reimbursement for meals provided pursuant to this article shall be limited to meals provided to pupils who are within the relevant definitions and criteria in federal statutes and regulations which prescribe eligibility for free and reduced price meals.

SEC. 2. Section 49531.1 is added to the Education Code, to read:

49531.1. (a) The State Department of Education shall develop and maintain nutrition guidelines for school lunches and breakfasts, and for all food and beverages sold on public school campuses. These nutrition guidelines shall consider current recommendations for children from the California Daily Food Guide published by the State Department of Health Services.

(b) The nutrition guidelines shall include guidelines for fat, saturated fat, and cholesterol, and shall specify that where comparable food products of equal nutritional value are available the food product lower in fat, or saturated fat, or cholesterol shall be used.

SEC. 3. Section 49553 of the Education Code is amended to read:

49553. (a) A nutritionally adequate lunch, for the purposes of this article, is one that qualifies for reimbursement under the federal

child nutrition program regulations, meets one-third of the Recommended Dietary Allowance established by the National Research Council in effect on January 1, 1990.

(b) For the purposes of special school nutrition supplements provided to pregnant or lactating pupils under Section 49559, protein and grain meal components for any given day shall, together, offer a total of five ounces of protein, one ounce of which shall be cheese or eight ounces of milk and three servings from the grain group, preferably whole and nutritious grains. This may be accomplished by adding one ounce of protein and one serving from the grain group at breakfast or serving these as a snack, and by adding one or two ounces of protein, one ounce of which must be cheese or eight ounces of milk, to lunch, or by offering a morning supplement consisting of two or three ounces of protein, one ounce of which must be cheese, or eight ounces of milk, and one or two servings from the grain group. Meal components where only breakfast is served shall be increased to a total including one ounce of protein and two servings from the grain group, preferably whole and nutritious grains. Where both breakfast and lunch are provided, they shall, together, provide a total of five ounces of protein foods, one ounce of which shall be cheese, three servings from the grain group, preferably whole and nutritious grains, one and one-fourth cups from the fruit and vegetable group, and one pint from the milk group.

The following options shall be allowed:

(1) One cup of fruit in place of one serving of the grain group, once a week.

(2) One cup of unsweetened yogurt, made with pasteurized milk, in place of eight ounces of milk or one ounce of cheese, up to two times a week.

CHAPTER 615

An act to amend Section 832.7 of the Penal Code, relating to peace officers.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Peace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of police officers or a police agency

conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency which employs peace officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(c) Nothing in this section shall prohibit a department or agency from notifying the complaining party of the disposition of his or her complaint.

The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(d) Nothing in this section shall affect the discovery or disclosure of information contained in a peace officer's personnel file pursuant to Section 1043 of the Evidence Code.

CHAPTER 616

An act to add Section 13105.7 to the Health and Safety Code, relating to fire protection.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 13105.7 is added to the Health and Safety Code, to read:

13105.7. (a) The State Fire Marshal may establish a schedule of fees for the inspection, approval, and listing of testing laboratories which test consumer products for fire safety that are regulated by the State Fire Marshal.

(b) The State Fire Marshal may charge the testing laboratories fees to cover the costs of the program specified in subdivision (a), including the cost of establishing the fee schedule.

CHAPTER 617

An act to amend Section 5156.5 of, and to add Section 5156.6 to, the Elections Code, relating to elections.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 5156.5 of the Elections Code is amended to read:

5156.5. Except as provided in Section 5156.6, whenever any petition is submitted to the voters, the clerk of the district shall transmit a copy of the measure to the county counsel, or to the district attorney if there is no county counsel, of the county that contains the largest number of registered voters of the district. The county counsel or district attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The analysis shall be printed preceding the arguments for and against the measure. The analysis shall not exceed 500 words in length.

In the event the entire text of the measure is not printed on the ballot nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows:

"The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the elections official's office at (insert telephone number) and a copy will be mailed at no cost to you."

SEC. 2. Section 5156.6 is added to the Elections Code, to read:

5156.6. (a) Whenever any petition is submitted to the voters of a water district, the clerk of the district shall transmit a copy of the measure to the legal counsel for the water district, or to the county counsel if there is no legal counsel for the water district, of the county that contains the largest number of registered voters of the water district. Except as otherwise provided in subdivision (b), if there is a legal counsel for the water district, he or she shall prepare, subject to review and revision by the county counsel, an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The analysis shall be printed preceding the arguments for and against the measure. The analysis shall not exceed 500 words in length.

In the event the entire text of the measure is not printed on the ballot nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows:

"The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure,

please call the elections official's office at (insert telephone number) and a copy will be mailed at no cost to you."

(b) If there is no legal counsel for the water district, or if the legal counsel for the water district and the county counsel so agree, the county counsel shall prepare the impartial analysis.

(c) As used in this section:

(1) "Legal counsel for the water district" means the attorney designated under the district's conflict of interest code as its legal officer pursuant to Section 87300 et seq. of the Government Code.

(2) "County counsel" means the district attorney if there is no county counsel.

(3) "Water district" means a water district as defined in Section 20200 of the Water Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 618

An act relating to parks and recreation.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989.]

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

SECTION 1. The Legislature finds and declares that approximately 1.88 acres of the Kings River Green Belt Recreation Park acquired by the County of Fresno with state grant funds is a recognized Indian burial site which is limited to that use. The Legislature further finds and declares that it is in the public interest to transfer this Indian burial site to a private organization that will be responsible for the maintenance of the burial site. The Legislature further finds and declares that the transfer of the Indian burial site benefits the state and that the County of Fresno is not required to repay any state grant money received for acquisition of these lands.

SEC. 2. The County of Fresno may grant title to approximately 1.88 acres of land which it acquired with state grant money under the Cameron-Unruh Beach, Park, Recreational, and Historical Facilities Bond Act of 1964 (Chapter 1.6 (commencing with Section 5096.1) of Division 5 of the Public Resources Code), appropriated by category (d) of Item 341 of the Budget Act of 1967 (Chapter 500, Statutes 1967) and expended pursuant to State Department of Parks and

Recreation Project Agreement No. 810-102, Kings River Green Belt Recreation Park Acquisition, to the Choinumni Cultural Association, Inc. for the purpose of maintaining the lands as an Indian burial site, and, if the property ceases to be maintained as an Indian burial site, the property shall revert to the County of Fresno for recreational and open-space purposes.

CHAPTER 619

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time within which actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. This act may be cited as the Second Validating Act of 1989.

SEC. 2 As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means counties, cities and counties, cities, and all of the following districts, authorities, agencies, boards, commissions, and other entities:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts.

Bridge and highway districts.

Bridge, highway, and transportation districts.

California water district distribution districts.

California water district improvement districts.

California water districts.

Cemetery districts.

Citrus pest control districts.

City general improvement district improvement districts.

City general improvement districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community rehabilitation districts.

Community service district improvement districts.
Community service districts.
Conservancy districts.
Cotton pests abatement districts.
County boards of education.
County drainage districts.
County fire protection districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County power pumping districts.
County sanitation district improvement districts.
County sanitation districts.
County service area improvement areas.
County service areas.
County sewage and water districts.
County water agencies.
County water authorities.
County water district improvement districts.
County water districts.
County waterworks districts.
Crossing guard maintenance districts.
Department of Water Resources and other agencies acting under and pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Horticultural development districts.
Horticultural protection districts.
Housing authorities.
Industrial development authorities.
Integrated financing districts.
Irrigation district distribution districts.
Irrigation district improvement districts.
Irrigation districts.
Joint harbor improvement districts.
Joint highway districts.
Joint municipal sewage disposal districts.

Junior college districts.
Levee districts.
Library districts.
Local agency formation commissions.
Local health districts.
Local hospital districts.
Local transportation authorities.
Metropolitan transit development boards.
Metropolitan water districts.
Mosquito abatement districts.
Mosquito abatement or vector control districts.
Municipal facilities districts.
Municipal improvement assessment districts.
Municipal improvement district improvement districts.
Municipal improvement districts.
Municipal port districts.
Municipal sewer districts.
Municipal utility districts.
Municipal water district improvement districts.
Municipal water districts of any kind.
Parking authorities.
Parking districts.
Park, recreation, and parkway districts.
Permanent road divisions.
Pest abatement districts.
Port districts.
Project areas of redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility district improvement districts.
Public utility districts.
Rapid transit authorities.
Rapid transit districts.
Reclamation districts.
Recreational harbor districts.
Recreation and park districts.
Recreation, park, and parkway districts.
Redevelopment agencies.
Regional justice facility financing agencies.
Regional open-space districts.
Regional park and open-space districts.
Regional park districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road districts.
Sanitary agencies.

Sanitary districts.
Sanitary districts annexed areas.
School districts of any kind or class.
Separation of grade districts.
Service zones of fire protection districts
Sewer maintenance districts.
Special benefit assessment districts of the Southern California Rapid Transit District.
Special community services districts.
Special transit service districts
Storm water districts.
Transit districts.
Underground utility districts.
Unified air pollution control districts.
Unified port districts.
Urban renewal agencies.
Vehicle parking districts.
Veterans' memorial districts
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage district improvement districts.
Water storage districts.
Weed abatement districts
Zones of community service districts.
Zones of county service areas.
Zones of county water agencies.
Zones of county water authorities.
Zones of county waterworks districts.
Zones of flood control and water conservation districts.
Zones of flood control districts.

The term "public body" and the plural thereof, as used in this act, shall include only those entities which are specifically enumerated in this section.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements in which the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of such body, all instruments payable from revenues or special funds of such public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of

this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law are hereby declared to have been legally organized and to be legally functioning as such public body. Every such public body shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of such a public body regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into any such public body or for the annexation of any such public body to any other such public body or for the withdrawal or exclusion of territory from any such public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of such territory or the consolidation, merger, or dissolution of such public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any such public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of such bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner in which issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with such authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with such

authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, such bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with such authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply such legislative authorization as may be necessary to authorize, confirm, and validate any such acts and proceedings heretofore taken which the Legislature could have supplied or provided for in the law under which such acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent to which the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined or which is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter which has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of such matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period in which any action may be brought beyond the period in which it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any city or district, or any change in the boundaries of any city or district, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed under Sections 54900 to 54904, inclusive, of the Government Code, is filed within the time and substantially in the manner required by those sections.

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:

To validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 620

An act to repeal and add Section 11011.8 of the Government Code, to amend Section 5007.1 of, and to add Section 5007.4 to, the Public Resources Code, to amend Section 4 of Chapter 1190 of the Statutes of 1983, to amend Section 2 of Chapter 304 of the Statutes of 1988, to repeal Section 12 of Chapter 1617 of the Statutes of 1982, to repeal Section 4.5 of Chapter 1190 of the Statutes of 1983, to repeal Section 66.7 of Chapter 268 of the Statutes of 1984, and to repeal Section 6 of Chapter 1358 of the Statutes of 1987, relating to public property.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 11011.8 of the Government Code is repealed.

SEC. 2. Section 11011.8 is added to the Government Code, to read:

11011.8. (a) Whenever any person, as defined in Section 17, or public agency receives any state surplus real property at less than current market value, it shall pay all interim management and administrative costs incurred by the state between the time the person or public agency expressed interest in obtaining the property and the completion of the transfer and all costs incurred by the state in transferring title to the property.

(b) This section does not apply to any transfer of surplus state property that was authorized on or before January 1, 1989.

SEC. 2.5. Section 5007.1 of the Public Resources Code is amended to read:

5007.1. (a) Lands purchased or otherwise acquired by the department at the Pan Pacific project, which are to be operated and maintained by other public agencies under agreements entered into pursuant to Section 5080.30, shall not be subject to Section 5002.1, 5002.2, 5002.3, or 5002.4, or Article 1.7 (commencing with Section 5019.50), during the term of those agreements. Any facility to be developed on those lands shall only be constructed in accordance with a development plan approved by the director.

(b) The Legislature hereby finds and declares that public use

facilities are being contemplated as one of the alternatives for the Pan Pacific project in the aftermath of the recent fire, 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 may be constructed. Accordingly, pursuant to subdivision (a) of Section 5080.18, the term of any concession contract may be for a period not to exceed 66 years if the contract provides that the rent shall be reviewed and adjusted at least every 10 years, but not more often than every five years, to reflect market rates and conditions prevailing in the area in which the concession is located.

SEC. 3. Section 5007.4 is added to the Public Resources Code, to read:

5007.4. Consistent with the general plan for the unit, the department may enter into an operating agreement, at no cost to the state, with a qualified nonprofit organization for the California Citrus State Historic Park for purposes to include, but not be limited to, the following:

(a) Managing and maintaining agricultural production.

(b) Leasing individual groves for the purpose of managing and maintaining agricultural production.

(c) Selling citrus fruit and fruit products at the park.

(d) Using the proceeds of those sales for financing facilities and programs at the park.

(e) Accepting and spending donations of money for facilities and programs.

SEC. 4. 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 interests of the state, all or any part of the following real property:

PARCEL 1. Approximately 0.5 acre, consisting of a vacant parcel adjoining the campus of California State University, San Bernardino, and fronting on North Park Circle near its intersection with State College Parkway in the City of San Bernardino.

PARCEL 2. Approximately 0.4 acre with a structure, known as the Paskenta Residence of the Department of Forestry and Fire Protection and fronting on Toomes Camp Road near its intersection with Mountain View Road in Tehama County.

PARCEL 3. Approximately 2.68 acres in two parcels known as Rio Vista North Fishing Access No. 1 of the Department of Fish and Game and lying between State Highway Route 84 and the Sacramento River downstream of its confluence with Cache Slough and Steamboat Slough in Solano County.

PARCEL 4. Approximately 1.0 acre known as Rio Vista North Fishing Access No. 2 of the Department of Fish and Game and fronting on the west side of State Highway Route 84 and the Sacramento River downstream of its confluence with Cache Slough

and Steamboat Slough in Solano County.

PARCEL 5. Approximately 2.22 acres, consisting of part of the Los Ranchos Wildlife Area of the Department of Fish and Game fronting on the eastern right-of-way of State Highway Route 227 near its intersection with the right-of-way of the Southern Pacific Transportation Company in San Luis Obispo County near the unincorporated community of Edna.

PARCEL 6. Approximately 0.86 acre with a structure utilized as office space by the Department of Motor Vehicles and known as 379 Colusa Avenue, Yuba City.

PARCEL 7. Approximately 4.5 acres, being the Military Department's Manhattan Beach Armory located at 3601 Bell Avenue, Manhattan Beach. This parcel shall not be disposed of, however, until the City of Manhattan Beach amends its zoning ordinance to rezone approximately 2.5 acres of this parcel as R-1, and the Adjutant General determines that operations of the Military Department conducted on this parcel can be relocated to alternative facilities at another location. Upon both these conditions being satisfied, the Department of General Services shall, notwithstanding Section 11011.1 of the Government Code, convey to the City of Manhattan Beach, for municipal purposes only and at no cost to the city, the remaining part of this parcel that was not rezoned to R-1.

PARCEL 8. Approximately 0.48 acre, being the eastern portion of the Military Department's Santa Ana Armory located at 612 East Warner Avenue, Santa Ana.

PARCEL 9. Approximately 0.13 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

PARCEL 10. Approximately 0.12 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

PARCEL 11. Approximately 0.23 acre, consisting of an unimproved, subdivided lot fronting on Palisades Beach Road immediately adjacent to Santa Monica State Beach.

SEC. 5. (a) The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, may exchange, upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interests of the state, approximately 2.66 acres with a structure within California Citrus State Historic Park in the Arlington Heights neighborhood in the City of Riverside, for the Gage Canal Co.'s inholdings, located at 1826, 1850, and 1870 Jackson Street, Riverside.

(b) This section shall not become operative unless and until funds in an amount sufficient to meet the provisions of an agreement between the Department of Parks and Recreation and the Gage Canal Co. relating to relocation assistance for the Gage Canal Co. have been appropriated for that purpose.

SEC. 6. (a) The Director of General Services, with the approval

of the State Public Works Board and the Director of Parks and Recreation, may exchange 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, approximately 20.32 acres in the northwestern area of Anza-Borrego Desert State Park, lying north of Palm Canyon Drive and west of Hoberg Road and Lazy S Drive in San Diego County.

(b) In addition to complying with any other requirements of law concerning mineral rights, there shall be excepted from the conveyance authorized by this section all coal, oil, gas, or other minerals contained in the described land, as reserved by the United States of America in patents to the State of California dated September 27, 1937, recorded November 8, 1937, in Book 712, page 375, of Official Records.

SEC. 7. (a) The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, may exchange 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 interests of the state, all or any part of approximately 0.21 acre in Clear Lake State Park adjoining property known as 6190 Soda Bay Road, Kelseyville, Lake County.

(b) The state property to be exchanged pursuant to this section shall consist of the minimum area of state property necessary to accommodate an encroachment extending from the northern boundary of 6190 Soda Bay Road.

SEC. 8. (a) The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, may sell 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 interests of the state, all or any part of approximately 0.11 acre in Malibu Creek State Park that adjoins 1515 Lookout Drive, Agoura, Los Angeles County.

(b) The state property to be sold pursuant to this section shall consist of the minimum area of state property necessary to accommodate an encroachment extending from the southern boundary of 1515 Lookout Drive. In order that this authorization may be effective to accommodate the encroachment and make appropriate boundary adjustments, the sale may be negotiated with the owner of 1515 Lookout Drive. The conveyance by the state shall be made subject to the conditions that the owner of 1515 Lookout Drive, and all subsequent assignees of any interest therein, be prohibited from erecting any further improvement on the property sold pursuant to this section and be required to comply with the requirements of Los Angeles County Ordinance No. 86-0004, Article 11, as it now exists or may be subsequently amended. The

conveyance shall provide that, upon the breach of any of the conditions imposed, the state may reenter the property and, upon that reentry, the interest granted shall terminate and ownership shall vest entirely in the state.

SEC. 9. (a) The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, may sell or exchange 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 interests of the state, all or any part of 0.12 acre in William B. Ide State Historic Park that adjoins 21685 Adobe Road, Red Bluff, Tehama County.

(b) The state property to be sold or exchanged pursuant to this section shall consist of the minimum area of state property necessary to accommodate an encroachment extending from the southern boundary of 21685 Adobe Road. In order that this authorization may be effective to accommodate the encroachment and make appropriate boundary adjustments, the sale or exchange may be negotiated with the owner of 21685 Adobe Road. The conveyance by the state shall be made subject to the condition that the owner of 21685 Adobe Road, and all subsequent assignees of any interest therein, be prohibited from erecting any further improvement on the property sold or exchanged pursuant to this section and that, upon any breach of this condition, the state may reenter the property and, upon that reentry, the interest granted shall terminate and ownership shall vest entirely in the state.

SEC. 10. The Director of General Services, with the approval of the State Public Works Board and the Director of Forestry and Fire Protection, may sell, exchange, or lease 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 interests of the state, all or any part of approximately 8.2 acres with structures, known as the Nevada City Forest Fire Station of the department of Forestry and Fire Protection and located on Ridge Road, Nevada City.

SEC. 11. The Director of General Services, with the approval of the State Public Works Board and the Director of Corrections, may transfer to the City of Corcoran, for public road and other municipal purposes, approximately 14.0 acres in three parcels, being a portion of California State Prison, Corcoran, with road improvements known as King Avenue and Paris Avenue, upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interests of the state. Upon any breach of the conditions of this transfer, the state may reenter the property, and upon that reentry, the interest of the City of Corcoran shall terminate and all right, title, and interest in the property shall revert to the state.

SEC. 12. The Director of General Services, with the approval of the State Public Works Board and the Director of Corrections, may

transfer to the County of Kings, for public road purposes, approximately 3.7 acres in two parcels, being a portion of California State Prison, Corcoran, with road improvements known as Sixth Avenue and Paris Avenue, upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interests of the state. Upon any breach of the conditions of this transfer, the state may reenter the property, and upon that reentry, the interest of the County of Kings shall terminate and all right, title, and interest in the property shall revert to the state

SEC. 13. The Director of General Services, with the approval of the State Public Works Board and the Director of Corrections, may transfer to the City of Avenal, for expansion of the city's water treatment plant to accommodate the needs of California State Prison, Avenal, approximately 2.52 acres, being a portion of California State Prison, Avenal, that were acquired pursuant to a joint powers agreement between the city and the Department of Corrections, upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interests of the state Upon any breach of the conditions of this transfer, the state may reenter the property, and upon that reentry, the interest of the County of Kings shall terminate and all right, title, and interest in the property shall revert to the state.

SEC. 14. (a) Notice of every public auction or bid opening shall be posted on any property to be sold pursuant to this act and shall be published in a newspaper of general circulation that is 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 this act is exempt from Chapters 3 (commencing with Section 21100) to 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 15. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of the parcels described in this act, upon appropriation therefor by the Legislature, from the proceeds of the parcels disposed.

(b) After deducting the amount necessary for the purposes of subdivision (a), the net proceeds of any moneys received from the disposition of the parcels described in this act shall be deposited in the General Fund, except as follows:

(1) The net proceeds of any moneys received from the disposition of Parcels 3, 4, and 5 in Section 4 shall be deposited in the Wildlife Restoration Fund.

(2) The net proceeds of any moneys received from the disposition of Parcel 6 in Section 4 shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

(3) The net proceeds of any moneys received from the disposition of Parcels 7 and 8 in Section 4 shall be deposited in the Armory Fund

(4) The net proceeds of any moneys received from the disposition

of the parcel described in Section 8 shall be deposited as provided in Section 5003.15 of the Public Resources Code.

(5) Inasmuch as Parcels 9, 10, and 11 in Section 4 and the parcel described in Section 9 were acquired several decades prior to the enactment of Section 5003.15 of the Public Resources Code, the net proceeds of any moneys received from the disposition of those parcels shall, notwithstanding Section 5003.15, be deposited in the State Parks and Recreation Fund and shall be available for appropriation for state park planning, acquisition, and development projects.

SEC. 16. As to any property conveyed pursuant to this act containing 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 any property conveyed pursuant to this act containing 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 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 resources and deposits.

SEC. 17. Section 12 of Chapter 1617 of the Statutes of 1982 is repealed.

SEC. 18. Section 4 of Chapter 1190 of the Statutes of 1983 is amended to read:

Sec. 4. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, is hereby authorized to convey or exchange upon those terms, conditions, and with such reservations and exceptions which in his or her opinion may be in the best interest of the state, all or part of the following described property:

PARCEL 2. Approximately 1.02 acres being a portion of Chino Hills located adjacent to the westerly boundary of Baldwin Company Ltd. at the terminus of Valley Center Drive in the City of Yorba Linda, Orange County.

PARCEL 3. Approximately 10.01 acres and the public pier at Avila State Beach, San Luis Obispo County.

PARCEL 4. Approximately 0.80 acre at Moonlight State Beach comprised of seven undeveloped lots in the Community of Encinitas, San Diego County.

SEC. 19. Section 4.5 of Chapter 1190 of the Statutes of 1983 is repealed.

SEC. 20. Section 66.7 of Chapter 268 of the Statutes of 1984, as amended by Section 1 of Chapter 1164 of the Statutes of 1986, is repealed.

SEC. 21. Section 6 of Chapter 1358 of the Statutes of 1987 is

repealed.

SEC. 22. Section 2 of Chapter 304 of the Statutes of 1988 is amended to read:

Sec. 2. (a) The sum of two million five hundred thousand dollars ($2,500,000) is hereby transferred from the State Energy Conservation Assistance Account in the General Fund to the Environmental License Plate Fund as a loan for the purpose of carrying out this section. This loan shall be repaid to the Energy Resources Programs Account in the General Fund in the 1989–90 fiscal year from the Environmental License Plate Fund with interest to be determined in accordance with Section 16314 of the Government Code.

(b) The sum of two million five hundred thousand dollars ($2,500,000) is hereby appropriated from the Environmental License Plate Fund to the State Coastal Conservancy for expenditure, together with as much of the funds appropriated in Section 1 of this act as may be necessary, for acquisition of all or part of the Jones Ranch, near Westport, Mendocino County. The first two million five hundred thousand dollars ($2,500,000) encumbered from the appropriations made by this section and Section 1 shall consist of the funds transferred from the State Energy Conservation Assistance Account pursuant to subdivision (a).

(c) Upon completion of the acquisition, the State Coastal Conservancy shall prepare a property disposition plan in cooperation with the Department of Parks and Recreation and the County of Mendocino. Upon completion of the plan, those portions of the property acquired by the state and suitable for the expansion of Westport-Union Landing State Beach shall be transferred to the Department of Parks and Recreation. Any remaining portions of the property held by the conservancy may be disposed of by the conservancy pursuant to Division 21 (commencing with Section 31000) of the Public Resources Code and in accordance with the applicable local coastal program. Any remaining portions of the property held in trust, as provided in subdivision (d), and not held by the conservancy, may also be disposed of by the conservancy if the trustee consents. After deduction of an amount necessary to reimburse the conservancy for its costs incurred pursuant to this act, the net proceeds of any property thus disposed of, which was previously held in trust, shall be deposited in the trust described in subdivision (d), and the net proceeds of any property thus disposed of, which was previously held by the conservancy, up to the sum of two million five hundred thousand dollars ($2,500,000) plus interest calculated pursuant to subdivision (a), shall be deposited to the credit of the Environmental License Plate Fund. In no event, however, shall the amount deducted exceed 5 percent of the proceeds. Any net proceeds received by the conservancy in excess of the amount necessary to reimburse the two million five hundred thousand dollars ($2,500,000) plus interest expended from the Environmental License Plate Fund shall be deposited in the trust

described in subdivision (d).

(d) This section shall not become operative until the Registrar of Charitable Trusts in the Department of Justice confirms in writing to the Secretary of State that the owner of the Jones Ranch has transferred title, in trust, to all of the Jones Ranch, less any part of the ranch, the sale of which was determined by the owner to be necessary to satisfy an existing encumbrance that would otherwise impair the owner's ability to transfer title in trust, and that the charitable remainder of the trust is for the exclusive benefit of the Statewide Air Pollution Research Center.

SEC. 23. Pursuant to Section 9 of Article XIX of the California Constitution, the Director of Transportation may transfer to the Department of Parks and Recreation all or part of the following real property:

PARCEL 1. Approximately 1.57 acres, as an addition to Cardiff State Beach, San Diego County.

PARCEL 2. Approximately 0.41 acre, as an addition to San Elijo State Beach, San Diego County.

SEC. 24. (a) The Director of Transportation may transfer to the State Coastal Conservancy all or any part of approximately 133.0 acres, consisting of right-of-way holdings in Mendocino County south of Westport in the vicinity of Bruhel Point that were acquired with funds pursuant to the federal Highway Beautification Act of 1965 (23 U.S.C. Sec. 131), subject to the following conditions:

(1) The Department of Transportation may establish specifications for the management and maintenance of the scenic turnout on State Highway Route 1 by any successor public agency.

(2) The property transferred shall continue to be managed and maintained in accordance with the terms under which funds were orignally granted for its acquisition pursuant to the Highway Beautification Act.

(b) Upon completion of the property disposition plan required by Section 2 of Chapter 304 of the Statutes of 1988, and subject to the requirements set forth in subdivision (a), the State Coastal Conservancy may, with the concurrence of the Director of Transportation, further transfer all or part of the real property to the Department of Parks and Recreation or another public agency for management as park, open space, or coastal resource lands in perpetuity and in a manner compatible with the management of the real property acquired pursuant to Chapter 304 of the Statutes of 1988.

(c) Because tax revenues designated in Sections 1 and 2 of Article XIX of the Constitution were not expended for the acquisition of the property described in this section, Section 9 of Article XIX does not apply to any transfer made pursuant to this section.

SEC. 25. Pursuant to Sections 5096.96 and 5096.137 of the Public Resources Code, public recreational uses may be terminated on not more than 2.5 acres of Palm Desert Community Center Park, a portion of which was improved with local assistance grants from the

State Beach, Park, Recreation, and Historical Facilities Fund of 1974 and the State, Urban, and Coastal Park Fund as, respectively, projects Nos. 33-0035 and 76-33012, if all of the following conditions are met:

(a) The City of Palm Desert and the Palm Desert Redevelopment Agency enter into an agreement with the Coachella Valley Recreation and Park District (1) to construct, or cause to be constructed, at the Palm Desert civic center site and by a time specified in the agreement, but in no event later than December 31, 1994, a community recreation facility, which is of at least comparable value to, and in replacement of, similar facilities at Palm Desert Community Center Park, for use by the district and at no cost to the district, (2) to grant the exclusive use of that facility to the district, at no cost to the district, for public recreational use until at least January 1, 2015, (3) to authorize at the civic center site only those uses of land in the immediate vicinity of that facility that are compatible with that facility's use, and (4) prior to completing construction of the community recreation facility, to keep available for public recreational use the temporary facility occupied by the district at the civic center site.

(b) The City of Palm Desert and the Palm Desert Redevelopment Agency agree, as an amendment to existing grant agreements to be submitted to the Department of Parks and Recreation for approval, (1) to maintain in perpetuity at least 5.0 acres at the civic center site for outdoor recreational use that are in addition to the land at the site required for the purposes of subdivision (a) and (2) to maintain in perpetuity the tennis courts and the surrounding land, consisting of approximately 27.0 acres, at Palm Desert Community Center Park for public recreational use and to assure the continuing availability at all times of public parking for recreational users at that park.

(c) The City of Palm Desert and the Coachella Valley Recreation and Park District jointly hold at least one public hearing concerning the transactions authorized by this section prior to undertaking any transaction so authorized.

(d) Any reference in this section to the Coachella Valley Recreation and Park District shall be deemed to refer also to any successor public agency to that district.

CHAPTER 621

An act to amend Section 8690.4 of the Government Code, relating to natural disaster assistance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. 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.

The unpredictable nature of earthquakes necessitates immediate access to funds for investigative purposes. For this reason, notwithstanding any other provision of law, funds in the Earthquake Emergency Investigations Account shall be available for expenditure without regard to fiscal years.

(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. 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:

This act continuously appropriates the moneys in the Earthquake Emergency Investigations Account in the Natural Disaster Assistance Fund. However, the existing moneys in the account will revert to the General Fund on December 31, 1989. In order to avoid this reversion of funds in the account, and to facilitate the orderly administration of the investigation of earthquakes, it is necessary that this act go into immediate effect.

CHAPTER 622

An act to amend Sections 11614, 11710, and 11713.1 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 11614 of the Vehicle Code is amended to read:

11614. It is unlawful and a violation of this code for a lessor-retailer licensed under this chapter in connection with any activity for which this license is required:

(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 oral representation, 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 statement as part of a plan or scheme with the intent not to sell any vehicle or sell service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) To fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(e) To advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars ($35).

(f) 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 , finance charges, or 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.

(g) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, 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.

(h) To refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) To engage in the business for which licensee is licensed without having in force and effect a bond as provided in Section 11612.

(j) To engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and a branch office location or locations as required by this chapter.

(k) To permit the use of the lessor-retailer 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 lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) To violate any of the provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) To represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

SEC. 2. Section 11710 of the Vehicle Code is amended to read:

11710. (a) Before any dealer's or remanufacturer's license is issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond executed by an admitted surety insurer, approved as to form by the Attorney General, and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a purchaser, seller, financing agency, or

governmental agency.

(b) A dealer bond shall be in the amount of ten thousand dollars ($10,000). A dealer holding a dealer's license that was issued before July 1, 1990, that does not expire until 1990 or 1991, which has a bond in the amount of five thousand dollars ($5,000) on file with the department, and whose license and bond remain continuously in full force and effect until the expiration of the license in 1990 or 1991, may continue to conduct business until that expiration date. Before the license is renewed by the department, the dealer shall procure and file a bond in the amount of ten thousand dollars ($10,000). A remanufacturer bond shall be in the amount of twenty-five thousand dollars ($25,000).

(c) Liability under the bond is to remain at full value. If the amount of liability under the bond is decreased or there is outstanding a final court judgment for which the dealer or remanufacturer and sureties are liable, the dealer's or remanufacturer's license shall be automatically suspended. In order to reinstate the license and special plates, the licensee shall either file an additional bond or restore the bond on file to the original amount, or shall terminate the outstanding judgment for which the dealer or remanufacturer and sureties are liable.

(d) A dealer's or remanufacturer's license, or renewal of the license, shall not be issued to any applicant therefor, unless and until the applicant files with the department a good and sufficient instrument, in writing, in which the applicant appoints the director as the true and lawful agent of the applicant upon whom all process may be served 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 the violation of the applicant of any of the terms and provisions of this code or any condition of the dealer's or remanufacturer's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in such a case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree, in writing, that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case where the licensee is served with process by service upon the director, 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 at the time of service of the copy of the summons and complaint. Service on the director shall be a sufficient service on the licensee if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the applicant'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 process so served upon the director, which record shall show the day and hour of service and shall retain the summons and complaint so served on file. Where the licensee is served with process by service upon the director, the licensee shall have and 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. However, for purposes of venue, where the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had an established place of business.

SEC. 3. 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, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed thirty-five dollars ($35).

(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, 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, 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 thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) 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.

CHAPTER 623

An act to amend Section 8901 of the Government Code, relating to the Legislature, and making an appropriation therefor.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 8901 of the Government Code is amended to read:

8901. Commencing at noon on January 2, 1967, each Member of the Legislature shall receive, as a salary for his or her services, the amount of sixteen thousand dollars ($16,000) per year, during the term for which he or she was elected, payable in equal monthly amounts.

Commencing at noon on January 4, 1971, the annual salary provided by this section shall be increased to nineteen thousand two hundred dollars ($19,200).

Commencing at noon on December 2, 1974, the annual salary provided by this section shall be increased to twenty-one thousand one hundred twenty dollars ($21,120).

Commencing at noon on December 6, 1976, the annual salary provided by this section shall be increased to twenty-three thousand two hundred thirty-two dollars ($23,232).

Commencing at noon on December 4, 1978, the annual salary provided by this section shall be increased to twenty-five thousand five hundred fifty-five dollars ($25,555).

Commencing at noon on December 1, 1980, the annual salary provided by this section shall be increased to twenty-eight thousand one hundred ten dollars ($28,110).

Commencing at noon on December 3, 1984, the annual salary provided by this section shall be increased to thirty-three thousand seven hundred thirty-two dollars ($33,732).

Commencing at noon on December 1, 1986, the annual salary provided by this section shall be increased to thirty-seven thousand one hundred five dollars ($37,105).

Commencing at noon on December 5, 1988, the annual salary provided by this section shall be increased to forty thousand eight hundred sixteen dollars ($40,816).

Commencing at noon on December 3, 1990, the annual salary provided by this section shall be increased to forty-four thousand eight hundred ninety-eight dollars ($44,898).

CHAPTER 624

An act to amend Sections 679.03 and 1203.1e of, and to add Sections 3075.3 and 3085.1 to, the Penal Code, to amend Sections 1764 and 1764.1 of, and to add Sections 1764.2 and 1764.3 to, the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 679.03 of the Penal Code is amended to read:

679.03. With respect to the conviction of a defendant involving a violent offense, as defined in subdivision (b) of Section 12021.1, the county district attorney, probation department, and victim-witness coordinator shall confer and establish an annual policy within existing resources to decide which one of their agencies shall inform each witness involved in the conviction who was threatened by the defendant following the defendant's arrest and each victim or next of kin of the victim of that offense of the right to request and receive a notice pursuant to Section 3058.8. If no agreement is reached, the presiding judge shall designate the appropriate county agency or department to provide this notification.

SEC. 2. Section 1203.1e of the Penal Code is amended to read:

1203.1e. (a) In any case in which a defendant is ordered to serve a period of confinement in a county jail or other local detention facility, and the defendant is eligible to be released on parole by the county board of parole commissioners, the court shall, after a hearing, make a determination of the ability of the person to pay all or a portion of the reasonable cost of providing parole supervision. The reasonable cost of those services shall not exceed the amount determined to be the actual average cost of providing parole supervision.

(b) If the court determines that the person has the ability to pay all or part of the costs, the court may set the amount to be reimbursed and order the person to pay that sum to the county in the manner in which the court believes reasonable and compatible with the person's financial ability. In making a determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon the person and any amount the person has been ordered to pay in restitution.

If practicable, the court shall order payments to be made on a monthly basis as directed by the court. 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.

(c) For the purposes of this section, "ability to pay" means the overall capability of the person to reimburse the costs, or a portion

of the costs, of providing parole supervision and shall include, but shall not be limited to, consideration of all of the following factors:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the board 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 person 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 person's financial capability to reimburse the county for the costs.

(d) At any time during the pendency of the order made under this section, a person against whom an order has been made may petition the court to modify or vacate its previous order on the grounds of a change of circumstances with regard to the person's ability to pay. The court shall advise the person of this right at the time of making the order.

(e) All sums paid by any person pursuant to this section shall be deposited in the general fund of the county.

(f) The parole of any person shall not be denied or revoked in whole or in part based upon the inability or failure to pay under this section.

(g) The county board of parole commissioners shall not have access to offender financial data prior to the rendering of any parole decision.

SEC. 3. Section 3075.3 is added to the Penal Code, to read:

3075.3. There is in Contra Costa County a board of parole commissioners, consisting of the following: (1) the sheriff or, in a county with a department of corrections, the director of that department, (2) the probation officer, and (3) a member not a public official to be selected from the public by the presiding judge, if any, or, if none, by the senior judge in point of service, of the superior court. The public member of the county board of parole commissioners or his or her alternate shall be entitled to actual traveling and other necessary expenses incurred in the discharge of their duties. In addition the public member or his or her alternate shall be entitled to per diem at such rate as may be provided by the board of supervisors. The public member or his or her alternate shall hold office for a term of one year and in no event for a period exceeding three consecutive years. The term shall commence on the date of appointment.

SEC. 3.3. Section 3085.1 is added to the Penal Code, to read:

3085.1. The presiding judge, if any, or, if none, the senior judge in point of service, of the superior court in Contra Costa County may appoint an alternate for the public member who shall serve in the absence of the public member.

SEC. 3.5. Section 1764 of the Welfare and Institutions Code is amended to read:

1764. Notwithstanding any other provision of law, any of the

following information in the possession of the Youth Authority regarding persons 16 years of age or older who were committed to the Youth Authority by a court of criminal jurisdiction, or who were committed to the Department of Corrections and were subsequently transferred to the Youth Authority, shall be disclosed to any member of the public, upon request, by the director or his or her designee:

(a) The name and age of the person.

(b) The court of commitment and the offense that was the basis of commitment.

(c) The date of commitment.

(d) Any institution where the person is or was confined.

(e) The actions taken by any paroling authority regarding the person which relate to parole dates.

(f) The date the person is scheduled to be released to the community, including release to a reentry work furlough program.

(g) The date the person was placed on parole.

(h) The date the person was discharged from the jurisdiction of the Youth Authority and the basis for the discharge.

(i) In any case where the person has escaped from any institution under the jurisdiction of the Youth Authority, a physical description of the person and the circumstances of the escape.

The provisions of this section shall not be construed to authorize the release of any information which could place any individual in personal peril; which could threaten Youth Authority security; or which is exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 4. Section 1764.1 of the Welfare and Institutions Code is amended to read:

1764.1. Notwithstanding any other provision of law, the director or his or her designee may release the information described in Section 1764, regarding a person committed to the Youth Authority by a juvenile court for an offense described in subdivision (a) of Section 676, to any member of the public who requests the information, unless the court has ordered confidentiality under subdivision (c) of Section 676.

SEC. 5. Section 1764.2 is added to the Welfare and Institutions Code, to read:

1764.2. (a) Notwithstanding any other provision of law, the director or his or her designee shall release the information described in Section 1764, regarding a person committed to the Youth Authority for an offense described in subdivision (a) of Section 676, to the victim or the next of kin of the victim of the offense, upon request, unless the court has ordered confidentiality under subdivision (c) of Section 676. The victim or next of kin shall be identified by the court or probation department in the offender's commitment documents before the director is required to disclose this information.

(b) The director or his or her designee shall, with respect to

persons committed to the Youth Authority, including persons committed to the Department of Corrections who have been transferred to the Youth Authority, for an offense described in subdivision (a) of Section 676, inform each victim of that offense, or the victim's next of kin, of his or her right to request and receive information pursuant to subdivision (a) and Section 1767.

SEC. 6. Section 1764.3 is added to the Welfare and Institutions Code, to read:

1764.3. (a) Whenever a person is committed to the Youth Authority by a court of criminal jurisdiction, or is committed to the Department of Corrections and subsequently transferred to the Youth Authority, for a conviction of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code, the director or his or her designee shall, with respect to that person, provide all notices that would be required to be provided by the Board of Prison Terms or the Department of Corrections pursuant to Sections 3058.6 and 3058.8 of the Penal Code, if that person were confined in their respective institutions.

(b) In order to be entitled to receive from the department, pursuant to subdivision (a), the notice set forth in Section 3058.8 of the Penal Code, the requesting party shall keep the department informed of his or her current mailing address.

(c) The notice required under this section shall be provided within 10 days of release with respect to persons committed to the Youth Authority by a court of criminal jurisdiction.

SEC. 7. The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 625

An act to amend Sections 1026 and 1370 of the Penal Code, and to amend Section 702.3 of the Welfare and Institutions Code, relating to criminal procedure, and making an appropriation therefor.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 1026 of the Penal Code is amended to read:

1026. (a) When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director, or the court may order the defendant placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2.

(b) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law. A defendant

committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 shall not be released from confinement, parole, or outpatient status unless and until the court which committed the person shall, after notice and hearing, find and determine that the person's sanity has been restored. Nothing in this section shall prevent the transfer of the patient from one state hospital to any other state hospital by proper authority. Nothing in this section shall prevent the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.

(c) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to a state hospital or to another public or private treatment facility approved by the community program director. Where either the defendant or the prosecuting attorney chooses to contest either kind of order of transfer, a petition may be filed in the court requesting a hearing which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.

(d) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(e) When the court, after considering the placement recommendation of the community program director required in subdivision (b), orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(1) The commitment order, including a specification of the charges.

(2) A computation or statement setting forth the maximum term of commitment in accordance with Section 1026.5.

(3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(4) State Summary Criminal History information.

(5) Any arrest reports prepared by the police department or other law enforcement agency.

(6) Any court-ordered psychiatric examination or evaluation reports.

(7) The community program director's placement recommendation report.

(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six-month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.

(g) When directing that the defendant be confined in a state hospital pursuant to subdivision (a), the court shall select the state hospital in accordance with the policies established by the State Department of Mental Health.

(h) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.

SEC. 2. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, and the court shall order that (i) in the meantime, the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered or to any other available public or private treatment facility approved by the community program director which will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600, and (ii) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with the provisions of Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of such order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a state hospital or to any other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program

director or a designee.

(3) When the court, after considering the placement recommendation of the community program director that is required in paragraph (2), orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State Summary Criminal History information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(4) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of Mental Health.

(5) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

(2) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(c) (1) If, at the end of three years from the date of commitment or a period of commitment equal to the maximum term of

imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the community program director or a designee of such return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county which ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee and shall notify the community program director or a designee of the outcome of the proceedings.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.

SEC. 3. Section 702.3 of the Welfare and Institutions Code is amended to read:

702.3. Notwithstanding any other provision of law:

(a) When a minor denies, by a plea of not guilty by reason of insanity, the allegations of a petition filed pursuant to Section 602 of the Welfare and Institutions Code, and also joins with that denial a general denial of the conduct alleged in the petition, he or she shall first be subject to a hearing as if he or she had made no allegation of insanity. If the petition is sustained or if the minor denies the allegations only by reason of insanity, then a hearing shall be held on the question of whether the minor was insane at the time the offense was committed.

(b) If the court finds that the minor was insane at the time the offense was committed, the court, unless it appears to the court that

the minor has fully recovered his or her sanity, shall direct that the minor be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private mental health facility approved by the community program director, or the court may order the minor to undergo outpatient treatment as specified in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code. The court shall transmit a copy of its order to the community program director or his or her designee. If the allegations of the petition specifying any felony are found to be true, the court shall direct that the minor be confined in a state hospital or other public or private mental health facility approved by the community program director for a minimum of 180 days, before the minor may be released on outpatient treatment. Prior to making the order directing that the minor be confined in a state hospital or other facility or ordered to undergo outpatient treatment, the court shall order the community program director or his or her designee to evaluate the minor and to submit to the court within 15 judicial days of the order his or her written recommendation as to whether the minor should be required to undergo outpatient treatment or committed to a state hospital or another mental health facility. If, however, it shall appear to the court that the minor has fully recovered his or her sanity the minor shall be remanded to the custody of the probation department until his or her sanity shall have been finally determined in the manner prescribed by law. A minor committed to a state hospital or other facility or ordered to undergo outpatient treatment shall not be released from confinement or the required outpatient treatment unless and until the court which committed him or her shall, after notice and hearing, in the manner provided in Section 1026.2 of the Penal Code, find and determine that his or her sanity has been restored.

(c) When the court, after considering the placement recommendation for the community program director required in subdivision (b), orders that the minor be confined in a state hospital or other public or private mental health facility, the court shall provide copies of the following documents which shall be taken with the minor to the state hospital or other treatment facility where the minor is to be confined:

(1) The commitment order, including a specification of the charges.

(2) The computation or statement setting forth the maximum time of commitment in accordance with Section 1026.5 and subdivision (e).

(3) A computation or statement setting forth the amount of credit, if any, to be deducted from the maximum term of commitment.

(4) State Summary Criminal History information.

(5) Any arrest or detention reports prepared by the police department or other law enforcement agency.

(6) Any court-ordered psychiatric examination or evaluation

reports.

(7) The community program director's placement recommendation report.

(d) The procedures set forth in Sections 1026, 1026.1, 1026.2, 1026.3, 1026.4, 1026.5, and 1027 of the Penal Code, and in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code, shall be applicable to minors pursuant to this section, except that, in cases involving minors, the probation department rather than the sheriff, shall have jurisdiction over the minor.

(e) No minor may be committed pursuant to this section for a period longer than the jurisdictional limits of the juvenile court, pursuant to Section 607, unless, at the conclusion of the commitment, by reason of a mental disease, defect, or disorder, he or she represents a substantial danger of physical harm to others, in which case the commitment for care and treatment beyond the jurisdictional age may be extended by proceedings in superior court in accordance with and under the circumstances specified in subdivision (b) of Section 1026.5 of the Penal Code.

(f) The provision of a jury trial in superior court on the issue of extension of commitment shall not be construed to authorize the determination of any issue in juvenile court proceedings to be made by a jury.

SEC. 4. To the extent that this act requires court personnel to perform activities which they previously did not perform in making judicial commitments to state hospitals, the courts may obtain reimbursement from the State Department of Mental Health for the incremental expenses which they incur.

CHAPTER 626

An act to add Sections 21081.7 and 21092.4 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 21081.7 is added to the Public Resources Code, to read:

21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located when the project has impacts that are of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency shall adopt guidelines for the submittal of those reporting or monitoring programs.

SEC. 2. Section 21092.4 is added to the Public Resources Code, to read:

21092.4. (a) For a project of statewide, regional, or areawide significance, the lead agency shall consult with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. A transportation planning agency or public agency which provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.

(b) As used in this section, "transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 627

An act to amend Sections 13260 and 13261 of the Water Code, relating to water quality.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the regional board of that region a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or

entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating or proposing to construct an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the regional board of that region a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) Any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceeding year was greater than or less than the revenue levels set forth in the Budget Act, the state board may further adjust the annual and filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 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, 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 by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until such time as those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the California regional water quality control board for the region, pursuant to the memorandum of understanding, entered into between the State Water Resources Control Board and the Department of Conservation on May 19, 1988. This section shall remain operative until the memorandum of understanding is revoked by the State Water Resources Control Board or the Department of Conservation.

SEC. 2. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the regional board of that region a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating or proposing to construct an injection

well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the regional board of that region a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) Any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than or less than the revenue levels set forth in the Budget Act, the state board may further adjust the annual and filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 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, 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 by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the

Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the California regional water quality control board for the region, pursuant to the memorandum of understanding, entered into between the State Water Resources Control Board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the State Water Resources Control Board or the Department of Conservation.

(*l*) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the State Department of Health Services pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the

mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

SEC. 3. Section 13261 of the Water Code is amended to read:

13261. (a) Any person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars ($5,000) for each day in which the violation occurs.

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of such requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor.

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars ($5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars ($25,000).

SEC. 4. Section 2 of this bill incorporates amendments to Section 13260 of the Water Code proposed by both this bill and AB 1413. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 13260 of the Water Code, and (3) this bill is enacted after AB 1413, 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 only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 628

An act to amend Section 19356.6 of the Welfare and Institutions Code, relating to developmental disabilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 19356.6 of the Welfare and Institutions Code is amended to read:

19356.6. (a) The terms used in this section shall have the following meanings:

(1) "Supported employment" means substantial paid work that is integrated in the community for persons with developmental disabilities whose vocational handicap is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) "Substantial paid work" means work of at least 20 hours per week which is paid for in accordance with applicable standards set forth by the Department of Labor and the State Department of Industrial Relations.

(3) "Integrated work" means the engagement of an employee with a disability in work in a natural community employment setting, including, but not limited to, work crews, enclaves, and individual placements, in which the degree of integration is measured by the extent to which the disabled employee has opportunities to interact with nondisabled individuals other than those providing direct support services to the disabled employee.

(4) "Work crew" means a group of workers in the community typically containing no more than eight persons with developmental disabilities who engage in paid work together on service contracts in the community.

(5) "Enclave" means a group typically containing no more than eight persons with developmental disabilities that engages in paid work at employer sites in the community and represents a minority of the employer work force.

(6) "Individual placement" means placing a person with a developmental disability with an employer in the community and providing specialized services which are intended to lead to

employer-paid and employer-supervised employment, and which decrease as the individual adjusts to the job; and ongoing postemployment services necessary for the individual to retain the job.

(7) "Allowable supported employment services" means the services approved in the individual habilitation component and provided, to the extent allowed by the Habilitation Services Program, for the purpose of achieving supported employment as an outcome for persons with developmental disabilities, which may include any of the following:

(A) Work-activity program staff time spent conducting task analysis on a supported employment opportunity for a specific client or group of clients.

(B) Work-activity program staff time spent in the direct supervision or training of a client or clients while they are engaged in integrated work designed to achieve supported employment unless other arrangements for client supervision, such as employer supervision reimbursed by the work-activity program, are approved by the Habilitation Services Program.

(C) Social skills training which is necessary to ensure job adjustment and retention, and which is provided in an integrated setting, unless otherwise approved by the Habilitation Services Program.

(D) Training in certain independent living skills, such as independent travel or money management, which is necessary to ensure job adjustment and retention and which is provided in the community, unless otherwise approved by the Habilitation Services Program.

(E) Counseling with family, care providers, or others to ensure necessary support to clients' job adjustment or to overcome problems affecting their job performance.

(F) Direct action to advocate on behalf of a client to resolve problems affecting the client's work adjustment or retention of an integrated job.

(G) Intervention with the employer to review a client's job performance, resolve job problems or facilitate the employer's hiring of the client as an employee.

(H) In the case of work crews, the time crew members spend preparing for and ending the day's work.

(I) In the case of individual placements, job development to the extent authorized by the Habilitation Services Program, and ongoing postemployment support services needed to ensure the client's retention of the job.

(J) In the case of enclaves, the staff time spent obtaining and arranging the enclave for a specific group of clients.

(b) Notwithstanding subdivision (c) of Section 19353, the department's habilitation services and vocational rehabilitation programs may mutually serve individuals whose individual written rehabilitation program provides for placement into supported

employment, or who are participating in vocational rehabilitation extended evaluation services.

(c) (1) Commencing in the 1986–87 fiscal year, the Habilitation Services Program shall set hourly rates for supported employment in accordance with this section. The Habilitation Services Program shall apply those rates to those work-activity programs or program components of work-activity programs approved by the department to provide community-integrated services under former paragraph (3) of subdivision (d) of Section 19356.5, and to new programs or components approved by the Habilitation Services Program to provide supported employment services following enactment of this section. Both of these categories of programs or components shall be required to comply with the criteria set forth in subdivision (b) of Section 19356.7 to receive approval from the Habilitation Services Program.

(2) The hourly rate for work crews and enclaves shall be four dollars ($4) per client or, in the case of new components of existing programs, the work-activity program's daily rate converted to an hourly rate according to the formula set forth in subdivision (d), whichever hourly rate is the higher. In addition, the Habilitation Services Program may, at its discretion, negotiate a higher hourly rate for work crews or enclaves, based upon a submitted budget that is approved by the Habilitation Services Program, when there is documentation that demonstrates a need for a higher rate because of the nature and severity of the disabilities of the clients served or unique local needs, as determined by the Habilitation Services Program. All negotiated rate increases based on unique local needs shall be contingent upon review and approval by the Department of Finance.

(3) The hourly rate for individual placement shall be twenty dollars ($20) per client for one-to-one services. If more than one client is receiving placement services simultaneously at the same site, the amount to be reimbursed per hour of service provided shall not exceed twenty dollars ($20) regardless of the number of clients receiving service during the hour.

(4) These hourly rates shall be subject to rate adjustments provided by law commencing with the 1987–88 fiscal year.

(d) (1) When a client receives traditional work-activity services and supported employment services during the same payment period, the Habilitation Services Program shall convert the daily rate for the traditional work-activity services into an hourly rate for the purpose of paying for those traditional work-activity services received by that client. In its conversion of the daily rate into any hourly rate the Habilitation Services Program shall use the formula in paragraph (2)

(2) The daily rate of the work-activity program shall be divided by the number of hours in the program day of the traditional work-activity program during the historical period on which its rate is based, or as of the date the Habilitation Services Program approved

the work-activity program as a new provider of habilitation services plus 5 percent.

(e) This section shall become inoperative on October 1, 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.

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 for services under this act for vocational rehabilitation extended evaluation participants to be implemented by the Department of Rehabilitation as soon as possible in the 1989–90 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 629

An act to add Section 5001.5 to the Public Utilities Code, relating to carriers, and making an appropriation therefor.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 5001.5 is added to the Public Utilities Code, to read:

5001.5. In addition to those purposes specified in Sections 5001 and 5005, the commission may utilize the funds it collects pursuant to this chapter for the following purposes:

(a) The collection, aggregation, and analysis of data and information on the economics of the highway carrier industry.

(b) The enforcement of highway carrier certificate, permit, entry and licensure requirements, including safety, financial responsibility and insurance requirements.

(c) The creation and enforcement of rates and charges systems for highway carrier services prescribed by statute or commission rule.

(d) The implementation of statutory policies or other legislative directives contained in law relating to the highway carrier industry.

CHAPTER 630

An act to amend Sections 99207, 99233.2, 99234.5, 99234.9, 99246, 99248, 99268.5, 99268.17, 99314.4, and 99400.5 of, and to add Section 99267 to, the Public Utilities Code, relating to transit.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Section 99207 of the Public Utilities Code is amended to read:

99207. (a) "Included municipal operator" means a city or county which is included, in whole or in part, within a transit district or which has been extended the authority to join a transit district by that district's enabling legislation, and in which city or county public transportation services have continuously been provided, since at least January 1, 1971, by the city or county, by a nonprofit corporation or other legal entity wholly owned by the city or county, or by the University of California.

(b) "Included municipal operator" also means the City and County of San Francisco and the Counties of Alameda and Contra Costa with respect to any portion of the unincorporated area thereof, and any city in those counties, which is outside the area of the Alameda-Contra Costa Transit District and which is not receiving adequate local public transportation services, as determined by the Metropolitan Transportation Commission, from any of the transit districts which includes the county or city, taking into consideration, among other things, the amount of such services needed in the county or city, the cost to provide such services, and the amount of such services provided in other areas of the transit district as compared to their needs.

(c) "Included municipal operator" also means any city within the County of Sacramento which (1) is outside the activated boundaries of the Sacramento Regional Transit District, (2) contracts with the district for transit services, and (3) provides local transit services within the city that the Sacramento Area Council of Governments annually determines can be better provided by the city than the district, taking into consideration, among other things, the amount and the nature of the services required in the city, the ability of the district to provide the services, the coordination of the services with district services, the remoteness of the city in relation to other district services, the cost of providing the services, the funds available to provide the services, and the amount of services provided in other areas of the district compared to their needs.

(d) "Included municipal operator" also means any city or unincorporated area within the County of Los Angeles (1) that is not receiving adequate local public transportation services, as

determined by the Los Angeles County Transportation Commission, from either the Southern California Rapid Transit District or any currently "included municipal operator" as defined in this section, and (2) that meets the criteria established by the Los Angeles County Transportation Commission, taking into consideration, among other things, the cost to provide such services, the amount of such services needed in the county or city, the funds available to provide such services, and the amount of such services provided in other areas of the county as compared to their needs.

SEC. 1.5. Section 99207 of the Public Utilities Code is amended to read:

99207. (a) "Included municipal operator" means a city or county which is included, in whole or in part, within a transit district or which has been extended the authority to join a transit district by that district's enabling legislation, or within a commission operating area, and in which city or county public transportation services have continuously been provided, since at least January 1, 1971, by the city or county, by a nonprofit corporation or other legal entity wholly owned by the city or county, or by the University of California.

(b) "Included municipal operator" also means the City and County of San Francisco and the Counties of Alameda and Contra Costa with respect to any portion of the unincorporated area thereof, and any city in those counties, which is outside the area of the Alameda-Contra Costa Transit District and which is not receiving adequate local public transportation services, as determined by the Metropolitan Transportation Commission, from any of the transit districts which includes the county or city, taking into consideration, among other things, the amount of those services needed in the county or city, the cost to provide those services, and the amount of those services provided in other areas of the transit district as compared to their needs.

(c) "Included municipal operator" also means any city within the County of Sacramento which (1) is outside the activated boundaries of the Sacramento Regional Transit District, (2) contracts with the district for transit services, and (3) provides local transit services within the city that the Sacramento Area Council of Governments annually determines can be better provided by the city than the district, taking into consideration, among other things, the amount and the nature of the services required in the city, the ability of the district to provide the services, the coordination of the services with district services, the remoteness of the city in relation to other district services, the cost of providing the services, the funds available to provide the services, and the amount of services provided in other areas of the district compared to their needs.

(d) "Included municipal operator" also means any city or unincorporated area within the County of Los Angeles (1) that is not receiving adequate local public transportation services, as determined by the Metropolitan Transportation Authority of Los Angeles County, from either the commission operator or any

currently "included municipal operator" as defined in this section, and (2) that meets the criteria established by the Metropolitan Transportation Authority of Los Angeles County, taking into consideration, among other things, the cost to provide those services, the amount of those services needed in the county or city, the funds available to provide those services, and the amount of those services provided in other areas of the county as compared to their needs.

SEC. 2. Section 99233.2 of the Public Utilities Code is amended to read:

99233.2. (a) Except as provided in subdivisions (b) and (c), there shall be allocated to the transportation planning agency, if it is statutorily created, such sums as it may approve, up to 3 percent of annual revenues, for the conduct of the transportation planning and programming process, unless a greater amount is approved by the director.

(b) In those areas that have a county transportation commission created pursuant to Section 130050, up to 1 percent of annual revenues shall be allocated to the commission in Los Angeles County, and up to 3 percent of the annual revenues shall be allocated to the commissions in Orange, Riverside, and San Bernardino Counties for the transportation planning and programming process. Of the funds allocated to the commission in Riverside County, one-half shall be allocated for planning studies within the Western Riverside County and the Coachella Valley areas, as determined by the commission. In addition, up to three-fourths of 1 percent of annual revenues, but not more than one million dollars ($1,000,000) per year, shall be allocated to the multicounty designated transportation planning agency, as defined in Section 130004, for the transportation planning and programming process. No operator shall grant any funds it receives under this chapter to the designated multicounty transportation planning agency for the purposes of the agency carrying out its responsibilities under Division 12 (commencing with Section 130000).

(c) In Ventura County, 1 percent of the annual revenues shall be allocated to the Ventura County Transportation Commission for the transportation planning and programming process.

SEC. 3. Section 99234.5 of the Public Utilities Code is amended to read:

99234.5. (a) The Counties of San Bernardino, Riverside, and Los Angeles may enter into a joint powers agreement pursuant to Article 1 (commencing with Section 6500), Chapter 5, Division 7, Title 1 of the Government Code, and the joint powers entity created pursuant to such agreement shall in accordance with Section 403 of the Rail Passenger Service Act of 1970 (45 U.S.C. 563), request the National Railroad Passenger Corporation to institute up to two additional trains a day in each direction between Los Angeles and San Bernardino to supplement the present level of service. The joint powers entity may request institution of more than two additional trains a day in each direction between Los Angeles and San

Bernardino. Contributions shall be made from the fund of each of the three counties, as agreed by them, to the joint powers entity, as may be required by the National Railroad Passenger Corporation to meet a reasonable portion of any losses associated with such service. The joint powers entity may request that the additional trains shall be operated, to the extent practicable, during periods of peak traffic.

(b) If the funds available under this chapter are insufficient for purposes of subdivision (a), the board of supervisors of any one of the three counties may make contributions to the joint powers entity from any funds available to it.

SEC. 4. Section 99234.9 of the Public Utilities Code is amended to read:

99234.9. Any county, city, county transportation commission, or operator may file claims with the transportation planning agency for rail passenger service operation expenditures and capital improvement expenditures. These funds may be used as the entity's required contribution toward the cost of providing these services or capital improvements.

SEC. 5. Section 99246 of the Public Utilities Code is amended to read:

99246. (a) The transportation planning agency shall designate entities other than itself, a county transportation commission, a transit development board, or an operator to make a performance audit of its activities and the activities of each operator to whom it allocates funds. The transportation planning agency shall consult with the entity to be audited prior to designating the entity to make the performance audit.

Where a transit development board created pursuant to Division 11 (commencing with Section 120000) or a county transportation commission exists, the board or commission, as the case may be, shall designate entities other than itself, a transportation planning agency, or an operator to make a performance audit of its activities and those of operators located in the area under its jurisdiction to whom it directs the allocation of funds. The board or commission shall consult with the entity to be audited prior to designating the entity to make the performance audit.

(b) The performance audit shall evaluate the efficiency, effectiveness, and economy of the operation of the entity being audited and shall be conducted in accordance with the efficiency, economy, and program results portions of the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Performance audits shall be conducted triennially pursuant to a schedule established by the transportation planning agency, transit development board, or county transportation commission having jurisdiction over the operator.

(c) The performance audit of the transportation planning agency, county transportation commission, or transit development board shall be submitted to the director. The transportation planning agency, county transportation commission, or transit development

board, as the case may be, shall certify in writing to the director that the performance audit of operators located in the area under its jurisdiction has been completed.

(d) With respect to an operator providing public transportation services, the performance audit shall include, but not be limited to, a verification of the operator's operating cost per passenger, operating cost per vehicle service hour, passengers per vehicle service hour, passengers per vehicle service mile, and vehicle service hours per employee, as defined in Section 99247. The performance audit shall include, but not be limited to, consideration of the needs and types of the passengers being served and the employment of part-time drivers and the contracting with common carriers of persons operating under a franchise or license to provide services during peak hours, as defined in subdivision (a) of Section 99260.2.

The performance audit may include performance evaluations both for the entire system and for the system excluding special, new, or expanded services instituted to test public transportation service growth potential.

SEC. 6. Section 99248 of the Public Utilities Code is amended to read:

99248. No operator is eligible to receive an allocation under this chapter for any fiscal year until the transmittal of reports of its performance audit to the entity which determines the allocation to the operator and the transportation planning agency for the three-year period ending one year prior to the beginning of the fiscal year of the proposed allocation. The transportation planning agency, county transportation commission, or transit development board, as the case may be, shall make the reports available to interested parties.

In conformance with Section 99246, and prior to September 1 of each fiscal year, the transportation planning agency, county transportation commission, or metropolitan transit development board, as the case may be, shall provide to the director and Controller a schedule of performance audits to be submitted during that fiscal year and a list of all operators or claimants who operated or commenced operations during the prior fiscal year.

SEC. 7. Section 99267 is added to the Public Utilities Code, to read:

99267. If an operator ceases operations, any capital acquisitions made by that operator from funds allocated to it pursuant to this article may be transferred to any claimant to provide transportation services under this chapter.

SEC. 7.5. Section 99268.5 of the Public Utilities Code is amended to read:

99268.5. (a) Commencing with claims for the 1980–81 fiscal year, no funds shall be allocated under this article in any fiscal year to an operator providing services using vehicles for the exclusive use of elderly and handicapped persons, unless the operator maintains, for the fiscal year, a ratio of fare revenues to operating cost, as defined

by subdivision (a) of Section 99247, for those services at least equal to one-tenth or to the ratio it had for those services during the 1978–79 fiscal year, whichever is greater.

(b) Notwithstanding subdivision (a), an operator which provides both exclusive transportation services for elderly and handicapped persons and regular scheduled public transportation services may be allocated funds under this article for the exclusive service if the combined services qualify under Section 99268.1, 99268.2, 99268.3, or 99268.4, as the case may be, and the ratio of fare revenues to operating cost for the combined service shall not be less than the ratio required in order to make allocations to the operator for its regular scheduled services.

(c) In a county which had less than 500,000 population as determined by the 1970 federal decennial census and more than 500,000 in population as determined by the 1980 or 1990 federal decennial census, an operator in the county shall maintain a ratio of fare revenues to operating cost, as defined by subdivision (a) of Section 99247, at least equal to one-fifth if serving an urbanized area or one-tenth if serving a nonurbanized area.

SEC. 8. Section 99268.17 of the Public Utilities Code is amended to read:

99268.17. (a) Notwithstanding subdivision (a) of Section 99247, liability and casualty insurance premiums and payments in settlement of claims arising out of the operator's liability are excluded from operating costs.

(b) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 9. Section 99314.4 of the Public Utilities Code is amended to read:

99314.4. (a) An operator in an urbanized area having a population of less than 200,000 persons may elect to participate in the funding exchange program authorized by this subdivision. An operator electing to participate in the funding exchange program shall give notice to the director and shall indicate the amount of funds which it wants allocated for the funding exchange program.

From funds that would otherwise be allocated to an operator pursuant to Sections 99313.3, 99314, and 99314.3, an amount so designated by the participating operator shall be allocated to the department for transfer pursuant to an agreement between the department and the State of Arizona whereby California can receive federal mass transportation funds originally apportioned to the State of Arizona.

The department shall allocate the federal mass transportation funds so received to each participating operator in the same proportion as the operator contributed to the funding exchange program. Funds so received shall be used only for the purposes authorized by this chapter and are subject to all statutes and rules and regulations applicable to funds allocated pursuant to Sections

99313 and 99314.

The Legislature finds and declares that the exchange of state funds for federal mass transportation funds authorized by this section will result in a net increase in the total amount of funds to be available to the participating operators.

(b) A transportation planning agency, county transportation commission, or transit development board may authorize an operator under its jurisdiction to exchange funds allocated to it pursuant to Section 99314.3 for funds made available pursuant to Section 99231. Any funds allocated pursuant to Section 99314.3 that are exchanged pursuant to this subdivision shall only be available to other operators and shall be used for the purposes authorized by this chapter and are subject to all statutes and rules and regulations applicable to funds allocated pursuant to Section 99314.3. Exchanges pursuant to this subdivision shall be on a dollar-for-dollar basis.

SEC. 10. Section 99400.5 of the Public Utilities Code is amended to read:

99400.5. Notwithstanding Section 99232, a county or a city in a county in which there is no countywide transit district may file a claim under this article with the transportation planning agency to finance the construction and maintenance of multimodal transportation terminals. The terminals may be located anywhere in the county or city, as the case may be.

SEC. 11. Section 1.5 of this bill incorporates amendments to Section 99207 of the Public Utilities Code proposed by both this bill and SB 1. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 99207 of the Public Utilities Code, and (3) this bill is enacted after SB 1, in which case Section 1 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 because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 631

An act to amend Section 10508 of, to add Article 3.7 (commencing with Section 10234.8) to Chapter 2.6 of Part 2 of Division 2 of, and to add Section 10508.5 to, the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Article 3.7 (commencing with Section 10234.8) is added to Chapter 2.6 of Part 2 of Division 2 of the Insurance Code, to read:

Article 3.7. Consumer Protection

10234.8. (a) With regard to long-term care insurance, 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).

10234.85. No insurer, broker, agent, or other person shall cause a policyholder to replace a long term care 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 long term care insurance policy that 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.

10234.9. In addition to the other duties imposed by law, an agent who makes contact with a consumer, as a result of acquiring the consumer's name from a lead generating device described in Section 10236.8 shall disclose that fact in the initial contact with the customer.

SEC. 2. Section 10508 of the Insurance Code is amended to read:

10508. (a) It is the obligation of every insurer admitted in this state to transact life or disability insurance, or both, to maintain certain records specified in this article pertaining to the activities of its life, life and disability, and disability agents and any other agents for the inspection and examination of the commissioner.

(b) The original or certified copies of the records shall be delivered to the commissioner within a period of 30 days following receipt of written demand therefor.

(c) The records required to be maintained or made available in this state may be in the form of originals, carbon, or facsimile copies, microfilm copies, or electronic data-processing records if printouts are available within a reasonable period of time, and shall include, to the extent the data are pertinent and available for each insurance transaction, the names, dates, amounts and policy numbers involved. The records are composed of all of the following:

(1) The original application for each insurance policy or contract sold in this state.

(2) Records showing, for each insurance policy or contract issued, the premiums received by the insurer.

(3) Production records showing all insurance policies or contracts sold by each agent or other agent in the expired portion of the current calendar year and the whole of each of the preceding five calendar years.

(4) Records showing, for each insurance policy or contract issued, the amount of commissions paid and to whom.

(5) Records or memoranda identifying any agent other, than the agent whose name appears on the application who, to the actual knowledge of the insurer, handled any part of an insurance transaction for which the other agent was not compensated.

(6) Correspondence, written solicitations or proposals, or other written communications sent by the insurer to a prospect, applicant, or insured, or received from him or her by the insurer, excluding printed material in general use distributed by the insurer, either directly or indirectly through its life agents.

(7) Correspondence, written proposals, notices, or other written communications, if any, pertaining to the termination or nonrenewal of a policy or contract, or the election of nonforfeiture values thereunder, sent by an insurer to a policyholder or contract holder or received from him or her by an insurer.

(8) A copy of a written comparison of benefits, limitations, exclusions, and costs of existing accident, sickness, or long-term care coverage and proposed coverage.

(9) A copy of the outline of coverage or disclosure statement required by law or regulation.

(10) Copies of any correspondence between the policyholder or prospective policyholder and the agent or insurer.

(11) Copies of correspondence between anyone acting on behalf of the policyholder or prospective policyholder and the agent or insurer.

(d) Except as otherwise provided, the records shall be maintained for a minimum period of two years following the actual delivery of the insurance policy or contract to which each pertains, or, if no policy or contract was issued, for a minimum period of two years after the date of the application therefor.

SEC. 3. Section 10508.5 is added to the Insurance Code, to read:

10508.5. It shall be the obligation of each life, life and disability, and disability insurance agent and any other agent and insurer to

preserve and maintain all applicable records defined in Section 10508 in his or her possession, in addition to those records transmitted to the insurer, at his or her principal place of business for a minimum of five years. The records shall be kept in an orderly manner so that the information therein is readily available, and shall be open to inspection or examination by the commissioner at all times.

CHAPTER 632

An act to amend Section 35550 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 35550 of the Vehicle Code is amended to read:

35550. (a) The gross weight imposed upon the highway by the wheels on any one axle of a vehicle shall not exceed 20,000 pounds and the gross weight upon any one wheel, or wheels, supporting one end of an axle, and resting upon the roadway, shall not exceed 10,500 pounds, except that the gross weight imposed upon the highway by the wheels on any front steering axle of a motor vehicle shall not exceed 12,500 pounds.

(b) The gross weight limit provided for weight bearing upon any one wheel, or wheels, supporting one end of an axle shall not apply to vehicles the loads of which consist of livestock.

(c) The following vehicles are exempt from the front axle weight limits specified in this section:

(1) Trucks transporting vehicles.

(2) Trucks transporting livestock.

(3) Dump trucks.

(4) Cranes.

(5) Buses.

(6) Transit mix concrete or cement trucks, and trucks that mix concrete or cement at, or adjacent to, a jobsite.

(7) Motor vehicles that are not commercial vehicles.

(8) Vehicles operated by any public utility furnishing electricity, gas, water, or telephone service.

(9) Trucks or truck tractors with a front axle at least four feet to the rear of the foremost part of the truck or truck tractor, not including the front bumper.

(10) Trucks transporting garbage, rubbish, or refuse.

(11) Trucks equipped with a fifth wheel when towing a semitrailer.

(12) Tank trucks which have a cargo capacity of at least 1,500

gallons.

(13) Trucks transporting bulk grains or bulk livestock feed.

(14) State and county weights and measures vehicles used in an official capacity for testing weighing devices pursuant to Division 5 (commencing with Section 12001) of the Business and Professions Code.

(15) Governmental fire service vehicles.

(16) Tow trucks with 26,000 pounds or more gross vehicle weight.

CHAPTER 633

An act to amend Sections 25392.1 and 25392.2 of the Health and Safety Code, relating to hazardous substances, and making an appropriation therefor.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 25392.1 of the Health and Safety Code is amended to read:

25392.1. The Legislature hereby finds and declares as follows:

(a) It is necessary that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the prompt and efficient removal of, and remedial actions to, releases of hazardous substances. Furthermore, the Legislature finds that removal of, and remedial actions to, releases of hazardous substances will reduce the degradation of the environment and protect the health, welfare, and safety of the people of this state, and that these actions are in the public interest and serve a public purpose.

(b) It is the purpose of this article to carry out, and make effective, the findings of the Legislature and, to that end, to provide industry and private nonprofit entities within the state with an alternative method for financing the removal of, and remedial actions to, releases of hazardous substances to promote the health and welfare of the citizens of the state.

(c) This article is necessary for the welfare of the state and its inhabitants, and shall be liberally construed to effect its purposes.

SEC. 2. Section 25392.2 of the Health and Safety Code is amended to read:

25392.2. For purposes of this article, the following definitions apply:

(a) "Authority" means the Hazardous Substance Cleanup Financing Authority established pursuant to Section 25392.3 and any board, commission, department, or officer which succeeds to the functions of the authority or to which is given the powers conferred

upon the authority by this article.

(b) "Bonds," unless the context otherwise requires, means the negotiable bonds, notes, and other securities and obligations, including bond anticipation notes and agreements relating to the notes, issued by the authority pursuant to subdivision (a) of Section 25392.15.

(c) "Cost," as applied to a project or portion of a project financed pursuant to this article, means all, or a part of, the cost of all of the following:

(1) Acquiring the lands, structures, real or personal property, or an interest therein, rights, rights-of-way, franchises, easements, and interests which are acquired or used for project.

(2) Constructing the structures and personal property used for a project.

(3) Any other expenses necessary or incident to constructing, acquiring, or financing a project.

(d) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities which is engaged in operations within this state and which requires financing pursuant to this article to aid and assist in removing hazardous substances.

(e) "Project" means any land, buildings, or improvements designed or developed to promote the removal of, and remedial actions to, releases of hazardous substances. "Project" also includes the removal or abatement of friable or potentially friable asbestos-containing material in private nonprofit preschools, elementary and secondary schools, and public and private nonprofit child care centers.

CHAPTER 634

An act to amend Sections 30001, 30008, 30009, 30011, 30012, 30014, 30102, 30102.5, 30103, 30104, 30105, 30105.5, 30107, 30108, 30109, 30111, 30140, 30181, 30182, 30183, 30184, 30185, 30186, 30187, 30201, 30221, 30282, 30431, 30432, 30436, 30453, 30454, 30455, 30475, and 30478 of, to amend the heading of Article 3 (commencing with Section 30221) of Chapter 4 of Part 13 of Division 2 of, and to add Sections 30005.5, 30017, 30140.1, 30176.1, 30178.1, 30178.2, and 30179.1 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 30001 of the Revenue and Taxation Code is amended to read:

30001. This part is known and may be cited as the "Cigarette and Tobacco Products Tax Law."

SEC. 2. Section 30005.5 is added to the Revenue and Taxation Code, to read:

30005.5. "Untaxed tobacco product" means any tobacco product which has not yet been distributed in a manner that results in a tax liability under this part.

SEC. 3. Section 30008 of the Revenue and Taxation Code is amended to read:

30008. "Distribution" includes:

(a) The sale of untaxed cigarettes or tobacco products in this state.

(b) The use or consumption of untaxed cigarettes or tobacco products in this state.

(c) The placing in this state of untaxed cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling the cigarettes or tobacco products to consumers.

SEC. 4. Section 30009 of the Revenue and Taxation Code is amended to read:

30009. "Use or consumption" includes the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof, other than the sale of the cigarettes or tobacco products or the keeping or retention thereof for the purpose of sale.

SEC. 5. Section 30011 of the Revenue and Taxation Code is amended to read:

30011. "Distributor" includes:

(a) Every person who, after 4 o'clock a.m. on July 1, 1959, and within the meaning of the term "distribution" as defined in this chapter, distributes cigarettes.

(b) Every person who, on or after 12:01 a.m. on January 1, 1989, and within the meaning of the term "distribution" as defined in this chapter, distributes tobacco products.

(c) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state.

SEC. 6. Section 30012 of the Revenue and Taxation Code is amended to read:

30012. "Dealer" includes every person, other than one holding a distributor's or wholesaler's license, who engages in this state in the sale of cigarettes or tobacco products.

SEC. 6.5. Section 30014 of the Revenue and Taxation Code is amended to read:

30014. (a) "Transporter" means any person transporting into or within this state any of the following:

(1) Cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions.

(2) Tobacco products upon which the tobacco products surtax imposed by Article 2 (commencing with Section 30121) of Chapter 2 has not been paid.

(b) "Transporter" shall not include any of the following:

(1) A licensed distributor.

(2) A common carrier.

(3) A person transporting cigarettes and tobacco products under federal internal revenue bond or customs control that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.

SEC. 7. Section 30017 is added to the Revenue and Taxation Code, to read:

30017. "Wholesale cost" means the cost of tobacco products to the distributor prior to any discounts or trade allowances.

SEC. 8. Section 30102 of the Revenue and Taxation Code is amended to read:

30102. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products to either of the following:

(a) United States Army, Air Force, Navy, Marine Corps or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores.

(b) The United States Veterans' Administration.

SEC. 9. Section 30102.5 of the Revenue and Taxation Code is amended to read:

30102.5. The taxes imposed by this part shall not apply to the distribution of cigarettes or tobacco products that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended, and the cigarettes or tobacco products are under internal revenue bond or customs control.

SEC. 10 Section 30103 of the Revenue and Taxation Code is amended to read:

30103. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the manufacturer to a licensed distributor.

SEC. 11. Section 30104 of the Revenue and Taxation Code is amended to read:

30104. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of the carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Sections 30101 and 30123 shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making sales in California at the same rate as set forth in Sections 30101 and 30123. Those common carriers and authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.

SEC. 12. Section 30105 of the Revenue and Taxation Code is amended to read:

30105. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the original importer to a licensed distributor if the cigarettes or tobacco products are manufactured outside the United States.

SEC. 13. Section 30105.5 of the Revenue and Taxation Code is amended to read:

30105.5. The taxes imposed by this part shall not apply to the sale or gift of federally tax-free cigarettes or tobacco products when the cigarettes or tobacco products are delivered directly from the manufacturer under Internal Revenue bond to a veterans' home of the State of California or a hospital or domiciliary facility of the United States Veterans' Administration for gratuitous issue to veterans receiving hospitalization or domiciliary care. The tax shall not be imposed with respect to the use or consumption of such cigarettes or tobacco products by the institution or by the veteran patients or domiciliaries.

SEC. 14. Section 30107 of the Revenue and Taxation Code is amended to read:

30107. The taxes resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 shall be paid by the user or consumer.

SEC. 15. Section 30108 of the Revenue and Taxation Code is amended to read:

30108. (a) Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Sections 30101 and 30123 is inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) Every person engaged in business in this state and making gifts of untaxed cigarettes or tobacco products as samples with respect to which the tax imposed by Sections 30101 and 30123 is inapplicable shall, at the time of making the gift or, if the donee is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the donee becomes so obligated, collect the tax from the donee, if the donee is other than a licensed distributor, and shall give the donee a receipt therefor in the manner and form prescribed by the board. This section shall not apply to those distributions of cigarettes or tobacco products which are exempt from tax under Section 30105.5.

(c) "Engaged in business in the state" means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or

temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes or tobacco products.

(d) The taxes required to be collected by this section constitute debts owed by the distributor, or other person required to collect the taxes, to the state.

SEC. 16. Section 30109 of the Revenue and Taxation Code is amended to read:

30109. Unless the contrary is established, it shall be presumed that all cigarettes or tobacco products acquired by a distributor are untaxed cigarettes or tobacco products, and that all cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed.

SEC. 17. Section 30111 of the Revenue and Taxation Code is amended to read:

30111. The taxes imposed by this part are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.

This section does not prohibit the application of Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), or Article 2 (commencing with Section 37021) of Part 17 to the sale, storage, use or other consumption of cigarettes or tobacco products.

SEC. 18. Section 30140 of the Revenue and Taxation Code is amended to read:

30140. Every person desiring to engage in the sale of cigarettes or tobacco products as a distributor (including a common carrier or authorized person mentioned in Section 30104), except a person who desires merely to sell or accept orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state, shall file with the board an application, in such form as the board may prescribe, for a distributor's license. A distributor shall apply for and obtain a license for each place of business at which he or she engages in the business of distributing cigarettes or tobacco products.

SEC. 19. Section 30140.1 is added to the Revenue and Taxation Code, to read:

30140.1. (a) The board may adopt rules and regulations which provide for the issuance of a license to a person who is not engaged in business in this state.

(b) A holder of a license shall collect the tax imposed by this part, give receipts for the collected tax, and pay the tax to the board in the same manner as licensees engaged in business in this state.

SEC. 20. Section 30176.1 is added to the Revenue and Taxation Code, to read:

30176.1. (a) The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) of Chapter 2 which is paid on the distribution of tobacco products which are shipped to a point outside the state for subsequent use or sale out of the state.

(b) This section does not apply to tobacco products delivered to the consumer in this state and subsequently taken outside the state.

SEC. 21. Section 30178.1 is added to the Revenue and Taxation Code, to read:

30178.1. Any applications for a refund under Section 30176.1 based upon the exportation of tax-paid tobacco products from this state shall be filed with the board within three months after the close of the calendar month in which the tobacco products are exported.

SEC. 22. Section 30178.2 is added to the Revenue and Taxation Code, to read:

30178.2. In lieu of the refund of the tax on tobacco products pursuant to Section 30176.1, a distributor eligible for that refund may elect to claim a credit against taxes imposed pursuant to this part equal to the amount which would have been refunded if a claim had been made pursuant to Section 30176.1.

SEC. 23. Section 30179.1 is added to the Revenue and Taxation Code, to read:

30179.1. No interest shall be allowed on an overpayment of the tax on exported tobacco products which is refunded pursuant to Section 30176.1 or credited against taxes pursuant to Section 30178.2 within 90 days of the claim for the credit or refund.

SEC. 24. Section 30181 of the Revenue and Taxation Code is amended to read:

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101) or Article 2 (commencing with Section 30121) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form prescribed by the board for each calendar month. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) of Chapter 2 for that period. To facilitate the administration of this part,

30221, 30264, and 30281.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 35. Section 30431 of the Revenue and Taxation Code is amended to read:

30431. Any transporter desiring to possess or acquire for transportation or transport upon the highways, roads or streets of this state more than 400 cigarettes which are not contained in packages to which are affixed California cigarette stamps or meter impressions or tobacco products with a value of twenty-five dollars ($25) or more shall obtain a permit from the board authorizing such transporter to possess or acquire for transportation or transport the cigarettes or tobacco products, and he shall have the permit in the transporting vehicle during the period of transportation of the cigarettes or tobacco products. The application for the permit shall be in such form and shall contain such information as may be prescribed by the board. The board may issue a permit for a single load or shipment or for a number of loads or shipments to be transported under specified conditions.

SEC. 36. Section 30432 of the Revenue and Taxation Code is amended to read:

30432. Each transporter who shall transport or possess or acquire for the purpose of transporting upon the highways, roads or streets of this state more than 400 cigarettes which are not contained in packages to which are affixed California cigarette tax stamps or meter impressions or tobacco products with a value of twenty-five dollars ($25) or more is required to have in the transporting vehicle during the period of transportation invoices, bills of lading or delivery tickets covering the cigarettes or tobacco products being transported which shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity and brands of the cigarettes or tobacco products transported.

SEC. 37. Section 30436 of the Revenue and Taxation Code is amended to read:

30436. The following property, upon seizure by the board, is hereby forfeited to the State of California:

(a) Cigarettes or tobacco products transported upon the highways, roads or streets of this state in violation of the provisions of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents

thereof, which has been loaded in whole or in part with packages of cigarettes which do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

SEC. 38. Section 30453 of the Revenue and Taxation Code is amended to read:

30453. Every distributor and every person dealing in, transporting, or storing cigarettes or tobacco products in this state shall keep such records, receipts, invoices, and other pertinent papers with respect thereto in such form as the board may require.

SEC. 39. Section 30454 of the Revenue and Taxation Code is amended to read:

30454. The board or its authorized representative may make such examinations of the books, papers, records, and equipment of any person dealing in, transporting, or storing cigarettes or tobacco products and such other investigations as it may deem necessary in carrying out the provisions of this part.

In addition to any other reports required under this part, the board may, by rule or otherwise, require additional, other, or supplemental reports from licensed distributors, dealers, transporters, common and private carriers, warehousemen, bailees, and other persons, including reports of shipments of cigarettes or tobacco products from a point outside this state to a point within this state, and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports.

SEC. 40. Section 30455 of the Revenue and Taxation Code is amended to read.

30455. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person.

Nothing in this section shall prevent the board from exchanging with officials of other states information concerning interstate shipments of cigarettes or tobacco products.

Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment not exceeding one year, or by both, in the discretion of the court.

SEC. 41. Section 30475 of the Revenue and Taxation Code is amended to read:

30475. (a) Any transporter who transports cigarettes or tobacco products upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars ($1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

(b) Any transporter who, with intent to defeat or evade or with intent to aid another to defeat or evade the taxes imposed by this part, at any given time transports 40,000 or more cigarettes or tobacco products with a value of five thousand dollars ($5,000) or more upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 shall be punished by imprisonment in the county jail for not more than one year, or in the state prison, or by fine of not more than five thousand dollars ($5,000), or be subject to both fine and imprisonment in the discretion of the court.

SEC. 42. Section 30478 of the Revenue and Taxation Code is amended to read:

30478. It shall be a misdemeanor for any retailer, as defined in Section 6015, to knowingly purchase cigarettes or tobacco products for resale from any person except a distributor or wholesaler licensed pursuant to this part.

SEC. 43. The Legislature finds and declares that the provisions of this act are consistent with the purposes of the Tobacco Tax and Health Protection Act of 1988 within the meaning of Section 30130 of the Revenue and Taxation Code.

SEC. 44. 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 correct and adequate funding to the Cigarette and Tobacco Products Surtax Fund which will fund tobacco-related programs, including education, fire prevention, medical and hospital care, and research, it is necessary that the act take effect immediately.

CHAPTER 635

An act to amend Section 23198 of the Vehicle Code, relating to driving offenses.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 23198 of the Vehicle Code is amended to read:

23198. (a) (1) Upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, notwithstanding Section 86 of the Code of Civil Procedure and any other provision of law otherwise prescribing the jurisdiction of the court based upon the value of the property involved, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle:

(A) A violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code.

(B) A violation of Section 23152 which occurred within seven years of two or more separate offenses of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or Section 23152 or 23153, or any combination thereof, which resulted in convictions.

(C) A violation of Section 23153 which occurred within seven years of one or more separate offenses of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or Section 23152 or 23153, which resulted in convictions.

(2) The court or the prosecutor shall give notice of the motion to the defendant, and the court shall hold a hearing before a motor vehicle may be declared a nuisance under this section.

(b) Except as provided in subdivision (g), upon the conviction of the defendant and at the time of pronouncement of sentence, the court with jurisdiction over the offense shall order any vehicle declared to be a nuisance pursuant to subdivision (a) to be sold. Any vehicle ordered to be sold pursuant to this subdivision shall be surrendered to the sheriff of the county or the chief of police of the city in which the violation occurred. The officer to whom the vehicle is surrendered shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle and, within five days of receiving that information, shall send by certified mail a notice to all legal and registered owners of the vehicle other than the defendant, at the addresses obtained from the department, informing them that the vehicle has been declared a nuisance and will be sold or otherwise disposed of pursuant to this section and of the approximate date and location of the sale or other

disposition. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (c).

(c) Any legal owner which in the regular course of its business conducts sales of repossessed or surrendered motor vehicles may take possession and conduct the sale of the vehicle declared to be a nuisance if it notifies the officer to whom the vehicle is surrendered of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (b). Sale of the vehicle pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given by the legal owner for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (e).

(d) If the legal owner does not notify the officer to whom the vehicle is surrendered of its intent to conduct the sale as provided in subdivision (c), the officer shall offer the vehicle for sale at public auction within 60 days of receiving the vehicle. At least 10 days but not more than 20 days prior to the sale, not counting the day of sale, the officer shall give notice of the sale by advertising once in a newspaper of general circulation published in the city or county, as the case may be, in which the vehicle is located, which notice shall contain a description of the make, year, model, identification number, and license number of the vehicle and the date, time, and location of the sale. For motorcycles, the engine number shall also be included. If there is no newspaper of general circulation published in the county, notice shall be given by posting a notice of sale containing the information required by this subdivision in three of the most public places in the city or county in which the vehicle is located, and at the place where the vehicle is to be sold, for 10 consecutive days prior to and including the day of the sale.

(e) The proceeds of a sale conducted pursuant to this section shall be disposed of in the following priority:

(1) To satisfy the costs of the sale, including costs incurred with respect to the taking and keeping of the vehicle pending sale.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of sale, including accrued interest or finance charges and delinquency charges.

(3) To the holder of any subordinate lien or encumbrance on the vehicle to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall reasonably furnish reasonable proof of its interest and, unless it does so on request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person who can establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest.

(5) If the vehicle was forfeited as a result of a felony violation of Section 191.5 of the Penal Code, or of Section 23153 which resulted in serious bodily injury to any person other than the defendant, the

balance, if any, to the city or county in which the violation occurred, to be deposited in its general fund.

(6) Except as provided in paragraph (5), the balance, if any, to the city or county in which the violation occurred, to be expended for community-based adolescent substance abuse treatment services.

The person conducting the sale shall disburse the proceeds of the sale as provided in this subdivision, and provide a written accounting regarding the disposition to all persons entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(f) If the vehicle to be sold under this section is not of the type that can readily be sold to the public generally, the vehicle shall be destroyed or donated to an eleemosynary institution.

(g) No vehicle shall be sold pursuant to this section in either of the following circumstances:

(1) The vehicle is stolen, unless the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained.

(2) The vehicle is owned by another, or there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family which may be operated on the highway with a class 3 or class 4 driver's license.

(h) The Legislature finds and declares it to be the public policy of this state that no policy of insurance shall afford benefits which would alleviate the financial detriment suffered by any person as a direct or indirect result of a confiscation of a vehicle pursuant to 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 636

An act to amend Section 4606 of, and to add Section 4608.1 to, the Civil Code, relating to family law.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 4606 of the Civil Code is amended to read:

4606. (a) In any initial or subsequent proceeding under this part where there is in issue the custody of or visitation with a minor child, the court may, if it determines it would be in the best interests of the minor child, appoint private counsel to represent the interests of the minor child.

(b) Counsel, upon entering an appearance on behalf of a minor pursuant to this section shall continue to represent that minor unless relieved by the court upon the substitution of other counsel by the court or for cause.

(c) The counsel shall be charged with the representation of the child's interests. The counsel has the following duties, unless under the circumstances it is inappropriate to exercise these duties, which include interviewing the child, reviewing the court files and all accessible relevant records available to both parties, and making any further investigations as he or she deems necessary to ascertain facts relevant to the custody or visitation hearings. Counsel may introduce and examine his or her own witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to adequately represent the child.

(d) Counsel shall have the following rights when ordered by the court: reasonable access to the child with adequate notice; notice of any and all proceedings including any request for examinations affecting the child; access to medical and school records for the child; the right to veto any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court; the right to assert on behalf of the child any privilege for discovery purposes; the right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon application to the court.

(e) The child's counsel may, upon noticed motion to all parties and the local child protective services agency, request the court to authorize release of relevant reports or files, concerning the child represented by the counsel, of the relevant local child protective services agency. The court shall review the reports or files in camera in order to determine whether they are relevant to the pending action and whether and to what extent they should be released to the child's counsel. Neither the review by the court nor the release to

counsel shall constitute a waiver of the confidentiality of these records and files. Counsel shall not disclose the contents or existence of these files or records to anyone unless otherwise permitted by law.

(f) When the court appoints counsel to represent the minor, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. This amount shall be paid by the parties in proportions as the court deems just.

SEC. 2. Section 4608.1 is added to the Civil Code, to read:

4608.1. (a) In any proceeding under this part where custody of, or visitation with, a minor child is at issue, the court may require the parents of the child who are involved in the custody or visitation dispute, and the minor child to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than six months if the court finds that the dispute between the parents or between a parent and the child poses a substantial danger to the best interests of the child and that the counseling is in the best interests of the minor child. The court shall fix the cost and shall order the entire cost of the services to be borne by the parties in the proportion as the court deems reasonable. The court, in its finding, shall set forth reasons why it has found the dispute poses a substantial danger to the best interests of the child and the counseling is in the best interest of the minor child, and that the financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations. The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with the provisions of this section.

The counseling shall be specifically designed to facilitate communication between the parties regarding their minor child's best interest, to reduce conflict regarding visitation or custody, and to improve the quality of parenting skills of each parent.

(b) In any proceeding in which counseling is ordered pursuant to subdivision (a), 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, 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 mental health professional, or attend other community programs or services, separately at separate times. This subdivision shall only be operative until January 1, 1992.

CHAPTER 637

An act relating to education.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 21, 1989.]

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

SECTION 1. Subject to the appropriation of funding for that purpose, the State Department of Education, in consultation with the Office of Criminal Justice Planning, shall conduct an assessment on the use of schoolsites before and after the regular instructional day. The focus of the study shall be the usage of schoolsites to reduce juvenile delinquency and gang activities through the identification and dissemination of information on school-based activities. The study shall also identify before and after school programs which have been successful in reducing or preventing juvenile delinquency and gang activities and shall analyze the level of coordination with other local public and private nonprofit agencies, especially those providing recreational, medical, counseling, and other social services important to youth. The department shall submit to the Legislature, on or before July 1, 1991, a report on this assessment that shall include recommendations for legislation.

SEC. 2. It is the intent of the Legislature that funding necessary for the State Department of Education to conduct the assessment and to submit the report to the Legislature required by Section 1 of this act shall be included in the Budget Act of 1990.

CHAPTER 638

An act to amend Sections 503, 503.5, 6833, 6838, and 6920 of the Elections Code, relating to elections, and making an appropriation therefor.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989]

I am deleting the appropriation contained in Section 6 of Assembly Bill No. 633 for $99,000 from the General Fund.

In addition to several non-controversial changes to the Election Code, this bill appropriates $99,000 to the Secretary of State for the purpose of funding the provisions of Chapter 235 of this year (AB 986) regarding ballot box security measures.

At the time AB 986 was signed, it was indicated to me that the Secretary of State would absorb this year's fiscal costs. If additional resources are needed in the upcoming year, those costs can be addressed in the annual budget bill.

With this deletion, I am signing Assembly Bill No. 633.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 503 of the Elections Code is amended to read:

503. (a) Except as provided in Section 503.5, the affidavit of registration shall show all the facts required to be stated.

(b) If the affidavit does not contain all of the information required, but the telephone number of the affiant is legible, the county clerk shall telephone the affiant and attempt to collect the missing information.

(c) If the affidavit does not contain all of the information required, and the county clerk is not able to collect the missing information by telephone, but the mailing address of the affiant is legible, the county clerk shall inform the affiant of the reason for rejection and shall send to the affiant a new voter registration card.

SEC. 2. Section 503.5 of the Elections Code is amended to read:

503.5. In the event that the county clerk receives an affidavit of registration that does not include portions of the information for which space is provided, the county clerk or registrar of voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If no occupation is shown, it shall be presumed that the affiant declined to state his or her occupation.

(c) If no party affiliation is shown, it shall be presumed that the affiant has no party affiliation.

(d) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 29th day prior to the election, provided that (1) the affidavit is received by the county clerk on or before the 29th day prior to the election, or (2) the affidavit is received by mail by the county clerk no later than the fourth day after the 29th day prior to the election.

(e) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the affiant's birthplace is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 3. Section 6833 of the Elections Code is amended to read:

6833. (a) (1) Nomination papers shall be prepared, circulated, signed, and delivered to the county elections official for examination no earlier than 148 days before the election and no later than 5 p.m. 88 days before the election.

(2) For offices for which no filing fee is required, nomination papers shall be prepared, circulated, signed, and delivered to the county elections official for examination no earlier than 193 days before the election and no later than 5 p.m. 88 days before the election.

(b) All nomination documents which are required to be filed in the office of the Secretary of State shall, within 24 days after being

left with the county elections official in compliance with paragraph (1) or (2) of subdivision (a), be forwarded by the county elections official to the Secretary of State, who shall receive and file them.

(c) If the total number of signatures submitted to a county elections official for an office entirely within that county does not equal the number of signatures needed to qualify the candidate, the county elections official shall declare the petition void and is not required to verify the signatures. If the district falls within two or more counties, the county elections official shall within two working days report in writing to the Secretary of State the total number of signatures submitted.

(d) If the Secretary of State finds that the total number of signatures submitted in the district or state is less than the minimum number required to qualify the candidate he or she shall within one working day notify in writing the counties involved that they need not verify the signatures.

SEC. 4. Section 6838 of the Elections Code is amended to read:

6838. Each candidate or group of candidates shall submit a nomination paper which shall be substantially in the following form:

County of _____. Nomination paper of _____, candidate for the office of _____.

State of California
County of _____ } ss.

SIGNER'S STATEMENT

I, undersigned, am a voter of the County of _____, State of California. I hereby nominate _____, who resides at No. _____, _____ Street, City of _____, County of _____, State of California, as a candidate for the office of _____ to be voted for at the election to be held on the _____ day of _____, 19__. I have not signed the nomination paper of any other candidate for the same office.

No	Printed Name	Signature	Residence
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
etc.	_____	_____	_____

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I have been appointed as a circulator to secure signatures in the County of _____ to the nomination paper of _____ as candidate for the office of _____; that the signatures were obtained between _____ 19__ and _____ 19__; that I saw all the signatures on this section of the nomination paper being signed and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My residence address is _____

(Signed) _____

Circulator

Subscribed and sworn to before me this _____ day of _____ 19__.

_____

(SEAL) Notary Public (or other official)

SEC. 5. Section 6920 of the Elections Code is amended to read:

6920. Each candidate, at least 88 days prior to the election, shall leave with the officer with whom his or her nomination papers are required to be left a declaration of candidacy which shall state:

(a) The candidate's residence, with street and number, if any.

(b) That the candidate is a voter in the precinct in which he or she resides.

(c) The name of the office for which he or she is a candidate.

(d) That the candidate will not withdraw as a candidate before the election.

(e) That, if elected, the candidate will qualify for the office.

(f) That the candidate is not, and was not at any time during the one year preceding the immediately preceding primary election at which a candidate was nominated for the office mentioned in the declaration of candidacy, registered as affiliated with a political party qualified under the provisions of Section 6430. The statement required by this subdivision shall be omitted when no primary election was held to nominate candidates for the office to which the declaration of candidacy is directed.

The name of a candidate shall not be placed on the ballot unless the declaration of candidacy provided for in this section has been properly filed.

SEC. 6. The sum of ninety-nine thousand dollars ($99,000) is hereby appropriated from the General Fund to the Secretary of State for purposes of Section 15105 of the Elections Code, as added by Assembly Bill 986 of the 1989–90 Regular Session. This section shall become operative only if AB 986 is chaptered.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act affirms for the state that which has been declared existing law or

regulation by action of the courts. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 639

An act to amend Section 4701 of the Civil Code, relating to family law.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 4701 of the Civil Code is amended to read:

4701. (a) (1) On and after January 1, 1987, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court shall order either parent or both parents to assign to an assigned payee, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child, unless the parent ordered to pay support demonstrates to the satisfaction of the court that the support payments ordered will be made. This demonstration may include proof of timely payment of previously ordered support for the minor children subject to the action. The wage assignment shall be ordered at the time of trial or entry of a judgment establishing child support, other than a temporary order pending trial. 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 is served. Any such order of assignment may be modified at any time by the court or, in the case of an arrearage, revoked as provided in subdivision (b).

(2) Notwithstanding paragraph (1), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to an assigned payee that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. 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 is served. Any such order may be modified or revoked at any time by the court. This paragraph shall not operate to limit the provisions of paragraph (1) but shall add to the powers set forth in that paragraph, by providing general authority for an order assigning wages or salary in any proceeding where the court has ordered either

or both parents to pay any amount for the support of a minor child, and under any circumstance.

(b) (1) Notwithstanding the provisions of subdivision (a), in any proceeding after January 1, 1987, where the court has ordered either or both parents to pay any amount for the support of a minor child and has not otherwise ordered an assignment of wages or salary pursuant to subdivision (a), that order for support shall contain a provision assigning the wages of the obligor to the assigned payee. Any order for the modification of child support entered after January 1, 1987, which does not otherwise contain a provision for wage assignment or an order assigning wages or salary pursuant to subdivision (a), shall also contain a provision assigning the wages of an obligor to the assigned payee. All provisions for wage assignment required pursuant to this subdivision shall be effective only upon an application signed under penalty of perjury by the assigned payee that the obligor is in arrears in payment in a sum equal to the amount of support payable for one month. Upon receipt of the application, the court shall issue, without notice to the obligor, an order requiring the obligor to assign to the payee that portion of the salary or wages of the obligor due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the obligor ordered to pay support upon whom a copy of the order is served.

(2) In cases in which the order for child support does not contain a provision for wage assignment, the application shall state that the assigned payee has given the obligor a written notice of his or her intent to seek a wage assignment in the event of a default in support payments 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 a wage 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. In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure. The obligor may at any time waive the written notice required by this subdivision.

(3) The assigned payee shall notify the employer of the obligor, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after the change. In instances in which payments have been ordered to be made to the district attorney, the parent to whom support has been ordered to be paid shall notify the court and the district attorney, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or district attorney is unable to deliver payments under the assignment for a period of six months due to the failure of the individual to whom

support has been ordered to be paid to notify the employer or district attorney of a change of address, the employer or district attorney shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the assignment. The Judicial Council shall adopt a form for the statement.

(6) An obligor alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the obligor of notice of the assignment order by his or her employer if the obligor states under oath that there is an error in the amount of current or overdue support, that the alleged obligor is not the obligor from whom support is due, or that the amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code, to the extent that the amount required to be withheld exceeds the limits specified in federal law. The obligor may also move to quash the assignment if he or she states under oath that a default in payment in a sum equal to the amount of support payable for one month has not occurred. 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. 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 shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion. If a finding of an error in the amount of overdue support results in an amount due which is less than one month's support, the assignment of wages shall be quashed accordingly. However, if a finding of an error in the amount of overdue support results in an amount in excess of one month's support, such a finding in the amount of overdue support shall not affect the assignment of that portion of the obligor's wages withheld to pay for current support. A finding of an error in the amount of current support subject to withholding does not affect the assignment of that portion of the obligor's wages withheld to pay overdue support.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted. The employer shall send the amounts withheld to the assigned payee within 10 days of the date the obligor is paid. An employer who willfully fails to withhold and forward support pursuant to a currently valid order

entered and served upon the employer pursuant to this section is liable to the assigned payee for the amount of support not withheld, forwarded, or otherwise paid to the assigned payee. Willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the order of assignment and the fact that the obligor may have subsequently paid the arrearages shall not relieve the court of its duty under this subdivision to enter the order for the assignment.

(10) Upon a notice of motion by the obligor, the court shall terminate an order of assignment entered pursuant to this subdivision if past due support has been paid in full and if one of the following conditions exists: (A) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the person to whom support has been ordered to be paid to notify the employer or district attorney of a change of address; or (B) the death or emancipation of the child to whom support is owed; or (C) the assignment has continued for 24 months after payment in full of any past due support. However, if the assignment was pursuant to a second or subsequent application, it shall not be terminated unless, upon a petition by the parent ordered to pay support, the court determines that there is good cause to terminate the assignment.

(11) The amounts withheld under this subdivision shall include both current support and payments towards the liquidation of arrearages. However, priority shall be given to the current support obligation.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar ($1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the child support obligation. The state agency or the local agency designated to enforce child support obligations, as required by federal law, shall allow employers to simplify the process of wage withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one court order in a consolidated check.

(e) Orders for wage assignment required or authorized by this

section shall include a requirement that the obligor notify the assigned payee of any change of employment and of the name and address of his or her new employer.

(f) 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 engages in the conduct prohibited by this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(g) 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.

(h) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in the payment in the amount specified in subdivision (b), and (2) the whereabouts of the defaulting parent or the identity of his or her employer are unknown to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent's last known employer. The court shall then order the defaulting parent to make support payments pursuant to subdivision (b).

(i) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

(j) This section applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that the money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(k) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under Section 4702. These moneys shall be subject to any procedure available to enforce an order for child support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court

unless the public entity has informed the court in writing that the moneys shall be released to the defaulting obligor. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

(*l*) Notwithstanding subdivisions (a) and (b), in any case where support is ordered to be paid through the district attorney for those purposes, or upon the district attorney's or obligor's request, the court shall issue an order for a wage assignment pursuant to this section.

In any such case in which an arrearage is alleged, the party ordered to pay support may move to quash the order for wage assignment in the manner specified in subdivision (b), but a finding of error in the amount of the arrearage is not sufficient in and of itself to quash the wage assignment for that portion of the obligor's wages withheld to pay current support.

As used in this subdivision, "wage assignment" has the same meaning as "assignment" and "wage assignment" in subdivisions (a) and (b).

(m) As used in this section, "assigned payee" means either the person to whom support has been ordered to have been paid or the district attorney, designated by the court to receive the payment. For the purposes of this section, the district attorney shall be the assigned payee for all cases in which an application for services has been filed under Title IV-D of the Social Security Act.

(n) In any case where support for a minor child is ordered to be paid through the district attorney on behalf of a minor child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the district attorney shall forward the support received to the custodial parent or other person having care or control of the minor child or children involved within seven working days of receipt.

(o) This section shall become operative on January 1, 1987.

SEC. 2. Section 4701 of the Civil Code is amended to read:

4701. (a) (1) On and after January 1, 1987, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court shall order either parent or both parents to assign to an assigned payee, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child, unless the parent ordered to pay support demonstrates to the satisfaction of the court that the support payments ordered will be made This demonstration may include proof of timely payment of previously ordered support for the minor children subject to the action. The wage assignment shall be ordered at the time of trial or entry of a judgment establishing child support, other than a temporary order

pending trial. 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 is served. Any such order of assignment may be modified at any time by the court or, in the case of an arrearage, revoked as provided in subdivision (b).

(2) Notwithstanding paragraph (1), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to an assigned payee that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. 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 is served. Any such order may be modified or revoked at any time by the court. This paragraph shall not operate to limit the provisions of paragraph (1) but shall add to the powers set forth in that paragraph, by providing general authority for an order assigning wages or salary in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, and under any circumstance.

(b) (1) Notwithstanding the provisions of subdivision (a), in any proceeding after January 1, 1987, where the court has ordered either or both parents to pay any amount for the support of a minor child and has not otherwise ordered an assignment of wages or salary pursuant to subdivision (a), that order for support shall contain a provision assigning the wages of the obligor to the assigned payee. Any order for the modification of child support entered after January 1, 1987, which does not otherwise contain a provision for wage assignment or an order assigning wages or salary pursuant to subdivision (a), shall also contain a provision assigning the wages of an obligor to the assigned payee. All provisions for wage assignment required pursuant to this subdivision shall be effective only upon an application signed under penalty of perjury by the assigned payee that the obligor is in arrears in payment in a sum equal to the amount of support payable for one month. Upon receipt of the application, the court shall issue, without notice to the obligor, an order requiring the obligor to assign to the payee that portion of the salary or wages of the obligor due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the obligor ordered to pay support upon whom a copy of the order is served.

(2) In cases in which the order for child support does not contain a provision for wage assignment, the application shall state that the assigned payee has given the obligor a written notice of his or her intent to seek a wage assignment in the event of a default in support payments 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 a wage 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. In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure. The obligor may at any time waive the written notice required by this subdivision.

(3) The assigned payee shall notify the employer of the obligor, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after the change. In instances in which payments have been ordered to be made to the district attorney, the parent to whom support has been ordered to be paid shall notify the court and the district attorney, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or district attorney is unable to deliver payments under the assignment for a period of six months due to the failure of the individual to whom support has been ordered to be paid to notify the employer or district attorney of a change of address, the employer or district attorney shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the assignment. The Judicial Council shall adopt a form for the statement.

(6) An obligor alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the obligor of notice of the assignment order by his or her employer if the obligor states under oath that there is an error in the amount of current or overdue support, that the alleged obligor is not the obligor from whom support is due, or that the amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code, to the extent that the amount required to be withheld exceeds the limits specified in federal law. The obligor may also move to quash the assignment if he or she states under oath that a default in payment in a sum equal to the amount of support payable for one month has not occurred. 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. 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 shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion. If a finding of an error in the amount of overdue support results in an amount due which is less than one month's support, the assignment of wages shall be quashed accordingly. However, if a finding of an error in the amount of overdue support results in an amount in excess of one month's support, such a finding in the amount of overdue support shall not affect the assignment of that portion of the obligor's wages withheld to pay for current support. A finding of an error in the amount of current support subject to withholding does not affect the assignment of that portion of the obligor's wages withheld to pay overdue support.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted. The employer shall send the amounts withheld to the assigned payee within 10 days of the date the obligor is paid. An employer who willfully fails to withhold and forward support pursuant to a currently valid order entered and served upon the employer pursuant to this section is liable to the assigned payee for the amount of support not withheld, forwarded, or otherwise paid to the assigned payee. Willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the order of assignment and the fact that the obligor may have subsequently paid the arrearages shall not relieve the court of its duty under this subdivision to enter the order for the assignment.

(10) Upon a notice of motion by the obligor, the court shall terminate an order of assignment entered pursuant to this subdivision if past due support has been paid in full and if one of the following conditions exists: (A) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the person to whom support has been ordered to be paid to notify the employer or district attorney of a change of address; or (B) the death or emancipation of the child to whom support is owed; or (C) the assignment has continued for 24 months after payment in full of any past due support. However, if the assignment was pursuant to a second or subsequent application, it shall not be terminated unless, upon a petition by the parent ordered to pay support, the court determines that there is good cause to terminate the assignment.

(11) The amounts withheld under this subdivision shall include

both current support and payments towards the liquidation of arrearages. However, priority shall be given to the current support obligation.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar ($1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the child support obligation. The state agency or the local agency designated to enforce child support obligations, as required by federal law, shall allow employers to simplify the process of wage withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one court order in a consolidated check

(e) Orders for wage assignment required or authorized by this section shall include a requirement that the obligor notify the assigned payee of any change of employment and of the name and address of his or her new employer.

(f) 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 engages in the conduct prohibited by this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(g) 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.

(h) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in the payment in the amount specified in subdivision (b), and (2) the whereabouts of the defaulting parent or the identity of his or her employer are unknown to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent's last known employer. The court shall then order the defaulting parent to make support payments pursuant to subdivision (b).

(i) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

(j) This section applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the

extent that the money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(k) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under Section 4702. These moneys shall be subject to any procedure available to enforce an order for child support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting obligor. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

(*l*) Notwithstanding subdivisions (a) and (b), in any case where support is ordered to be paid through the district attorney for those purposes, or upon the district attorney's or obligor's request, the court shall issue an order for a wage assignment pursuant to this section.

In any such case in which an arrearage is alleged, the party ordered to pay support may move to quash the order for wage assignment in the manner specified in subdivision (b), but a finding of error in the amount of the arrearage is not sufficient in and of itself to quash the wage assignment for that portion of the obligor's wages withheld to pay current support.

As used in this subdivision, "wage assignment" has the same meaning as "assignment" and "wage assignment" in subdivisions (a) and (b).

(m) As used in this section, "assigned payee" means either the person to whom support has been ordered to have been paid or the district attorney, designated by the court to receive the payment. For the purposes of this section, the district attorney shall be the assigned payee for all cases in which an application for services has been filed under Title IV-D of the Social Security Act.

(n) In any case where support for a minor child is ordered to be paid through the district attorney on behalf of a minor child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200)

of Part 3 of Division 9 of the Welfare and Institutions Code), the district attorney shall forward the support received to the custodial parent or other person having care or control of the minor child or children involved within seven working days of receipt.

(o) This section shall become operative on January 1, 1987.

(p) 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 dates on which it becomes inoperative and is repealed.

SEC. 3. Section 2 of this bill incorporates amendments to Section 4701 of the Civil Code, proposed by both this bill and AB 1904. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4701 of the Civil Code, and (3) this bill is enacted after AB 1904, in which case Section 1 of this bill shall not become operative.

CHAPTER 640

An act to amend Sections 10148, 10150, 10151, 10156.6, 10156.7, and 10240 of the Business and Professions Code, and to amend Section 830.11 of the Penal Code, relating to real estate brokers.

[Approved by Governor September 20, 1989 Filed with Secretary of State September 21, 1989]

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, the books, accounts, and records shall be made available for examination, inspection, and copying 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 the 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 10150 of the Business and Professions Code is amended to read:

10150. (a) Application for the real estate broker license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker examination application. The application for the broker examination shall be accompanied by the real estate broker license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate broker license examination may apply for a real estate broker license. Application for the real estate broker license shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker license application. The application for the real estate broker license shall be accompanied by the appropriate fee.

SEC. 3. Section 10151 of the Business and Professions Code is amended to read:

10151. (a) Application for the real estate salesperson license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson examination application. The application for the salesperson examination shall be accompanied by the real estate salesperson license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate salesperson examination may apply for a real estate salesperson license. Application for the real estate salesperson license application shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson license application. The application for the real estate salesperson license shall be accompanied by the appropriate fee.

SEC. 4. Section 10156.6 of the Business and Professions Code is amended to read:

10156.6. A restricted license issued pursuant to Section 10156.5 as the commissioner in his or her discretion finds advisable in the public interest may be restricted:

(a) By term.

(b) To employment by a particular real estate broker, if a salesperson.

(c) By conditions to be observed in the exercise of the privileges granted.

(d) If a salesperson licensee or applicant has not complied with Section 10153.4 within 18 months after issuance of the license.

SEC. 5. Section 10156.7 of the Business and Professions Code is amended to read:

10156.7. (a) A restricted license issued pursuant to Section 10156.5 does not confer any property right in the privileges to be exercised thereunder, and the holder of a restricted license does not have the right to the renewal of the license.

(b) Except as provided in subdivision (c), the commissioner may without hearing issue an order suspending the licensee's right to further exercise any privileges granted under a restricted license pending final determination made after formal hearing.

(c) A restricted salesperson license containing a condition requiring compliance with Section 10153.4 shall be automatically suspended upon the licensee's failure to comply with the condition. The suspension shall not be lifted until the suspended licensee has submitted the required evidence of course completion and the commissioner has given written notice to the licensee of the lifting of the suspension.

SEC. 6. Section 10240 of the Business and Professions Code is amended to read:

10240. (a) Every real estate broker acting within the meaning of subdivision (d) of Section 10131 who negotiates a loan to be secured directly or collaterally by a lien on real property shall, before the borrower becomes obligated to complete the loan, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of four years a true and correct copy of such statement as signed by the borrower.

No real estate licensee shall permit such statement to be signed by a borrower if any information required by Section 10241 is omitted. This section is not applicable with respect to a loan for a lender enumerated in paragraph (1) of subdivision (a) of Section 10133.1 on which the broker receives a commission from the borrower not in excess of 2 percent of such loan.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

SEC. 7. Section 830.11 of the Penal Code is amended 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 10000) and Part 2 (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. 8. Section 830.11 of the Penal Code is amended 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 10000) and Part 2 (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.

(4) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(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. 9. Section 8 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by both this bill and SB 1667. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 830.11 of the Penal Code, and (3) this bill is enacted after SB 1667, in which case Section 830.11 of the Penal Code, as amended by SB 1667, shall remain operative only until the operative date of this bill, at which time Section 8 of this bill shall become operative, and Section 7 of this bill shall not become operative.

CHAPTER 641

An act to amend Sections 8551.5 and 8564.5 of the Business and Professions Code, relating to pest control, and making an appropriation therefor.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 8551.5 of the Business and Professions Code is amended to read:

8551.5. No unlicensed individual in the employ of a registered company shall apply any insecticide, pesticide, rodenticide, fumigant, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling or preventing infestation or infections of such pests, or organisms included in Branch 2 or Branch 3 unless that individual has successfully passed an examination

conducted by the board pursuant to Section 8564.5. However, that individual may, for 30 days from the date of hire, apply insecticides, pesticides, rodenticides, fumigants, or allied chemicals for the purposes of training under the direct supervision of a licensee employed by the company. This direct supervision means in the presence of the licensee at all times. The 30-day time period may not be extended.

SEC. 1.5. Section 8551.5 of the Business and Professions Code is amended to read:

8551.5. No unlicensed individual in the employ of a registered company shall apply any insecticide, pesticide, rodenticide, fumigant, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling or preventing infestation or infections of such pests, or organisms included in Branch 2, Branch 3, or Branch 4 unless that individual has successfully passed an examination conducted by the board pursuant to Section 8564.5. However, that individual may, for 30 days from the date of hire, apply insecticides, pesticides, rodenticides, fumigants, or allied chemicals for the purposes of training under the direct supervision of a licensee employed by the company. This direct supervision means in the presence of the licensee at all times. The 30-day time period may not be extended.

SEC. 2. Section 8564.5 of the Business and Professions Code is amended to read:

8564.5. (a) Prior to the application of any chemical substance included in Branch 2 or Branch 3 by any unlicensed individual in the employ of a registered company, as specified in Section 8551.5, the board shall ascertain by written examination that the individual has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures and pesticide label directions.

(b) Passage of the written examination authorizes an individual to apply any chemical substance in Branch 2 or Branch 3 for a period not to exceed three years at which time he or she shall again apply for and successfully pass the written examination.

(c) Individuals who have successfully passed the written examination by January 1, 1990, shall again successfully pass the examination by January 1, 1991, in order to allow the individual to apply any chemical substance in Branch 2 or Branch 3 for a period not to exceed three years at which time the individual shall again apply for and successfully pass the written examination.

The board may charge a fee for any examination required by this section in an amount sufficient to cover the cost of administering such examination, provided, however, that such fee shall not exceed fifteen dollars ($15).

SEC. 3. Section 8564.5 of the Business and Professions Code is amended to read:

8564.5. (a) Prior to the application of any chemical substance included in Branch 2 or Branch 3 by any unlicensed individual in the

employ of a registered company, as specified in Section 8551.5, the board shall ascertain by written examination that such individual has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures and pesticide label directions.

(b) Passage of the written examination authorizes an individual to apply any chemical substance in Branch 2 or Branch 3 for a period not to exceed three years at which time he or she shall again apply for and successfully pass the written examination.

(c) Individuals who have successfully passed the written examination by January 1, 1990, shall again successfully pass the examination by January 1, 1991, in order to allow the individual to apply any chemical substance in Branch 2 or Branch 3 for a period not to exceed three years at which time the individual shall again apply for and successfully pass the written examination.

(d) Prior to the application of any wood preservative, as part of a roof restoration process covered under Branch 4, by any unlicensed individual in the employ of a registered company as specified in Section 8551.5, the board shall, on and after July 1, 1990, ascertain by written examination that the individual has sufficient knowledge of wood preservative application procedures, mixing and formulation and wood preservation label directions.

(e) The board may charge a fee for any examination required by this section in an amount sufficient to cover the cost of administering such examination, provided, however, that such fee shall not exceed fifteen dollars ($15).

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 8551.5 of the Business and Professions Code proposed by both this bill and AB 1682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 8551.5 of the Business and Professions Code, and (3) this bill is enacted after AB 1682, in which case Section 8551.5 of the Business and Professions Code, as amended by AB 1682, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 5. Section 3 of this bill incorporates amendments to Section 8564.5 of the Business and Professions Code proposed by both this bill and AB 1682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 8564.5 of the Business and Professions Code, and (3) this bill is enacted after AB 1682, in which case Section 8564.5 of the Business and Professions Code, as amended by AB 1682, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Section 2 of this bill shall not become operative.

CHAPTER 642

An act to amend Section 25143.1 of the Health and Safety Code, and to amend Sections 13050, 13172, and 13260 of, to add Section 13263.1 to, and to add and repeal Section 13260.1 of, the Water Code, relating to hazardous waste.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989]

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

SECTION 1. Section 25143.1 of the Health and Safety Code is amended to read:

25143.1. (a) 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.

(b) (1) Wastes from the extraction, beneficiation, and processing of ores and minerals that are not subject to regulation under Subchapter III (commencing with Section 6921) of Chapter 82 of Title 42 of the United States Code are exempt from the requirements of this chapter, except the requirements of Article 9.5 (commencing with Section 25208), as provided in paragraph (2).

(2) The wastes subject to this subdivision are subject to Article 9.5 (commencing with Section 25208) and Chapter 6.8 (commencing with Section 25300) if the wastes would otherwise be classified as hazardous wastes pursuant to Section 25117 and the regulations adopted pursuant to Section 25141.

(3) For purposes of this subdivision, "wastes from the extraction, beneficiation, and processing of ores and minerals" means any of the following:

(A) Soil, waste rock, overburden, and any other solid, semisolid, or liquid natural materials that are removed, unearthed, or otherwise displaced as a result of excavating or recovering an ore, mineral, or other natural material.

(B) Residuals of ores, minerals, or other natural materials after those ores, minerals, or other natural materials have been removed, unearthed, or otherwise displaced from their natural sites and (i) physically or chemically treated or otherwise managed in order to separate or concentrate the commercial product present in the ore, mineral, or other natural material, or (ii) processed to produce a final marketable product.

SEC. 2. Section 13050 of the Water Code is amended to read:

13050. As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" also includes any city, county, district, the state or any department or agency thereof. "Person" includes the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(e) "Waters of the state" means any water, surface or underground, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" or "quality of the waters" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:

(1) Beneficial uses to be protected.

(2) Water quality objectives.

(3) A program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(*l*) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(1) The waters for beneficial uses.

(2) Facilities which serve these beneficial uses.

"Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during or as a result of the treatment or disposal of wastes

(n) "Reclaimed water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur.

(o) "Citizen or domiciliary" of the State of California includes a foreign corporation having substantial business contacts in the State of California or which is subject to service of process in this state.

(p) (1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311 (b) (2) of the Clean Water Act (33 U.S.C. Section 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous substance" shall not include any substance excluded from the applicability of Section 311 (b) (2) of the Clean Water Act because it is within the scope of Section 311 (a) (1) of the Clean Water Act

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 2426 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311 (b) (4) of the Clean Water Act.

(D) Any discharge to land which results or probably will result in a discharge to groundwater where the amount of the discharge to land is less than a reportable quantity, as determined by regulations issued pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals Mining waste includes, but is not limited to, soil, waste

rock, and overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials.

SEC. 3. 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.

(e) Adopt policies, standards, and regulations for discharges of mining waste which apply, and ensure compliance with, all surface water and groundwater protection and monitoring requirements of this division, Article 9.5 (commencing with Section 25208) of Chapter 6.5 of Division 20 of the Health and Safety Code, and Subchapter IV (commencing with Section 6941) of Chapter 82 of Title 42 of the United States Code, which are applicable to discharges of mining waste. These policies, standards, and regulations shall include, but are not limited to, all of the following:

(1) A statewide policy for monitoring surface water and groundwater that may be affected by discharges of mining waste. The policy shall establish the principles the regional boards shall use in developing monitoring plans for discharges of mining waste, including the methods the regional boards shall use in determining the location, number, and type of monitoring sites.

(2) Regulations requiring that waste discharge requirements issued for discharges of mining waste by regional boards include monitoring requirements consistent with the statewide policy

adopted pursuant to paragraph (1).

(3) Standards for reporting the results of surface water and groundwater monitoring to the regional board. The standards shall establish a reporting format that graphs monitoring data over an appropriate time period and compares the values found for each measured parameter against the standard for that parameter established in the waste discharge requirements.

SEC. 4. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the regional board of that region a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating or proposing to construct an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the regional board of that region a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the reimbursement levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the reimbursement levels set forth in the Budget Act for this activity.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be

adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 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, 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 by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the California regional water quality control board for the region, pursuant to the memorandum of understanding, entered into between the State Water Resources Control Board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the State Water Resources Control Board or the Department of Conservation.

(*l*) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or

contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the State Department of Health Services pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

SEC. 5. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the regional board of that region a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating or proposing to construct an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the regional board of that region a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed ten thousand dollars ($10,000) according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, or area involved.

(2) Any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the

fee shall be refunded.

(f) (1) On or before January 1, 1990, the state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual and filing fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual and filing fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than or less than the revenue levels set forth in the Budget Act, the state board may further adjust the annual filing fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 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, 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 by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or

geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the California regional water quality control board for the region, pursuant to the memorandum of understanding, entered into between the State Water Resources Control Board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the State Water Resources Control Board or the Department of Conservation.

(*l*) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the State Department of Health Services pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

SEC. 6. Section 13260.1 is added to the Water Code, to read:

13260.1. In addition to the fee imposed by subdivision (d) of Section 13260, each person for whom waste discharge requirements for the discharge of mining waste have been prescribed pursuant to Section 13263 shall pay an annual fee to the state board to cover the costs of implementing subdivision (e) of Section 13172, Section 13263.1, and Section 8 of the act which added this section. The annual fee shall be paid each year of the four consecutive years beginning in 1990 and ending in 1993. The total amount collected under this section shall not exceed seventy-nine thousand dollars ($79,000) per year or a combined total of three hundred sixteen thousand dollars ($316,000) over four years. The annual fee imposed upon each discharger of mining waste pursuant to this section shall be in the same proportion to seventy-nine thousand dollars ($79,000) as the fee the discharger pays pursuant to subdivision (d) of Section 13260 is to the total amount of fees paid by all dischargers of mining waste pursuant to subdivision (d) of Section 13260. The state board shall create a special fund or a separate account to ensure the proper administration of this section. The repeal of this section does not relieve a discharger of mining waste from his or her obligation to pay the annual fee imposed by this section.

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 January 1, 1994, deletes or extends that date.

SEC. 7. Section 13263.1 is added to the Water Code, to read:

13263.1. Before a regional board issues or revises waste discharge requirements pursuant to Section 13263 for any discharge of mining waste, the regional board shall first determine that the proposed mining waste discharge is consistent with a waste management strategy that prevents the pollution or contamination of the waters of the state, particularly after closure of any waste management unit for mining waste.

SEC. 8. On or before January 1, 1991, the State Water Resources Control Board shall investigate current analytic procedures, if any, which are available to test mining waste for acid-forming potential and report to the Legislature on all of the following:

(a) Whether a practical procedure exists that can be used to predict the acid-forming potential of mining waste.

(b) If a practical procedure is not available, whether a test for acid-forming potential should be developed.

(c) If the state board's recommendation is that a test specified in subdivision (b) should be developed, the state board's estimate of the cost of developing and validating the test and possible sources of funding that might be used to pay for those development costs.

SEC. 9. Section 5 of this bill incorporates amendments to Section 13260 of the Water Code proposed by both this bill and AB 456. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 13260 of the Water Code, and (3) this bill is enacted after AB 456, in which case Section 4 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 only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 643

An act relating to earthquake safety.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. The State Department of Education shall be the lead agency designated to develop plans and procedures, in consultation with, but not limited to, the Seismic Safety Commission, the State Architect, and the Office of Emergency Services, to coordinate earthquake awareness, disaster planning, and preparedness and hazard reduction programs for public schools. The Department of Education shall develop inservice training programs to mitigate the effects of a major earthquake, and shall provide a series of training seminars for school administrators and district board of trustee members. It is the intent of the Legislature that funds to support the activities in this section be made available through the state budget process.

CHAPTER 644

An act to amend Section 19571 of, and to add Section 19533.5 to, the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 19533.5 is added to the Business and Professions Code, to read:

19533.5. Notwithstanding Section 19533, the board may authorize an association licensed to conduct a quarter horse meeting to include Appaloosa races and Arabian races with the consent of the quarter horse horsemen's organization contracting with the association with respect to the conduct of the racing meeting.

SEC. 2. Section 19571 of the Business and Professions Code is amended to read:

19571. No horserace authorized by the board, except the last scheduled race of any racing day, may be commenced after midnight.

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 this act may apply during this racing season, it is necessary that this act take effect immediately.

CHAPTER 645

An act to amend Sections 3703, 3730, and 3741 of, to add Sections 3736.5 and 3742 to, and to repeal Section 3738 of, the Business and Professions Code, relating to respiratory care.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 3703 of the Business and Professions Code is amended to read:

3703. (a) The settings in which respiratory care may be practiced include licensed health care facilities, hospitals, clinics, ambulatory or home health care, physicians' offices, and public or community health services. Respiratory care may also be provided during the transportation of a patient, and under any circumstances where an emergency necessitates respiratory care.

(b) The practice of respiratory care shall be performed under the supervision of a medical director in accordance with a prescription of a physician and surgeon or pursuant to respiratory care protocols as specified in Section 3702.

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 Respiratory Care Examining Committee 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 3736.5 is added to the Business and Professions Code, to read:

3736.5. The examining committee's examination contractor shall provide to the examining committee the state examination pass-fail

statistics for each approved respiratory care training program.

SEC. 4. Section 3738 of the Business and Professions Code is repealed.

SEC. 5. Section 3741 of the Business and Professions Code is amended to read:

3741. (a) During the period of any clinical training, respiratory care services may be rendered by a student enrolled in an approved respiratory care training program when these services are incidental to his or her course of study.

(b) A person engaged in a respiratory care training program as a student shall be identified only as a "student respiratory care practitioner."

SEC. 6. Section 3742 is added to the Business and Professions Code, to read:

3742. During the period of any clinical training, a student respiratory care practitioner shall be under the direct supervision of a person holding a valid and current certificate issued under this chapter. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient care area.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 646

An act to amend Section 1707 of, and to add Section 1704.5 to, the Insurance Code, relating to insurance.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 1704.5 is added to the Insurance Code, to read:

1704.5. (a) Except as provided in subdivision (b), a licensed life agent may present a proposal for insurance to a prospective policyholder on behalf of an insurer for which the agent is not specifically appointed, and may also transmit an application for insurance to that insurer. If a policy of insurance is issued pursuant

to that application, the insurer is considered to have authorized the agent to act on its behalf, and the insurer is responsible for all actions of the agent that relate to the application and policy as if the agent had been duly appointed for the insurer. Not more than 14 days after the life agent submits an application for insurance to the insurer for which the insurer issues a policy, the insurer shall forward to the commissioner a notice of appointment of the life agent as the insurer's agent in accordance with the requirements of this article. Nothing in this section obliges an insurer to accept an application for underwriting from a life agent. Any payments made by the prospective policyholder prior to issuance of the policy shall be made only in the form of a draft, check, cashier's check, traveler's check, money order, or similar instrument made payable to the insurer to which the application is transmitted.

(b) A licensed life agent who is not specifically appointed for a particular insurer may not (1) present a proposal to a prospective policyholder for insurance with that insurer or (2) transmit an application for insurance to that insurer if the insurer requires all its life agents to represent only that insurer or a group of affiliated insurers of which that insurer is a member or to submit risks to that insurer or group of affiliated insurers prior to submitting them to other insurers.

SEC. 2. Section 1707 of the Insurance Code is amended to read:

1707. Except as otherwise provided in Section 1704.5, each notice of appointment or notice of termination of appointment filed pursuant to this article shall be filed in triplicate on forms prescribed by the commissioner within 10 days of appointment or termination. The commissioner shall, in the case of appointment notices, retain one copy thereof in his files and return two copies thereof to the insurer or insurer's representative, or employing insurance agent or broker, filing such notice. The insurer or insurer's representative or employing agent or broker shall thereupon return one copy thereof to the licenseholder whose appointment is effected.

In the case of a termination notice, the commissioner shall retain one copy thereof for his files, forward one copy thereof to the licenseholder whose appointment is terminated, and return one copy thereof to the insurer or insurer's representative, or employing insurance agent or broker, filing such notice.

CHAPTER 647

An act relating to school facilities.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. (a) The Department of Corrections shall conduct a study to document the impact of new prisons upon the school facilities of the public school system in the area of the new prisons, including, but not limited to, the number of correctional officers and other employees of the department who are employed at or near those new prisons, the number of schoolaged children of those employees, and the amount of capital expenditure, if any, that was necessary to meet the school facilities needs resulting from the new prison. The study shall address, for this purpose, two locations, selected by the department, where a new prison has been activated since 1984. In conducting the study, the department shall request data on school facilities conditions, and other relevant information, from school districts whose pupil population was affected by the new prison.

(b) The department shall submit the study described in subdivision (a) to the Legislature no later than July 1, 1991.

CHAPTER 648

An act to amend Sections 5784, 12001, and 12001.5 of, and to add Section 5786 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 5784 of the Food and Agricultural Code is amended to read:

5784. (a) The regulations adopted by the director upon the establishment of a cotton host-free period or district for a particular pest shall, insofar as practical, be uniform and shall be uniformly enforced in all cotton host-free periods or districts established for that pest. Any exemptions or variances thereafter shall be extended to all other districts or periods unless the director finds that it will be detrimental to the eradication or effective control of the particular pest to do so.

(b) The remedies provided in this article for any violation of this

article are in addition to any other remedy provided by law.

(c) Any person producing cotton in violation of cotton plowdown requirements adopted pursuant to this article is subject to a civil penalty of five hundred dollars ($500). Each acre not in compliance is a separate additional violation subject to a civil penalty of five dollars ($5) per acre of land not in compliance.

(d) Any person producing cotton in violation of cotton planting dates adopted pursuant to this article is subject to a civil penalty of five hundred dollars ($500). Each acre not in compliance is a separate additional violation subject to a civil fine of fifty dollars ($50) per acre of land not in compliance.

(e) The Attorney General, upon the request of the director, or the district attorney or county counsel, upon the request of the commissioner, may request a court to issue an injunction or take other appropriate action to restrain violations of the provisions of this article relating to cotton pests.

SEC. 2. Section 5786 is added to the Food and Agricultural Code, to read:

5786. (a) The Legislature finds that any cotton plants and parts thereof not in compliance with any cotton plowdown dates adopted pursuant to this article constitutes a public nuisance which immediately threatens the health and safety of the public.

(b) In addition to any other remedies provided by law, any cotton plant or part thereof not in compliance with any cotton plowdown order may be abated at the direction of the commissioner in the county where the cotton plant or parts exist. The notice of the cotton plowdown date shall serve as notice to the owner of the plant or parts thereof that the plant or parts constitute a public nuisance if not brought into compliance with the orders by that date. Thereafter, the commissioner may take any abatement action as is reasonably necessary to bring the plant and parts thereof into compliance.

(c) The person who produced the cotton plant and parts thereof shall pay 150 percent of all costs associated with the commissioner's abatement of the nuisance. The producers may, when making the payment of the amount, submit a written appeal of the payment to the director.

(d) Any moneys collected pursuant to Section 5784 or this section for violation of cotton pest provisions shall be allocated to the commissioner in the county where the action is brought.

SEC. 3. Section 12001 of the Food and Agricultural Code is amended to read:

12001. No person shall act, or offer to act, as an agricultural pest control adviser without first having secured an agricultural pest control adviser license from the director. Officials of federal, state, and county departments of agriculture and the University of California personnel engaged in official duties relating to agricultural use are exempt from this section when any recommendation by any of these persons as to a specific application on a specific parcel is in writing. Officials of districts formed pursuant

to Chapter 4 (commencing with Section 5780) of Division 5 of the Public Resources Code are exempt from this section when any recommendation by any of these persons as to specific application on a specific parcel is in writing. However, this exemption for officials of districts does not apply to persons otherwise required to be licensed pursuant to this division. Federal, state, and county officials who are not employed in a department of agriculture are exempt from this section until July 1, 1991, when a recommendation by any of these persons as to a specific application on a specific parcel is in writing.

SEC. 4. Section 12001.5 of the Food and Agricultural Code is amended to read:

12001.5. (a) The director may adopt, by regulation, alternative minimum criteria based on education or technical experience for applicants for an agricultural pest control adviser license. These alternative minimum qualifications shall apply only to persons who, at the time of license application, are officials of federal, state, or county departments other than agriculture.

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.

CHAPTER 649

An act to repeal and add Section 2188.6 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 2188.6 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 2188.6 is added to the Revenue and Taxation Code, to read:

2188.6. (a) Unless a request for exemption has been recorded pursuant to subdivision (d), prior to the creation of a condominium as defined in Section 783 of the Civil Code, the county assessor may separately assess each individual unit which is shown on the condominium plan of a proposed condominium project when all of the following documents have been recorded as required by law:

(1) A subdivision final map or parcel map, as described in Sections 66434 and 66445, respectively, of the Government Code.

(2) A condominium plan, as defined in subdivision (e) of Section 1351 of the Civil Code.

(3) A declaration, as defined in subdivision (h) of Section 1351 of

the Civil Code.

(b) The tax due on each individual unit shall constitute a lien solely on that unit.

(c) The lien created pursuant to this section shall be a lien on an undivided interest in a portion of real property coupled with a separate interest in space called a unit as described in subdivision (f) of Section 1351 of the Civil Code.

(d) The record owner of the real property may record with the condominium plan a request that the real property be exempt from separate assessment pursuant to this section. If a request for exemption is recorded, separate assessment of a condominium unit shall be made only in accordance with Section 2188.3.

(e) This section shall become operative on January 1, 1990, and shall apply to condominium projects for which a condominium plan is recorded after that date.

SEC. 3. It is the intent of the Legislature in enacting Section 1 of this act to leave unchanged the law which governs the time at which a condominium is created, but to permit the county assessor to separately assess each proposed condominium in a condominium project prior to that time.

CHAPTER 650

An act to amend Section 21153 of the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 21153 of the Government Code is amended to read:

21153. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or any other employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 120 working days or 960 hours in any calendar year, and the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

CHAPTER 651

An act to amend Sections 1646.1 and 1646.2 of, to amend and renumber Sections 1646.3, 1646.7, 1646.9, 1646.10, and 1646.11 of, to add Section 1646.3 to, and to repeal Sections 1646.4, 1646.5, 1646.6, and 1646.8 of, the Business and Professions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 1646.1 of the Business and Professions Code is amended to read:

1646.1. (a) No dentist shall administer or order the administration of general anesthesia on an outpatient basis for dental patients unless the dentist possesses a current license in good standing to practice dentistry in this state and holds a valid general anesthesia permit issued by the board.

(b) No dentist shall order the administration of general anesthesia unless the dentist is physically within the dental office at the time of the administration.

(c) A general anesthesia permit shall expire on the date provided in Section 1715 which next occurs after its issuance, unless it is renewed as provided in this article.

(d) This article does not apply to the administration of local anesthesia or to conscious-patient sedation.

SEC. 2. Section 1646.2 of the Business and Professions Code is amended to read:

1646.2. (a) A dentist who desires to administer or order the administration of general anesthesia shall apply to the board on an application form prescribed by the board. The dentist must submit an application fee and produce evidence showing that he or she has successfully completed a minimum of one year of advanced training in anesthesiology and related academic subjects approved by the board, or equivalent training or experience approved by the board, beyond the undergraduate school level.

(b) The application for a permit shall include documentation that equipment and drugs required by the board are on the premises.

SEC. 3. Section 1646.3 of the Business and Professions Code is amended and renumbered to read:

1646.4. (a) Prior to the issuance or renewal of a permit for the use of general anesthesia, the board may, at its discretion, require an onsite inspection and evaluation of the licentiate and the facility, equipment, personnel, and procedures utilized by the licentiate. The permit of any dentist who has failed an onsite inspection and evaluation shall be automatically suspended 30 days after the date on which the board notifies the dentist of the failure, unless within that

time period the dentist has retaken and passed an onsite inspection and evaluation. Every dentist issued a permit under this article shall have an onsite inspection and evaluation at least once every six years. Refusal to submit to an inspection shall result in automatic denial or revocation of the permit.

(b) The board may contract with public or private organizations or individuals expert in dental outpatient general anesthesia to perform onsite inspections and evaluations. The board may not, however, delegate its authority to issue permits or to determine the persons or facilities to be inspected.

SEC. 4. Section 1646.3 is added to the Business and Professions Code, to read:

1646.3. Any dentist holding a permit shall maintain medical history, physical evaluation, and general anesthesia records as required by board regulations.

SEC. 5. Section 1646.4 of the Business and Professions Code is repealed.

SEC. 6. Section 1646.5 of the Business and Professions Code is repealed.

SEC. 7. Section 1646.6 of the Business and Professions Code is repealed.

SEC. 8. Section 1646.7 of the Business and Professions Code is amended and renumbered to read:

1646.6. (a) The application fee for a permit or renewal under this article shall not exceed two hundred fifty dollars ($250).

(b) The fee for an onsite inspection shall not exceed three hundred fifty dollars ($350).

(c) It is the intent of the Legislature that fees established pursuant to this section be equivalent to administration and enforcement costs incurred by the board in carrying out this article.

(d) At the discretion of the board, the fee for onsite inspection may be collected and retained by a contractor engaged pursuant to subdivision (b) of Section 1646.4.

SEC. 9. Section 1646.8 of the Business and Professions Code is repealed.

SEC. 10. Section 1646.9 of the Business and Professions Code is amended and renumbered to read:

1646.7. A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

SEC. 11. Section 1646.10 of the Business and Professions Code is amended and renumbered to read:

1646.8. Nothing in this chapter shall be construed to authorize a dentist to administer or directly supervise the administration of

general anesthesia for reasons other than dental treatment, as defined in Section 1625.

SEC. 12. Section 1646.11 of the Business and Professions Code is amended and renumbered to read:

1646.5. A permittee shall be required to complete 15 hours of approved courses of study related to general anesthesia as a condition of renewal of a permit. Those courses of study shall be credited toward any continuing education required by the board pursuant to Section 1645.

CHAPTER 652

An act to amend Section 2113 of, and to repeal Section 2114 of, the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 2113 of the Business and Professions Code is amended to read:

2113. (a) Any person who does not immediately qualify for a physician's and surgeon's certificate under this chapter and who is offered by the dean of an approved medical school in this state a full-time faculty position may, after application to and approval by the Division of Licensing, be granted a certificate of registration to engage in the practice of medicine only to the extent that such practice is incident to and a necessary part of his or her duties as approved by the division in connection with such faculty position.

(b) To qualify for the certificate an applicant shall meet all the following requirements:

(1) Furnish documentary evidence satisfactory to the division that the applicant is a United States citizen or is legally admitted to the United States.

(2) If the applicant is a graduate of a medical school other than in the United States or Canada, furnish documentary evidence satisfactory to the division that he or she has been licensed to practice medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the division, or has been engaged in the practice of medicine in the United States for at least four years in approved facilities, or has completed a combination of that licensure and training.

If the applicant is a graduate of an approved medical school in the United States or Canada, furnish documentary evidence that he or she has completed a resident course of professional instruction as required in Section 2089.

(3) The head of the department in which the applicant is to be

appointed shall certify in writing to the division that the applicant will be under his or her direction and will not be permitted to practice medicine unless incident to and a necessary part of the applicant's duties as approved by the division in subdivision (a).

(4) Take and pass an oral examination if required by the division.

(c) A certificate of registration is valid for one year after its issuance. During this period the division may require the registrant to take the written examination required for issuance of a physician's and surgeon's certificate. If the registrant is required to take the written examination and does not pass, the certificate of registration shall nevertheless be effective for the one-year period issued and if the effective period of the certificate will lapse before the examination may be retaken, the certificate of registration may be renewed, subject to the discretion of the division, for a period not to exceed one additional year.

If the registrant is not required to take the written examination in order to be issued a certificate of registration or has passed that examination, the certificate of registration may be renewed annually at the discretion of the division for a total period of five years from the date of issuance of the original certificate. The division may condition any renewal on passing the written examination as described in this subdivision.

(d) If the registrant is a graduate of a medical school other than in the United States or Canada, he or she shall meet the requirements of Section 2101 or 2102, as appropriate, in order to obtain a physician's and surgeon's certificate. Notwithstanding any other provision of law, the division may accept practice in an appointment pursuant to this section as qualifying time to meet the postgraduate training requirements in Sections 2101 and 2102, and may, in its discretion, waive the examination requirements specified in Sections 2101 and 2102 in the event the registrant applies for a physician's and surgeon's certificate. As a condition to waiving any examination, the division in its discretion, may require an applicant to pass the clinical competency examination referred to in subdivision (d) of Section 2135. The division shall not waive any examination for an applicant who has not completed at least one year in the faculty position.

(e) Except to the extent authorized by this section, the registrant shall not engage in the practice of medicine or receive compensation therefor, unless he or she is issued a physician's and surgeon's certificate.

SEC. 2. Section 2114 of the Business and Professions Code is repealed.

CHAPTER 653

An act to amend Sections 7302, 7307, 7308, 7311, 7312, 7320, 7320.5, 7321, 7322, 7324, 7330, 7331, 7332, 7332.5, 7333, 7334, 7341, 7342, 7350, 7370, 7373, 7380, 7381, 7382, 7383, 7384, 7384.5, 7384.6, 7386, 7386.1, 7386.2, 7386.4, 7386.5, 7386.6, 7386.7, 7431, 7437, 7437.2, 7444, and 7444.1 of the Business and Professions Code, relating to cosmetology.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 7302 of the Business and Professions Code is amended to read:

7302. A person appointed as a member of the board:

(a) With the exception of a public member, shall be registered as a cosmetologist, or any of its branches, under this chapter, or participate actively in the management of a school of cosmetology or electrology as the owner of, or as a member of a partnership or officer of a corporation which owns, that school.

(b) With the exception of a public member, shall be, at the time of appointment, either actually engaged in conducting a cosmetology establishment, or actually engaged in the practice of cosmetology, or any of its branches, or electrology.

(c) Shall be of good moral character.

(d) Shall not be connected, directly or indirectly, in the wholesale business of the manufacture, rental, sale or distribution of cosmetology appliances or supplies.

(e) With the exception of a public member, shall have had at least five years' experience in the actual practice of cosmetology, or any of its branches, or electrology in this state immediately prior to the appointment. Persons shall be considered to be engaged in the actual practice of cosmetology, or any of its branches, or electrology within the meaning of this subdivision if they participate actively in the management of a school of cosmetology or electrology as the owner of, or as a member of a partnership or officer of a corporation which owns, that school.

(f) Shall be at least 25 years of age.

The public members shall not be licensees of the board.

SEC. 2. Section 7307 of the Business and Professions Code is amended to read:

7307. With the approval of the director, the board may:

(a) Prescribe the duties of its officers and employees.

(b) Enter into an agreement with any board, bureau, or commission within the department which employs sanitary inspectors to have those inspectors conduct sanitary inspections of cosmetology establishments and schools.

(c) Establish a principal office and branch offices at places in the

state as may be deemed necessary.

All records and files of the board shall be kept at the principal office.

The board shall adopt a seal.

SEC. 3. Section 7308 of the Business and Professions Code is amended to read:

7308. The board shall do all of the following:

(a) Provide for the examination of all applicants for registration, unless otherwise provided, whose applications have been submitted to it in proper form, the examinations to be held at least four times a year, one of which shall be held in each of the following cities: San Francisco, Sacramento, Los Angeles, and San Diego.

(b) Issue certificates of registration and licenses to applicants as may be entitled thereto.

(c) Register cosmetology establishments and schools of cosmetology.

(d) Report to the proper prosecuting officers all violations of this chapter coming within its knowledge.

SEC. 4. Section 7311 of the Business and Professions Code is amended to read:

7311. The board may adopt rules governing sanitary conditions, and precautions to be employed, as are reasonably necessary to protect the public health and safety in cosmetology establishments, schools of cosmetology, in the practice of a cosmetologist, and in any branch of cosmetology. The rules shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Title 2 of the Government Code), and shall be submitted to the State Department of Health Services, and approved by that department prior to filing with the Secretary of State. A written copy of all those rules shall be furnished to each licensee.

SEC. 5. Section 7312 of the Business and Professions Code is amended to read:

7312. The board shall keep a registration record of each licensee containing the name, known places of business, number of the license and date issued, together with the name and addresses of all cosmetology establishments and schools of cosmetology and electrology, registered under this chapter. This record shall also contain those facts as the applicants may have stated in their application for examination for registration and license.

SEC. 6. Section 7320 of the Business and Professions Code is amended to read:

7320. No person, firm or corporation shall conduct or operate a cosmetology establishment, school of cosmetology or electrology, or any other place of business in which the art of cosmetology or any of its branches is taught or practiced, except the branch of manicuring as practiced in a barbershop, unless licensed under this chapter and complying with this chapter relating to sanitation. Any violation of this section is a misdemeanor.

SEC. 7. Section 7320.5 of the Business and Professions Code is amended to read:

7320.5. (a) A cosmetologist may practice cosmetology on the premises of a licensed barbershop, but only if that premises is also licensed by the Board of Cosmetology as a cosmetology establishment.

(b) A barber may practice barbering on the premises of a licensed cosmetology establishment, but only if that premises is also licensed by the Board of Barber Examiners as a barbershop.

SEC. 7.5. Section 7321 of the Business and Professions Code is amended to read:

7321. The art of cosmetology includes any and all and any combination of the following practices:

(a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, singeing, bleaching, tinting, coloring, straightening, dyeing, brushing, beautifying or otherwise treating by any means the hair of any person.

(b) Massaging, cleaning or stimulating the scalp, face, neck, arms, bust or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions or creams.

(c) Beautifying the face, neck, arms, bust or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions or creams.

(d) Removing superfluous hair from the body of any person by the use of electrolysis or by the use of depilatories or by the use of tweezers, chemicals, preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

(e) Cutting, trimming, polishing, tinting, coloring, cleansing or manicuring the nails of any person.

(f) Massaging, cleansing, or beautifying the hands or feet of any person.

SEC. 8. Section 7322 of the Business and Professions Code is amended to read:

7322. This chapter does not prohibit any practice within its scope in cases of emergency nor does it prohibit the domestic administration of any practice without compensation, nor the administration of any practice outside of a licensed school of cosmetology or cosmetology establishment when necessary because of the illness or other physical incapacitation of the recipient of the service and when performed by a licensee obtained for the purpose from a licensed cosmetology establishment.

SEC. 9. Section 7324 of the Business and Professions Code is amended to read:

7324. The following persons are exempt from this chapter:

(a) All persons authorized by the laws of this state to practice medicine, surgery, dentistry, pharmacy, osteopathy, chiropractic, naturopathy or podiatry.

(b) Commissioned officers of the Medical Corps of the United States Army, Navy or Marine Hospital Service or Public Health Service when engaged in the actual performance of their official duties, and attendants attached to these services.

(c) Barbers, insofar as their usual and ordinary vocation and profession is concerned when engaged in any of the following practices:

(1) Arranging, dressing, curling and waving (except permanent waving), cleansing, cutting or singeing the hair of any person.

(2) Massaging, cleansing, stimulating, exercising or similar work upon the scalp, face or neck of any person, with the hands or with mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams.

(d) Employees employed to render cosmetology services in the course of and incidental to the business of employers engaged in the theatrical, radio, television or motion picture production industry.

SEC. 10. Section 7330 of the Business and Professions Code is amended to read:

7330. A cosmetologist is any person who engages in the practice of cosmetology in a licensed cosmetology establishment except the branch of electrolysis.

SEC. 11. Section 7331 of the Business and Professions Code is amended to read:

7331. A junior operator is any person who is engaged in learning or acquiring a knowledge of the occupation of a cosmetologist, in a licensed cosmetology establishment, under the supervision of a licensed cosmetologist.

SEC. 12. Section 7332 of the Business and Professions Code is amended to read:

7332. The board shall admit to examination for a certificate of registration and license as a cosmetologist any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has not committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Has completed the 10th grade in the public schools of this state or its equivalent.

(d) Has had any one of the following:

(1) Training of at least 1,600 hours, at least 400 hours of which shall have been received within the five years immediately preceding application, in a school of cosmetology approved by the board.

(2) Practice of cosmetology, as defined in Section 7321, for a period of four years outside of this state. One year of the practice shall have been within the three years immediately preceding application. Each three months of the practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1) of this subdivision.

(3) Service for at least two years as a licensed junior operator in

a licensed cosmetology establishment in which all of the occupations of a cosmetologist are practiced.

(4) Practice of the occupation of a licensed barber in this state within the last preceding two years, and has completed a 400-hour approved course in a cosmetology school licensed by the board.

(5) Completion of a 1,500-hour course in a barbering school licensed by the State Board of Barber Examiners and has completed a 400-hour approved course in a cosmetology school licensed by the California Board of Cosmetology.

SEC. 13. Section 7332.5 of the Business and Professions Code is amended to read:

7332.5. (a) The board shall admit to the examination for a certificate of registration and license as a cosmetology instructor, any person who has made an application to the board in the proper form, who has paid the fee required by this chapter, and who meets the following qualifications:

(1) Has had at least 600 hours of teacher training in an approved school in this state or equivalent training in an approved school in another state, or one year of practical experience within the previous three years in all branches of cosmetology, except the branch of electrology, in a licensed cosmetology establishment in this state, or equivalent experience in another state.

(2) Has completed the 12th grade, or an accredited senior high school course of study, in public schools of this state, or has equivalent education.

(3) Has not committed any acts or crimes constituting grounds for denial of a license under Section 480.

(4) Holds a valid California license as a cosmetologist.

(b) Each applicant shall submit an affidavit signed by his or her employers attesting to his or her experience.

(c) Each licensed cosmetology instructor shall complete 30 clock hours of continuing education in the teaching of vocational education during each two-year licensing period. This subdivision does not apply to a cosmetology instructor who teaches cosmetology on the campus of a California Community College, or a cosmetology instructor who has obtained a clear vocational education teaching credential pursuant to regulations of the Commission on Teacher Credentialing.

For the purposes of this subdivision, programs designed for continuing education in the "teaching of vocational education" may include, but not be limited to, the development of understanding and competency in the learning process, instructional techniques, curriculum and media, instructional evaluation, counseling and guidance, and the special needs of students.

The board may make exceptions from the requirements of this subdivision in emergency cases.

SEC. 14. Section 7333 of the Business and Professions Code is amended to read:

7333. The board may license as a junior operator any person who

has made application to the board upon the proper form and has submitted with the form two photographs, size 3 by 3 inches, has paid the fee required by this chapter, and who is qualified as follows:

(a) Has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Is over the age of 16 years.

(c) Has completed the 10th grade in the public schools of this state or its equivalent.

(d) Has submitted evidence acceptable to the board that any training he or she is required by law to obtain shall be conducted in a licensed cosmetology establishment which has been approved by the board to conduct that training and under the supervision of a licensed cosmetologist.

SEC. 15. Section 7334 of the Business and Professions Code is amended to read:

7334. A licensed junior operator may engage in any one occupation of a cosmetologist upon a patron who is paying for service or materials, under the immediate supervision of a licensed cosmetologist in a licensed cosmetology establishment only after completing 350 hours of instruction.

The license of a junior operator shall expire upon the expiration of three years from the date the license was issued, or on the date the junior operator is issued a license as a cosmetologist, or, if the junior operator fails the cosmetologist examination twice, on the date the results of the second examination are issued.

SEC. 16. Section 7341 of the Business and Professions Code is amended to read:

7341. A junior electrologist is any person who is engaged in learning or acquiring a knowledge of the practice of electrolysis in a licensed cosmetology establishment under a licensed electrologist.

SEC. 17. Section 7342 of the Business and Professions Code is amended to read:

7342. The board shall admit to examination for a certificate of registration and license as an electrologist, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Has completed the 12th grade, or an accredited senior high school, in public schools of this state or its equivalent.

(d) Has had any one of the following:

(1) Training of at least 500 hours, at least 125 hours of which shall have been received within the five years immediately preceding application, in a school of cosmetology or electrology approved by the board.

(2) Instruction, training and practice as a junior electrologist for a period of not less than 12 months, in a licensed cosmetology establishment, under the supervision of a licensed electrologist.

(3) A currently valid electrology license issued by a state whose licensing requirements are equal to or greater than California.

(4) Practice of the occupation of an electrologist, as defined in Section 7340, for a period of 15 months outside of this state, within the five years immediately preceding application. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1).

SEC. 17.5. Section 7350 of the Business and Professions Code is amended to read:

7350. A manicurist is any person who engages in the occupation of cutting, trimming, polishing, coloring, tinting, cleansing or manicuring the nails of any person or massaging, cleansing, or beautifying the hands or feet of any person.

SEC. 18. Section 7370 of the Business and Professions Code is amended to read:

7370. Every application for admission to examination, and every application for license as a cosmetologist, or in any branch of cosmetology, shall be in writing, on forms prepared and furnished by the board.

Each application shall be accompanied by the required fee, and shall contain proof of the qualifications of the applicant for examination for registration and license and shall be verified by the oath of the applicant. Every applicant shall, as a condition of admittance to the examination facility, present satisfactory proof of identification. Satisfactory proof of identification shall be in the form of a driver's license or identification card, containing the photograph of the person to whom it was issued, issued by any state, federal, or other government entity.

SEC. 19. Section 7373 of the Business and Professions Code is amended to read:

7373. Every applicant for a license as a cosmetologist, electrologist, manicurist, cosmetician, cosmetology instructor, or electrology instructor satisfactorily passing the examination provided by the board to determine fitness to engage in the practice of the occupation for which the license is sought shall receive from the board a license which entitles the holder to engage in the practice of that occupation in a licensed cosmetology establishment or school, as the case may be.

SEC. 20. Section 7380 of the Business and Professions Code is amended to read:

7380. A cosmetology establishment is any premises, building or part of a building, whereon or wherein is practiced any branch or any combination of branches of cosmetology, or the occupation of a cosmetologist, except the branch of manicuring as practiced in barbershops, licensed by the board and complying with Sections 7381, 7382, 7383, and 7384 and all sanitary regulations established by the board.

If a new cosmetological establishment is located in the same room as an existing barbershop, the existing equipment and plumbing of

the barbershop shall be included in determining the minimum equipment and plumbing required for the cosmetology establishment.

SEC. 21. Section 7381 of the Business and Professions Code is amended to read:

7381. Any person, firm, or corporation desiring to operate a cosmetology establishment shall make an application to the board for a certificate of registration and license, accompanied by the registration fee prescribed by this chapter. The applicant, if an individual, or each officer, director, and partner, if the applicant is other than an individual, shall not have committed acts or crimes which are grounds for denial of licensure under Section 480. A certificate issued pursuant to this section shall authorize the operation of the establishment only at the location for which the certificate is issued. Operation of the establishment at any other location shall be unlawful unless a certificate for the new location has been obtained upon compliance with this section applicable to the issuance of a certificate in the first instance.

SEC. 22. Section 7382 of the Business and Professions Code is amended to read:

7382. A cosmetology establishment shall, at all times, be in the charge of a licensed cosmetologist, except that if the operations within the establishment are limited to the practice of electrology, the establishment may, at all times, be in the charge of a licensed electrologist, and if the operations within the establishment are limited to the practice of manicuring, the establishment may, at all times, be in the charge of a licensed manicurist, and if the operations within the establishment are limited to the practice of a cosmetician, the establishment may, at all times, be in the charge of a licensed cosmetician.

SEC. 23. Section 7383 of the Business and Professions Code is amended to read:

7383. It is unlawful for any person to employ, or allow to be employed, or permit to work, in or about a cosmetology establishment any person who performs cosmetology services and is not duly registered or licensed by the board.

Any person violating this section is guilty of a misdemeanor.

SEC. 24. Section 7384 of the Business and Professions Code is amended to read:

7384. No person having charge of a cosmetology establishment or school of cosmetology, whether as an owner or an employee, shall permit any room or part thereof in which any of the branches or practices of cosmetology are conducted, practiced or taught to be used for sleeping or residential purposes or for any other purpose that would tend to make the room unsanitary.

A cosmetology establishment or school of cosmetology shall have a direct entrance, separate and distinct from any entrance in connection with private quarters.

A violation of this section is a misdemeanor punishable by a fine

of not less than fifty dollars ($50) nor more than four hundred dollars ($400) or by imprisonment for a term of not less than 50 nor more than 180 days, or by both fine and imprisonment.

SEC. 25. Section 7384.5 of the Business and Professions Code is amended to read:

7384.5. Every cosmetology establishment where hairdressing services are performed shall provide at least one public toilet room located on the premises for its patrons. Any toilet room installed after the effective date of this chapter shall be not less than 18 square feet in area. The entrance to the room shall be effectively screened so that no toilet compartment is visible from any workroom. The room shall be kept in a clean condition and in good repair, well lighted and ventilated to the outside air and effectively screened against insects and free from rodents The floor shall be of cement, tile laid in cement, vitrified brick, or other nonabsorbent material. All sewer drains shall be connected to an approved disposal system, and shall be properly trapped. No toilet room shall be used for storage.

SEC. 26. Section 7384.6 of the Business and Professions Code is amended to read:

7384.6. Every cosmetology establishment shall provide adequate and convenient handwashing facilities, including running water, soap, and approved sanitary towels.

SEC 27. Section 7386 of the Business and Professions Code is amended to read:

7386. For purposes of this article, "mobile cosmetology unit" or "mobile unit" means any self-contained, self-supporting, enclosed mobile unit which is at least 24 feet in length wherein is practiced any branch or any combination of branches of cosmetology, or the occupation of a cosmetologist, except the branch of manicuring as practiced in barbershops, licensed by the board and complying with this article and all sanitary regulations established by the board.

SEC. 28. Section 7386.1 of the Business and Professions Code is amended to read:

7386.1. (a) Any person, firm, or corporation desiring to operate a mobile cosmetology unit shall make an application to the board for a certificate of registration and license containing the information and data set forth in subdivision (b). The applicant, if an individual, or each officer, director, and partner, if the applicant is other than an individual, shall not have committed acts or crimes which are grounds for denial of licensure under Section 480. A certificate issued pursuant to this section shall authorize the operation of the unit only within those geographical boundaries designated by the board. Operation of the unit outside of the geographical boundaries for which the certificate is issued shall be unlawful, unless a certificate for the expanded geographic area has been obtained upon compliance with this article applicable to the issuance of a certificate in the first instance.

(b) Each application shall include the following:

(1) A detailed floor plan showing the location of doors, windows,

restrooms, facilities, sinks, lift or ramps, ventilation, equipment, and dimension of the mobile unit in compliance with this article.

(2) Proof of purchase of the mobile unit and shop equipment.

(3) The required fee.

(4) Copies of applicable county and city licenses or permits to provide the mobile cosmetology services in each county and city of operation and the locations therein where the services will be offered.

(5) Proof of compliance with applicable city, county, and state plumbing, electrical, and fire laws.

(6) Proof of a valid California driver's license issued to an officer or employee responsible for driving the mobile unit.

(7) A permanent base address from which the mobile unit shall operate.

(c) After initial approval of the floor plan and application has been granted, the applicant shall schedule an appointment to show the mobile unit to the board, or representative of the board, for final approval.

SEC. 29. Section 7386.2 of the Business and Professions Code is amended to read:

7386.2. An application to transfer ownership of an existing licensed unit shall be filed by the purchaser with the board within 10 days after purchase. Each application shall include the following:

(a) A detailed floor plan showing the location of doors, windows, restroom facilities, sinks, lift or ramps, ventilation, equipment, and dimensions of the mobile unit.

(b) Bills of sale proving purchase of existing equipment and mobile unit.

(c) The existing shop license.

(d) The required fee.

(e) Copies of applicable city and county licenses or permits to provide the mobile cosmetology services in each county and city of operation issued in the new owner's name.

(f) Proof of compliance with applicable city, county, and state plumbing, electrical, and fire laws.

(g) Proof of a valid California driver's license issued to an officer or employee responsible for driving the mobile unit.

SEC. 30. Section 7386.4 of the Business and Professions Code is amended to read:

7386.4. A mobile cosmetology unit shall, at all times, be in the charge of a licensed cosmetologist, except that if the operations within the unit are limited to the practice of electrology, the unit may, at all times, be in the charge of a licensed electrologist, and if the operations within the unit are limited to the practice of manicuring, the unit may, at all times, be in the charge of a licensed manicurist, and if the operations within the unit are limited to the practice of a cosmetician, the unit may, at all times, be in the charge of a licensed cosmetician.

SEC. 31. Section 7386.5 of the Business and Professions Code is

amended to read:

7386.5. It is unlawful to operate a mobile cosmetology unit that is not duly registered and licensed by the board.

It is unlawful for any person to employ, or allow to be employed, or permit to work, in or about a mobile cosmetology unit, any person who performs cosmetology services and is not duly registered or licensed by the board.

Any person who violates this section is guilty of an infraction.

SEC. 32. Section 7386.6 of the Business and Professions Code is amended to read:

7386.6. No person having charge of a mobile cosmetology unit, whether as an owner or an employee, shall permit any room or part thereof in which any of the branches or practices of cosmetology are conducted, practiced, or taught, to be used for sleeping or residential purposes or for any other purpose that would make the unit unsanitary.

This section shall not apply when the mobile cosmetology unit is used for purposes other than the practice of cosmetology or any of its branches outside of the designated geographical boundaries for which it is licensed.

SEC. 33. Section 7386.7 of the Business and Professions Code is amended to read:

7386.7. All laws governing cosmetology establishments in this chapter, except Article 7 (commencing with Section 7380), apply to mobile cosmetology units, unless otherwise provided.

SEC. 34. Section 7431 of the Business and Professions Code is amended to read:

7431. The grounds for disciplinary action are as follows:

(a) Failure of a person, firm or corporation operating a cosmetology establishment or school of cosmetology or engaged in the practice of cosmetology or any of its branches to comply with the requirements of this chapter.

(b) Failure to comply with the rules governing sanitary conditions, adopted by the board and approved by the State Department of Health, for the regulation of cosmetology establishments, schools of cosmetology or the practice of cosmetology.

(c) Failure to comply with the rules adopted by the board for the regulation of cosmetology establishments, schools of cosmetology, or the practice of cosmetology.

(d) Obtaining practice in cosmetology, or any branch thereof, or money, or any other thing of value, by fraudulent misrepresentation.

(e) Gross negligence.

(f) Repeated similar negligent acts.

(g) Incompetence.

(h) Continued practice by a person knowingly having an infectious or contagious disease.

(i) Habitual drunkenness, or addiction to the use of any controlled substance.

(j) Advertisement by means of knowingly false or deceptive statements.

(k) Permitting a certificate of registration or license to be used where the holder is not personally, actively and continuously engaged in business.

(*l*) Failure to display the license or sanitary rules and regulations in a conspicuous place.

(m) Conviction of any crime substantially related to the qualifications, functions, or duties of the registration or license holder, in which case the record of conviction or a certified copy, shall be conclusive evidence thereof.

(n) Engaging, outside of a licensed school of cosmetology or cosmetology establishment and for compensation in any form whatever, in any practice for which a license is required under this chapter, except that when the service is necessary because of the illness or other physical incapacity of the person with respect to whom it is performed, it may be performed by a licensee obtained for the purpose from a licensed cosmetology establishment.

(o) Any action or conduct which would have warranted the denial of a certificate or license.

SEC. 35. Section 7437 of the Business and Professions Code is amended to read:

7437. Except as otherwise provided in this article, a license of a cosmetologist, cosmetology instructor, electrologist, electrology instructor, manicurist, cosmetician, or cosmetology establishment which has expired for failure of the licensee to renew within the time fixed by Section 7436 may be renewed within five years of the date of expiration upon application therefor and upon payment of the renewal fee in effect on the last regular renewal date. If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 7436 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 36. Section 7437.2 of the Business and Professions Code is amended to read:

7437.2. A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee in effect at the time of reinstatement.

SEC. 37. Section 7444 of the Business and Professions Code is amended to read:

7444. The amount of the fees payable under this chapter relating to licenses to operate a cosmetology establishment is as follows:

(a) The registration fee is an amount equal to the renewal fee in effect on the date on which the license is issued, except that, if the license will expire less than one year after its issuance, then the fee is an amount equal to 50 percent of the renewal fee in effect on the date on which the license is issued. The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(b) The renewal fee shall be set by the board at not more than twenty dollars ($20).

(c) The delinquency fee is 50 percent of the renewal fee in effect on the date of renewal.

SEC. 38. Section 7444.1 of the Business and Professions Code is amended to read:

7444.1. The amount of the fees payable under this chapter relating to licenses to operate a mobile cosmetology unit are as follows:

(a) The application fee shall be not more than fifty dollars ($50).

(b) The initial inspection and license fee shall be not more than one hundred dollars ($100).

(c) The renewal fee shall be not more than thirty dollars ($30).

(d) The delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

CHAPTER 654

An act to amend Section 66799.49 of the Government Code, to amend Section 25174 of the Health and Safety Code, and to amend Sections 6361, 6421, 6423, 7098, 7153.5, 9354.5, 30480, 40187, and 41143.4 of the Revenue and Taxation Code, relating to fiscal procedures.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 66799.49 of the Government Code is amended to read:

66799.49. (a) Every operator of a solid waste landfill required to have a solid waste facilities permit pursuant to Section 66796.30 shall, commencing January 1, 1989, pay an annual fee to the state board pursuant to Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code on all solid waste disposed at each

disposal site on and after January 1, 1989. The fee shall be established by the state board and shall be based on the amount, by weight or by a volumetric equivalent, as determined by the state board, of solid waste disposed at each disposal site so that total receipts of approximately twenty million dollars ($20,000,000), are collected each calendar year.

(b) Notwithstanding subdivision (a), the state board shall, as necessary, adjust the rate of the fees annually so that the balance in the account each July 1 does not exceed one hundred million dollars ($100,000,000).

(c) The state board may exempt from all fees any operator of a solid waste landfill that receives less than a monthly average of five tons per operating day of solid waste.

(d) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to subdivision (a).

SEC. 2. Section 25174 of the Health and Safety Code 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 Sections 25205.2, 25205.5, 25205.6, 25205.7, and 25205.8.

(2) The amount of fees collected pursuant to Section 2560 of the Vehicle Code, as allocated by Section 25168.6.

(3) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(4) 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.).

(5) 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 and state operational costs.

(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.

SEC. 3. Section 6361 of the Revenue and Taxation Code is amended to read:

6361. (a) Any nonprofit organization, youth group sponsored by a school district, or other organization the primary purpose of which is to provide a supervised program of competitive sports for youth, or to promote good citizenship in youth, which does not discriminate on the basis of race, sex, nationality, or religion, and which qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code, is a consumer of, and shall not be considered a retailer within the provisions of this part with respect to, food products, nonalcoholic beverages, or other tangible personal property made or produced by members of the organization which it sells on an irregular or intermittent basis, provided that the profits are used solely and exclusively in furtherance of those purposes.

(b) "Irregular or intermittent," as used in this section, means associated directly with a particular event, such as fairs, galas, parades, scout-a-ramas, games, and similar activities. Included are refreshment stands or booths that are utilized at scheduled events of organized leagues, but not included are storefront or mobile retail outlets which ordinarily require local business licenses, or activities by any group that does not qualify for tax-exempt status under Section 501(c) of the Internal Revenue Code.

(c) The organizations described in this section include only Little League, Bobby Sox, Boy Scouts, Cub Scouts, Girl Scouts, Campfire, Inc., Young Men's Christian Association, Young Women's Christian Association, Future Farmers of America, Future Homemakers of America, 4-H Clubs, Distributive Education Clubs of America, Future Business Leaders of America, Vocational Industrial Clubs of America, Collegiate Young Farmers, Boys' Clubs, Girls' Clubs, Special Olympics, Inc., American Youth Soccer Organization, California Youth Soccer Association, North, California Youth Soccer Association, South, and Pop Warner Football.

(d) "Nonprofit organization," as used in this section, does not

include the state or any of its political subdivisions.

SEC. 4. Section 6421 of the Revenue and Taxation Code is amended to read:

6421. (a) If a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this chapter from the computation of the amount of the sales tax, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the gross receipts from such retail sale. The certificate shall relieve the seller from liability for the sales tax only if it is taken in good faith.

(b) For purposes of this section, "use" is the same as defined in Section 6009 without the exclusion defined in Section 6009.1.

SEC. 5. Section 6423 of the Revenue and Taxation Code is amended to read:

6423. (a) A purchaser certifying under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 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 shall do so in a form prescribed by the board.

(b) If the purchaser provides the certificate referred to in subdivision (a) and uses the fuel in a manner that does not entitle the purchaser to a direct refund or credit against his or her income tax for the federal excise tax paid or if the purchaser does not receive such a refund or credit, the purchaser shall be liable for sales or use tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. The certificate shall relieve the seller from liability for any sales or use tax due only if it is taken in good faith.

(c) Any person, including any officer or employee of a corporation, who certifies under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 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 on fuel when that person knows at the time of purchase that he or she shall not be entitled to the refund or credit is liable to the state for the amount of sales or use tax that would be due if he or she had not so certified. In addition to the tax, interest, and other penalties, the person shall be liable to the state for a penalty of 10 percent of the tax or five hundred dollars ($500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(d) Any person, including any officer or employee of a corporation, who, for the purpose of evading payment to the seller of a portion of the tax applicable to the transaction, certifies under subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011

or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 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 on fuel when that person knows at the time of purchase that he or she is not entitled to such a refund or credit is guilty of a misdemeanor punishable as provided in Section 7153.

SEC. 6. Section 7098 of the Revenue and Taxation Code is amended to read:

7098. For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

SEC. 7. Section 7153.5 of the Revenue and Taxation Code is amended to read:

7153.5. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the Deputy Director, Business Taxes, or that person's designee. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 8. Section 9354.5 of the Revenue and Taxation Code is amended to read:

9354.5. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the Deputy Director, Business Taxes, or that person's designee. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 9. Section 30480 of the Revenue and Taxation Code is amended to read:

30480. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the Deputy

Director, Business Taxes, or that person's designee. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 10. Section 40187 of the Revenue and Taxation Code is amended to read:

40187. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the Deputy Director, Business Taxes, or that person's designee. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

SEC. 11. Section 41143.4 of the Revenue and Taxation Code is amended to read:

41143.4. Notwithstanding any other provision of this part, any violation of this part by any person with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. The determination shall be approved by the Deputy Director, Business Taxes, or that person's designee. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

CHAPTER 655

An act to amend Section 8601 of, and to add Sections 8601.5 and 8601.6 to, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1 Section 8601 of the Fish and Game Code is amended to read:

8601. Any net or line used to take fish that is anchored to the bottom on each end and is not free to drift with the tide or current is a set net or set line. Any net so placed that it will catch or impound

fish within a bight, bay, or estuary, or against the shore upon the receding of the tide is a set net. Fyke nets, shrimp nets, or crab nets are not set nets.

SEC. 2. Section 8601.5 is added to the Fish and Game Code, to read:

8601.5. (a) Set nets and set lines shall be marked at both ends with buoys displaying above their waterlines, in numerals at least 2 inches high, the fisherman's identification number.

(b) Each piece or panel of a set net shall be marked along the corkline of the net, in a manner determined by the department to adequately identify the net, with the fisherman's identification number. The distance between the markings shall not exceed 45 fathoms. If the lost or abandoned net is recovered by the department or persons designated by the department, the commission may require the owner of the lost or abandoned net to pay for all recovery costs. The commission may revoke the owner's set net permit issued pursuant to Section 8681 for failure to comply with this subdivision.

(c) If a person is unable to recover a set net or portion of a set net, the person shall contact one of the department offices located in the City of Menlo Park, Monterey, Long Beach, or San Diego, not later than 72 hours after returning to port following the loss and shall report all of the following information:

(1) The date and time when the set net was lost.

(2) The location, including depth, where the net was lost.

(3) A description of the lost net, including the mesh size, length, height, and target species, and whether anchors remain attached to the net.

(4) The name and fisherman's identification number of the person owning the net.

(5) The name and fisherman's identification number of the person fishing with the net, if different from paragraph (4).

(6) The name and California Fish and Game number of the vessel from which the lost net was being fished.

SEC. 3. Section 8601.6 is added to the Fish and Game Code, to read:

8601.6. (a) The footrope (leadline) of any set net shall have a breaking strength of at least 50 pounds less than the combined breaking strength of the headrope and corkline.

(b) This section shall become operative on August 15, 1990.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 656

An act to add Section 434.5 to the Government Code, relating to the Flag of the United States.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 434.5 is added to the Government Code, to read:

434.5. (a) No person, private entity, or governmental agency shall adopt rules, regulations, or ordinances, or enter into any agreement or covenant, which prevents any person or private entity which would otherwise have the legal right to display a Flag of the United States on private property from exercising that right, unless it is used as, or in conjunction with, an advertising display.

(b) As used in this section, "legal right" means the freedom of use and enjoyment generally exercised by owners and occupiers of land.

(c) Nothing in this section shall be construed to prevent a city, county, or city and county from imposing reasonable restrictions as to the time, place, and manner of placement or display of a Flag of the United States when necessary for the preservation of the public's health, safety, or order. However, no restrictions solely to promote aesthetic considerations may be imposed.

CHAPTER 657

An act to add and repeal Section 96.8 of the Labor Code, relating to wages.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 96.8 is added to the Labor Code, to read:

96.8. (a) The Labor Commissioner shall annually publicize the existence of the Industrial Relations Unpaid Wage Fund, including an address and telephone number where any worker may inquire whether wages and benefits are being held for the worker. The Labor Commissioner shall determine the manner in which this information is publicized.

(b) The costs of publicizing the existence of the Industrial Relations Unpaid Wage Fund shall be paid from the fund.

(c) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which

is enacted before January 1, 1995, deletes or extends that date.

CHAPTER 658

An act to add Section 15977 to the Government Code, and to amend Section 99401.5 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 15977 is added to the Government Code, to read:

15977. The Director of Transportation shall submit to the Legislature, by July 1, 1990, and biennially thereafter, a summary of the reports received by the director pursuant to Section 15973. That summary shall include, but not be limited to, all of the following:

(a) An inventory of all existing public and private social service transportation services within the state.

(b) A description of the amount and source of funding utilized by those services.

(c) The type and number of social service recipients being served.

(d) A concise statement on the drivers and management of the services, with an evaluation of the operating, capital, and administrative costs for the services.

(e) A synopsis of the average miles of vehicle travel to provide services during each month and a brief analysis of the eligibility requirements for obtaining services.

(f) A description of the background of social service transportation in the state and any other pertinent information necessary to adequately document and describe the service.

SEC. 2. Section 99401.5 of the Public Utilities Code is amended to read:

99401.5. Prior to making any allocation not directly related to public transportation services, specialized transportation services, or facilities provided for the exclusive use of pedestrians and bicycles, the transportation planning agency shall annually do all of the following:

(a) Consult with the social services transportation advisory council established pursuant to Section 99238.

(b) Identify the transit needs of the jurisdiction which have been considered as part of the transportation planning process, including the following:

(1) An annual assessment of the size and location of identifiable groups likely to be transit dependent or transit disadvantaged, including, but not limited to, the elderly, the handicapped, and

persons of limited means.

(2) An analysis of the adequacy of existing public transportation services and specialized transportation services, including privately and publicly provided services, in meeting the transit demand identified pursuant to paragraph (1).

(3) An analysis of the potential alternative public transportation and specialized transportation services and service improvements that would meet all or part of the transit demand.

(c) Identify the unmet transit needs of the jurisdiction and those needs that are reasonable to meet. The transportation planning agency shall hold at least one public hearing pursuant to Section 99238.5 for the purpose of soliciting comments on the unmet transit needs that may exist within the jurisdiction and that might be reasonable to meet by establishing or contracting for new public transportation or specialized transportation services or by expanding existing services. The definition adopted by the transportation planning agency for the terms "unmet transit needs" and "reasonable to meet" shall be documented by resolution or in the minutes of the agency. The fact that an identified transit need cannot be fully met based on available resources shall not be the sole reason for finding that a transit need is not reasonable to meet. An agency's determination of needs that are reasonable to meet shall not be made by comparing unmet transit needs with the need for streets and roads.

(d) Adopt by resolution a finding for the jurisdiction, after consideration of all available information compiled pursuant to subdivisions (a), (b), and (c). The finding shall be that (1) there are no unmet transit needs, (2) there are no unmet transit needs that are reasonable to meet, or (3) there are unmet transit needs, including needs that are reasonable to meet. The resolution shall include information developed pursuant to subdivisions (a), (b), and (c) which provides the basis for the finding.

(e) If the transportation planning agency adopts a finding that there are unmet transit needs, including needs that are reasonable to meet, then the unmet transit needs shall be funded before any allocation is made for streets and roads within the jurisdiction. If the finding is inconsistent with the regional transportation plan, then the transportation planning agency shall resolve the inconsistency by timely amendment or supplement to the plan.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 659

An act to add Section 21080.09 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 21080.09 is added to the Public Resources Code, to read:

21080.09. (a) For purposes of this section, the following definitions apply:

(1) "Public higher education" has the same meaning as specified in Section 66010 of the Education Code.

(2) "Long range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.

(b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center.

(c) The approval of a project on a particular campus or medical center of public higher education is subject to this division and may be addressed, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

(d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus or medical center, and addressed as required by this division.

CHAPTER 660

An act to add Section 1410.5 to the Evidence Code, and to amend Section 594 of the Penal Code, relating to crimes.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 1410.5 is added to the Evidence Code, to read:

1410.5. (a) For purposes of this chapter, a writing shall include any graffiti consisting of written words, insignia, symbols, or any other markings which convey a particular meaning.

(b) Any writing described in subdivision (a), or any photograph thereof, may be admitted into evidence in an action for vandalism, for the purpose of proving that the writing was made by the defendant.

(c) The admissibility of any fact offered to prove that the writing was made by the defendant shall, upon motion of the defendant, be ruled upon outside the presence of the jury, and is subject to the requirements of Sections 1416, 1417, and 1418.

SEC. 2. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously (1) defaces with paint or any other liquid, (2) damages, or (3) destroys any real or personal property not his or her own, in cases otherwise than those specified by state law, is guilty of vandalism.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is one thousand dollars ($1,000) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in the county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) If the amount of defacement, damage, or destruction is less than one thousand dollars ($1,000), vandalism is punishable by imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of writing graffiti, the court may, in addition to any punishment imposed under subdivision (b), at the victim's option, order the defendant to either clean up and repair the damaged property himself or herself, or to pay for someone else to do so.

CHAPTER 661

An act to add Section 14499.6 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 14499.6 is added to the Welfare and Institutions Code, to read:

14499.6. (a) The Santa Barbara Special Health Care Authority may arrange with out-of-county Selective Provider Contracting Program hospitals that have negotiated hospital contracts and per diem rates under Article 5.1 (commencing with Section 14165) of Chapter 7, to provide medically justified emergency services or to provide specialized hospital services not available within Santa Barbara County to Medi-Cal beneficiaries who reside in Santa Barbara County. The authority may arrange medically justified inpatient hospital services with out-of-county program hospitals for those beneficiaries whose county of residence for purposes of eligibility determination is Santa Barbara, but who for medical or legal reasons physically reside in a county other than Santa Barbara.

(b) The out-of-county program hospitals shall not charge the authority more than their program negotiated rates when providing hospital services to authority patients under this section, except as provided in subdivision (c).

(c) In cases where an out-of-county program hospital can demonstrate that the cost of the services it is rendering to authority patients was not contemplated in the case mix and acuity assumptions on which the program rates are based, the program hospital and the authority shall negotiate in good faith equitable rates for payment for the provision of hospital services to authority patients. The established program rate shall serve as the base for those negotiations.

(d) (1) Notwithstanding any other provision of law, any records maintained by the authority which would enable a determination to be made regarding rates negotiated pursuant to Article 5.1 (commencing with Section 14165) of chapter 7, shall be exempt from the Public Records Act (Chapter 3.5 (commencing with Section

6250) of Division 7 of Title 1 of the Government Code).

(2) The authority shall establish guidelines to ensure that these rates are maintained as confidential records and that access to these records is restricted.

(3) The authority shall submit the established guidelines to the department for approval.

CHAPTER 662

An act to add and repeal Section 71631.7 of the Water Code, relating to municipal water districts.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 71631.7 is added to the Water Code, to read:

71631.7. Notwithstanding Section 71631, in any improvement district situated within the San Luis Rey Municipal Water District, the standby assessment or availability charge shall not exceed thirty dollars ($30) per acre per year for land on which the charge is levied or thirty dollars ($30) per year for a parcel less than one acre. In any such improvement district, the proceeds from any standby assessment or availability charge in excess of ten dollars ($10) per acre per year or ten dollars ($10) per year for a parcel less than one acre shall only be used for the purposes of that improvement district.

This section, applicable only to the San Luis Rey Municipal Water District, is necessary because of the unique and special water management problems of those areas included within that district.

This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 663

An act to amend Sections 18040, 18138, 18268, 18269, 18271, 18314.5, 18317, 18342, 18343, 18345, 18356, 18358, 18359, and 18442 of, to add Sections 18018, 18018.1, 18018.2, 18018.3, 18018.4, 18018.5, 18018.6, and 18019 to, to add Article 5 (commencing with Section 18427) to Chapter 5 of Division 7 of, and to repeal Section 18136 of, the Financial Code, relating to industrial loan companies.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 18018 is added to the Financial Code, to read:

18018. "Capital," as used in this division, consists of all of the following:

(a) Capital stock.

(b) Primary capital to the extent not included in capital stock.

(c) Secondary capital.

SEC. 1.1. Section 18018.1 is added to the Financial Code, to read:

18018.1. "Primary capital," as used in this division, means the sum of common stock, perpetual preferred stock, capital surplus, undivided profits, capital reserves, and mandatory convertible debt (to the extent of 20 percent of primary capital exclusive of that debt).

SEC. 1.2. Section 18018.2 is added to the Financial Code, to read:

18018.2. "Secondary capital," as used in this division, means the sum of mandatory convertible debt that is not included in primary capital, limited life preferred stock, and subordinated notes and debentures, all in an amount up to 50 percent of primary capital. Issues of limited life preferred stock and subordinated notes and debentures, except mandatory convertible debt, shall have original weighted average maturities of at least seven years to be included within capital surplus under primary capital.

SEC. 1.3. Section 18018.3 is added to the Financial Code, to read:

18018.3. "Perpetual preferred stock," as used in this division, means a preferred stock that does not have a stated maturity date or that can not be redeemed at the option of the holder. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

SEC. 1.4. Section 18018.4 is added to the Financial Code, to read:

18018.4. "Mandatory convertible debt," as used in this division, means a subordinated debt instrument which requires the issuer to convert that instrument into common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of those instruments shall be 12 years or less.

SEC. 1.5. Section 18018.5 is added to the Financial Code, to read:

18018.5. "Limited life preferred," as used in this division, means preferred stock which has a maturity or which may be redeemed at the option of the holder.

SEC. 1.6. Section 18018.6 is added to the Financial Code, to read:

18018.6. "Subordinated notes and debentures," as used in this division, means an obligation other than an investment certificate obligation that:

(a) Bears on its face, in boldface type no smaller than the largest

size type used in the obligation, the following: "this obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation."

(b) (1) Has a maturity of at least seven years, or (2) in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least seven years; however, the commissioner may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the commissioner has determined that exigent circumstances require the issuance of that obligation or issue. This subdivision shall not apply to mandatory convertible obligations or issues.

(c) States expressly that the obligation is subordinated and junior in right of payment to the issuing industrial loan company's obligations to its investment certificate holders and to the industrial loan company's other obligations to its general and secured creditors, and is ineligible as collateral for a loan by the issuing industrial loan company.

(d) Is unsecured.

(e) States expressly that the issuing industrial loan company may not retire any part of its obligation without the prior written consent of the commissioner.

(f) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

SEC. 2. Section 18019 is added to the Financial Code, to read:

18019. "Capital Stock," as used in this division, means one-class voting common stock.

SEC. 3. Section 18040 of the Financial Code is amended to read:

18040. An industrial loan company may purchase, hold and convey real property for the following purposes only:

(a) Real property conveyed to it in satisfaction of debts previously contracted in the course of its business.

(b) Real property purchased at sale under judgments, decrees or mortgage foreclosures or foreclosures of or trustees' sales under deeds of trust under securities held by it. No company shall bid at any such sale a larger amount than is necessary to satisfy its debt and costs.

(c) Real property necessary as premises for the transaction of its business. No company shall invest directly or indirectly an amount exceeding one-third of its paid-up capital stock and surplus not available for dividends as provided in Section 18319 in the lot and building in which the business of the company is carried on, leasehold improvements, furniture, fixtures, vaults, automobiles, and other personal property, necessary and proper to carry on its business.

(d) The provisions of this section shall not apply to property acquired and held for lease pursuant to Section 18310.

SEC. 4. Section 18136 of the Financial Code is repealed.

SEC. 5. Section 18138 of the Financial Code is amended to read:

18138. (a) No person may acquire in the aggregate 10 percent or more of the capital stock of, or the capital of, an industrial loan company through purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the written consent of the commissioner. Prior to any person acquiring 10 percent or more of the capital stock of, or the capital of, an industrial loan company, or prior to any person acquiring additional capital stock or capital of an industrial loan company which would result in an aggregate acquisition of 10 percent or more of the capital stock or of the capital, that person seeking the acquisition shall make written application to the commissioner requesting written consent for the acquisition.

(b) No person may acquire in the aggregate 10 percent or more of (1) the capital stock of or, (2) the capital that has voting power or control over the management of a holding company as defined in Section 18025 (or the capital that has potential voting power or potential control over the management of a holding company) through purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the written consent of the commissioner. Prior to any person acquiring 10 percent or more of the capital stock of, or the capital of a holding company as described herein, or prior to any person acquiring additional capital stock or capital of a holding company as described herein which would result in an aggregate acquisition of 10 percent or more of the capital stock or that capital, that person seeking the acquisition shall make written application to the commissioner requesting written consent for the acquisition.

(c) With respect to the application required to be filed under subdivisions (a) and (b), the commissioner shall consent in writing or decline to consent within 60 days of the filing of a completed application.

SEC. 6. Section 18268 of the Financial Code is amended to read:

18268. An industrial loan company that has investment certificates outstanding shall not lend in the aggregate more than 5 percent of its capital stock and surplus not available for dividends as provided in Section 18319 upon the security of the stock of any one corporation and that stock may not exceed 10 percent of the outstanding stock of the corporation, or upon the security of the bonds of any one obligor except bonds of the United States or for the payment of which the credit of the United States is pledged, bonds of the State of California, or for the payment of which the credit of the State of California is pledged, and any security authorized in writing by the commissioner or any security authorized by rule of the commissioner.

SEC. 7. Section 18269 of the Financial Code is amended to read:

18269. An industrial loan company that has investment certificates outstanding shall not make any loan secured primarily by improved real property in a principal amount in excess of 20 percent of the company's unimpaired capital stock and surplus not available for dividends as provided in Section 18319. An industrial loan

company that has investment certificates outstanding shall not make any loan secured primarily by unimproved real property in a principal amount in excess of 10 percent of the company's unimpaired capital stock and surplus not available for dividends as provided in Section 18319.

SEC. 8. Section 18271 of the Financial Code is amended to read:

18271. An industrial loan company that has investment certificates outstanding shall not make loans to, or hold the obligations of, any one person as primary obligor in an aggregate principal amount in excess of 20 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319. Unsecured loans or obligations of any person as primary obligor made or held by a company may not, in any event, exceed in the aggregate principal amount 5 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319.

SEC. 9. Section 18314.5 of the Financial Code is amended to read:

18314.5. An industrial loan company shall not hold lease obligations of any one person as primary obligor in an aggregate amount due in excess of 10 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319.

SEC. 10. Section 18317 of the Financial Code is amended to read:

18317. No company may have investment certificates outstanding with a person or related persons in an aggregate amount in excess of 20 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319.

SEC. 11. Section 18342 of the Financial Code is amended to read:

18342. Industrial loan companies have the powers specified in this division. In addition, industrial loan companies have the general powers conferred upon corporations by the General Corporation Law. The powers granted, including those granted by the General Corporation Law, are subject to the supervision and control of, and the conditions imposed by, the commissioner.

SEC. 12. Section 18343 of the Financial Code is amended to read:

18343. The commissioner may require an industrial loan company to establish and maintain reasonable reserves for loans made, and contracts or other obligations purchased or discounted in accordance with sound business practices. The commissioner may by rule or order:

(a) Establish reasonable standards for the classification of loans and contracts or other obligations as to their delinquency or currency.

(b) Prescribe the conditions requiring the writing off of delinquent loans and contracts or other obligations and the conditions under which they may be restored as part of corporate assets.

(c) Establish the basis upon which reasonable and adequate

reserves shall be created and maintained.

SEC. 13. Section 18345 of the Financial Code is amended to read:

18345. An industrial loan company shall notify the commissioner of every change in the officers, directors and management personnel of the company and of each branch of the company within 15 days of such change. Such report shall include a complete identification of each person assuming any such office or duties and such other information as the commissioner shall prescribe. The commissioner may by rule or order prescribe the positions or duties which will be deemed to be management personnel within the meaning of this section.

SEC. 14. Section 18356 of the Financial Code is amended to read:

18356. The commissioner may order any industrial loan company to desist from any conduct which the commissioner finds in violation of this division, or of the Corporate Securities Law of 1968, or any rule or order of the commissioner made pursuant to this division or the Corporate Securities Law of 1968.

SEC. 15. Section 18358 of the Financial Code is amended to read:

18358. If it appears to the commissioner that an industrial loan company is conducting business in an unsafe, unsound, or injurious manner, the commissioner may, by written order, direct the discontinuance of any such unsafe or injurious practices.

SEC. 16. Section 18359 of the Financial Code is amended to read:

18359. Whenever the commissioner is authorized to issue an order pursuant to Section 18357 or Section 18358 of this division, the commissioner may issue an order directing an industrial loan company to discontinue or limit the sale of its investment certificates or to impound the proceeds from the sale of its investment certificates in such manner as the commissioner may specify in such order.

SEC. 17. Article 5 (commencing with Section 18427) is added to Chapter 5 of Division 7 of the Financial Code, to read:

Article 5. Securities Transactions

18427. (a) It is unlawful for any company to offer or sell any security (other than an investment certificate when authorized by the commissioner as provided in this division) in an issuer transaction, whether or not by or through underwriters, unless the sale has been qualified under Section 25111, 25112, 25113, or 25121 of the Corporations Code (and no order under Section 25140 or subdivision (a) of Section 25143 of the Corporations Code or Section 18427.2 of this code is in effect with respect to that qualification).

(b) The security and transaction exemptions under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code, or the security and transaction exemptions adopted by rule of the commissioner under that chapter, do not apply to the offer or sale of any security, or to any security, of a company in an issuer transaction.

18427.1. An application filed by a company under Section 25111, 25112, 25113, or 25121 of the Corporations Code for the qualification of the offer of sale of securities shall contain any additional information that the commissioner may require.

18427.2. In addition to the authority granted to the commissioner under Section 25140 of the Corporations Code, the commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any qualification of securities under Section 25111 or 25112 of the Corporations Code, or suspend or revoke any permit under Section 25113 or 25121 of the Corporations Code, or refuse to issue a permit under Section 25113 or 25121 of the Corporations Code, if the commissioner finds that the action is in the public interest or that the safety or soundness of the company is or may be threatened, or both.

18427.3. In addition to the authority of the commissioner under Section 25141 of the Corporations Code, the commissioner may by rule or order restrict, limit, prohibit or otherwise condition the uses of the proceeds from the sale of securities, the extent to which a security may be included within the definition of capital, or the extent to which the proceeds from the sale of securities may be included in the investment certificate ratio as defined by Section 18016, or used to increase outstanding investment certificates.

18427.4. There shall be exempted from subdivision (a) of Section 18427 any transaction which the commissioner by rule, adopted under the Industrial Loan Law, exempts as not being comprehended within the purposes of this aritcle and the qualification of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of investors, investment certificate holders, and the industrial loan company industry as a whole.

SEC. 18. Section 18442 of the Financial Code is amended to read:

18442. An industrial loan company shall not make any loan of money or property to or guarantee the obligation of any person upon the security of its capital (including the shares of capital stock) of the company, its holding company, or its affiliates.

SEC. 19. The Commissioner of Corporations may assess an additional one hundred seventy-nine thousand dollars ($179,000) pursuant to Section 18350 of the Financial Code for use in the first year of the administration of Article 5 (commencing with Section 18427) of Chapter 5 of Division 7 of the Financial Code.

SEC. 20. This act shall become operative on January 1, 1991.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

CHAPTER 664

An act to amend Section 65865.3 of the Government Code, relating to development agreements.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 65865.3 of the Government Code is amended to read:

65865.3. (a) Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(b) The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health or safety, or both.

(c) Except as otherwise provided in subdivision (d), this section applies to any development agreement which meets all of the following requirements:

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the

annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(d) This section does not apply to any territory subject to a development agreement if that territory is incorporated and the effective date of the incorporation is prior to January 1, 1987.

CHAPTER 665

An act to amend Sections 180106 and 180153 of the Public Utilities Code, relating to local transportation authorities.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 180106 of the Public Utilities Code is amended to read:

180106. (a) The authority may hire an independent staff of its own or contract with any department or agency of the United States or with any public agency to implement this division.

(b) The authority may contract with private entities in conformance with applicable procurement procedures for the procurement of engineering, project management, and contract management services.

SEC. 2. Section 180153 of the Public Utilities Code is amended to read:

180153. The authority may contract with any department or agency of the United States, with any public agency, including, but not limited to, the Department of Transportation, any county, city, or district, or with any person or a private entity upon any terms and conditions that the authority finds in its best interest for the procurement of engineering, project management, and contract management services.

CHAPTER 666

An act to add Section 2826 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 21, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 2826 is added to the Public Utilities Code, to read:

2826. (a) The commission shall establish requirements for the administration of power purchase contracts between electrical corporations and private energy producers. For any project which has not received all regulatory permits at the time of the commission's review of a proposed project deferral agreement, the commission shall, at a minimum, apply both of the following requirements:

(1) Prohibit payments by an electrical corporation to a private energy producer to defer the construction of a private energy project unless the private energy producer agrees to repay all deferral payments charged to ratepayers in the event the project is not constructed and operating by the time the deferral period expires.

(2) Require the private energy producer to provide adequate security to ensure repayment of those ratepayer charges.

(b) Subdivision (a) does not apply to a power purchase contract between an electrical corporation and a private energy producer which is a major customer of the electrical corporation, if the contract is negotiated pursuant to procedures prescribed by the commission and for the purpose of retaining that customer.

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

CHAPTER 667

An act to add Section 17788.7 of the Education Code, relating to portable classrooms, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 17788.7 is added to the Education Code, to read:

17788.7. (a) Any school district, or, under a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, any combination of one or more school districts or county superintendents of schools, may, to the extent of the eligibility of the school district or of the parties to the joint powers agreement to lease portable classrooms under this chapter, purchase portable classrooms as provided in this section.

(b) The purchase costs of the portable classrooms, which include costs of site preparation, furniture and equipment, toilet facilities as described in Section 65980 of the Government Code, and the transportation of classrooms, may be funded from revenues received by the school district or districts pursuant to Section 53080 of the Government Code. The purchase shall comply with any procedures and policies established by the board under this chapter for the purchase of portable classrooms. All portable classrooms purchased pursuant to this section are the property of the state.

(c) The board shall lease the portable classrooms purchased pursuant to the authority granted in this section to the purchaser, as described in subdivision (a), in accordance with this chapter, including applicable eligibility standards, and the purchase costs paid shall be credited toward the rent the purchaser would otherwise be required to pay under this chapter as a lessee.

(d) In the event that the purchase of portable classrooms under this section occurs pursuant to a joint powers agreement, as described in subdivision (a), the agreement shall identify the school district or districts and county superintendent or superintendents of schools that are party to the agreement, identify the district or districts providing the revenues, specify the manner in which the revenues are to be expended, and specify the distribution of portable classrooms subsequent to purchase, which distribution shall be in accordance with the eligibility requirements of this chapter. The agreement shall be subject to approval of the board, pursuant to subdivision (b) and any applicable procedures and policies established by the board under this chapter.

(e) Where a school district has committed any fee or other

requirement levied under Section 53080 of the Government Code for the purchase costs of portable classrooms pursuant to this section, including any obligation under a joint powers agreement entered into for the purposes of this section, which is to be collected during any portion of the period designated for the calculation of the local matching share described in Section 17705.5, the board shall permit the school district to delay its payment of the affected portion of the matching share until the district has fulfilled its funding commitment under this section pursuant to terms and conditions approved by the board. Any delayed payments shall be made exclusively from revenues received by the district under Section 53080 of the Government Code.

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 create an alternative method for schools to obtain emergency classrooms so they can accommodate increased student enrollment.

CHAPTER 668

An act to amend Sections 92690, 92691, 92695, 92696, and 92697 of, and to amend the heading of Chapter 9 (commencing with Section 92690) of Part 57 of, the Education Code, relating to education.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. The heading of Chapter 9 (commencing with Section 92690) of Part 57 of the Education Code is amended to read:

CHAPTER 9. THE CENTER FOR COOPERATIVES

SEC. 2. Section 92690 of the Education Code is amended to read:

92690. The Legislature finds and declares all of the following:

(a) That California consumers enjoy the economic benefits of a substantial cooperative business sector. An estimated one million people participate in a diversity of consumer cooperatives that includes, but is not limited to, housing, child care, food, insurance and health care, student, rural electric, senior citizen, cable, and funeral cooperatives, as well as employee-owned arts and crafts cooperatives and other small business cooperatives. Credit unions, as financial cooperatives, provide services to over 6.2 million members.

In addition, over 40,000 California farmers belong to agricultural cooperatives which produce and market over six billion dollars

($6,000,000,000) of food and fiber products annually.

(b) That land grant universities of this nation, including the University of California, have a long tradition of providing research, educational, and extension programs of direct interest to cooperatives.

(c) That public understanding of the nature and role of cooperatives is minimal. In general, the public does not understand how the cooperative form of business structure is being utilized for their benefit.

(d) That public understanding about the benefits of the cooperative form of business could be greatly improved through a coordinated effort by the University of California and other institutions of higher education to focus on the role of cooperatives in the California economy.

(e) That in the fast changing world economic environment it is important to California that its cooperatives remain a dynamic sector within the state's economy. In order to enhance this sector's development the state is asked to support the establishment of a Center for Cooperatives.

(f) That the establishment of a Center for Cooperatives would help to meet the growing need for information, knowledge, and the professional skills necessary to increase the competitiveness of California's cooperatives in the state, national, and world trade and economy.

SEC. 3. Section 92691 of the Education Code is amended to read:

92691. In order to facilitate the development of cooperatives in the business and education sectors, the University of California is requested to establish a Center for Cooperatives. The university is further requested to give careful consideration to locating the center at the University of California, Davis, due to the demonstrated leadership role of that campus in providing research, education, and extension services to cooperatives. It is the intent of the Legislature that the center be interdisciplinary in nature and be administered by the university through the appointment of a director.

SEC. 4. Section 92695 of the Education Code is amended to read:

92695. It is the intent of the Legislature, and subject to the availability of funds, that qualified institutions of higher education, organizations, and individuals, as determined by the president, or his or her designee, in consultation with the advisory board, be eligible to participate in a competitive grant program to assist in carrying out Sections 92692 and 92693.

SEC. 5. Section 92696 of the Education Code is amended to read:

92696. It is further the intent of the Legislature that the Center for Cooperatives be funded by a variety of sources which may include, but not be limited to, the following:

(1) Funds derived from special fund accounts.

(2) Public and private funds secured through cooperative research agreements from entities such as the Agricultural Cooperative Service of the United States Department of Agriculture.

(3) Funds currently available to the university which are directed in the interest of cooperatives.

(4) Legislative appropriations to enhance the awareness and involvement of various minorities in cooperative business enterprises.

(5) Income from courses, seminars, publications, and contractual services.

(6) Contributions from cooperatives and other associated business organizations.

(7) Grants and endowments received from private foundations, government agencies, and other public or private sources.

SEC. 6. Section 92697 of the Education Code is amended to read:

92697. It is the intent of the Legislature that the Center for Cooperatives be established and in operation on or before July 1, 1989. The University of California is requested to submit to the Legislature by March 15, 1990, a progress report addressing the level of General Fund moneys necessary to operate the center, and describing the steps taken toward establishing and operating the center and, on or before January 1, 1992, a final report evaluating the effectiveness of the center in meeting legislative intent as expressed in this act.

CHAPTER 669

An act to add Section 5005.3 to the Public Resources Code, relating to the Bodega Bay Fisherman's Memorial.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 5005.3 is added to the Public Resources Code, to read:

5005.3. The department shall identify a site on its lands at the head of Bodega Bay, which shall be mutually agreed upon by the department and the Board of Directors of the Pacific Coast Federation of Fishermen's Association, for the Bodega Bay Fisherman's Memorial. The memorial shall be constructed and maintained solely through private contributions of funds, materials, and labor. The department shall be responsible for the interpretation, in consultation with the Pacific Coast Federation of Fishermen's Association, of the memorial after its completion.

CHAPTER 670

An act to amend Section 69948 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred dollars ($100) a day, or any fractional part thereof.

(e) In Mariposa County, the fee for reporting testimony and proceedings in contested cases is ninety-five dollars ($95) a day, or any fractional part thereof.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Sections 70045.11 and 74839, the fee for reporting testimony and proceedings in contested cases is one hundred ten dollars ($110) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and

proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is one hundred twenty-five dollars ($125) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

SEC. 2. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(c) In Madera County, the board of supervisors may, by ordinance

or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred dollars ($100) a day, or any fractional part thereof.

(e) In Mariposa County, the board of supervisors may, by ordinance or resolution, prescribe the rate of compensation for superior court reporters.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Sections 70045.11 and 74839, the fee for reporting testimony and proceedings in contested cases is one hundred ten dollars ($110) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and

proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is one hundred twenty-five dollars ($125) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

SEC. 3. Section 2 of this bill incorporates amendments to Section 69948 of the Government Code proposed by both this bill and AB 1745. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 69948 of the Government Code, and (3) this bill is enacted after AB 1745, in which case Section 69948 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 1745, at which time Section 2 of this bill shall become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order to ensure adequate court reporter services in Yuba and Colusa Counties, it is necessary that this act take effect immediately.

CHAPTER 671

An act relating to local agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. The Legislature finds and declares that in 1987, County Service Area No. 3, Circle XX, in the County of Calaveras, began proceedings under the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code) to reorganize the area into a community services district. The Legislature finds and declares that the County of Monterey began proceedings for the formation of County Service Area No. 74 and zones A and B under the County Service Area Law (Chapter 2.2 (commencing with Section 25210.1) of Division 2 of Title 3 of the Government Code). The Legislature further finds and declares that the processes have taken an exceptional amount of time due to circumstances beyond the control of the affected parties, including improper notice to parties and a lack of personnel available to the local agency formation commission, and that a relatively short extension of time from a deadline imposed by the State Board of Equalization is necessary to complete that process.

SEC. 2. Due to the unique circumstances surrounding these changes of organization, 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. Notwithstanding the provisions of Sections 54902 and 54903 of the Government Code, the approval of the Circle XX, Community Services District in Calaveras County and County Service Area No. 74 and zones A and B in Monterey County shall be effective for assessment and taxation purposes for fiscal year 1989–90 if the required statements and maps are filed with the State Board of Equalization on or before June 12, 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 that the changes of organization of major importance to residents of County Service Area No. 3 in Calaveras County and to residents of County Service Area No. 74 and zones A and B of Monterey County may proceed, and not be terminated due to exceptional circumstances beyond the control of the parties, it is necessary that this act take immediate effect.

CHAPTER 672

An act to add Section 1030.6 to the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 1030.6 is added to the Insurance Code, to read:

1030.6. In any proceeding under this article, no agent shall be liable to the liquidator or conservator for unearned premiums uncollected by the agent, or unearned commissions uncollected by the agent, arising from an insolvency of an insurer.

CHAPTER 673

An act to amend Section 1053 of, and to add Section 7852.1 to, the Fish and Game Code, relating to duplicate licenses, and making an appropriation therefor.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 1053 of the Fish and Game Code is amended to read:

1053. (a) Not more than one license or not more than the number of license tags authorized by statute or regulation of the same class shall be issued to or purchased by a person for the same license year, except upon:

(1) The expiration of the license.

(2) The filing of an affidavit showing the loss or destruction of an unexpired license or license tag previously issued and payment of a fee in an amount determined by the department to pay the cost of issuing a duplicate license or license tag, not to exceed the fee for issuing the original license or license tag.

(3) The filing of an affidavit showing the loss or destruction of an unexpired sport fishing or hunting license, and payment of a fee of three dollars ($3). Duplicate sportfishing or hunting licenses issued pursuant to this subdivision shall be issued only by the department.

(b) Any person authorized by the department to issue licenses may administer the oath for purposes of the affidavit without any fee. Each of the affidavits provided for under subdivision (a) shall be filed with the department at the times and in the manner prescribed

by the department.

SEC. 2. Section 7852.1 is added to the Fish and Game Code, to read:

7852.1. The department may refund the fees paid for a commercial fishing license or stamp, a commercial boat registration, or a commercial fishing permit to the estate of the deceased holder of the license, stamp, registration, or permit, if proof is provided by the estate that the death of the holder occurred prior to the opening of the season for which the license, stamp, registration, or permit was valid. The department may deduct from the refund an amount equal to the cost of issuing the refund, but not to exceed twenty-five dollars ($25).

CHAPTER 674

An act to amend Sections 7521, 7539, and 7544.6 of, and to add Section 7539.3 to, the Business and Professions Code, relating to private patrol operators.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 7521 of the Business and Professions Code is amended to read:

7521. (a) A private investigator within the meaning of this chapter is a person, other than an insurance adjuster subject to the provisions of Chapter 1 (commencing with Section 14000) of Division 5 of the Insurance Code, who, for any consideration whatsoever engages in business or accepts employment to furnish or agrees to furnish any person to protect persons pursuant to Section 7521.5, or engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining, information with reference to:

Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person; the location, disposition, or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer, or investigating committee. For the purposes of this subdivision, a private investigator is any person, firm, company, association, partnership or corporation acting for the purpose of investigating, obtaining, and reporting to any private employer, its

agent, supervisor, or manager, information concerning such employer's employees involving questions of integrity, honesty, breach of rules or other standards of performance of job duties.

This subdivision shall not apply to a public utility regulated by the State Public Utilities Commission, or its employees.

(b) A private patrol operator, or operator of a private patrol service, within the meaning of this chapter is a person, other than an armored contract carrier, who, for any consideration whatsoever:

Agrees to furnish, or furnishes, a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or performs the service of such watchman, guard, patrolman, or other person, for any of these purposes.

(c) A person licensed as a private patrol operator only may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which he or she has been hired or engaged to protect, guard, or watch.

(d) An armored contract carrier within the meaning of this chapter is a contract carrier operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority.

(e) An armored vehicle guard within the meaning of this chapter is any person employed by an armored contract carrier who in the course of such employment carries a deadly weapon.

(f) A protection dog operator within the meaning of this chapter is any person who, for any consideration whatsoever, engages in business to furnish, or agree to furnish, or train, a protection dog for others. A "protection dog" means any dog trained to guard, protect, patrol or defend any premises, area or yard, or any dog trained to protect, defend or guard any person or property, with or without the necessity of direct human supervision.

(g) A security guard or security officer, within the meaning of this chapter, is an employee of a private patrol operator, or an employee of a lawful business or public agency who is not exempted pursuant to Section 7522, who performs the functions as described in subdivision (b) on or about the premises owned or controlled by the customer of the private patrol operator or by the guard's employer or in the company of persons being protected.

(h) A street patrolman, within the meaning of this chapter, is a security guard or security officer employed by a private patrol operator who performs the functions described in subdivision (b) by street patrol service utilizing foot patrol, motor patrol, or other means of transportation in public areas, streets or public thoroughfares in order to serve multiple customers. "Street patrolman" does not include management or supervisory employees

of the private patrol operator moving from one customer location to another to inspect personnel or security guard or security officers.

SEC. 1.5. Section 7539 of the Business and Professions Code is amended to read:

7539. (a) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or district attorney, or his or her representative, any information he or she may acquire as to any criminal offense, but he or she shall not divulge to any other person, except as he or she may be required by law so to do, any information acquired by him or her except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager or employee of a licensee shall knowingly make any false report to his or her employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

(d) No licensee, or officer, director, partner, manager, or employee of private investigator licensees, shall use a badge in connection with the official activities of the licensee's business.

(e) No licensee, or officer, director, partner, manager, or employee of a licensee, shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he or she is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(f) No licensee, or officer, partner, qualified manager, or employee shall use any identification to indicate that he or she is licensed as a private investigator other than the official identification card issued by the bureau or the business card regularly used by the business. However, a licensee may issue an employer identification card.

(g) No licensee, or officer, director, partner, manager, or employee of a licensee, shall enter any private building or portion thereof, except premises commonly accessible to the public, without the consent of the owner or of the person in legal possession thereof.

(h) No private patrol licensee, or officer, director, partner, manager, or employee of a private patrol licensee shall use or wear a badge, except while engaged in guard or patrol work and while wearing a uniform. Any person authorized to use or wear a badge shall wear a patch on each arm that reads "private security" and that includes the name of the private patrol company by which the person is employed or for which the person is a representative. The patch shall be of a standard design approved by the director and shall be clearly visible.

(i) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports or present

bills to clients, or in any manner whatever conduct business for which a license is required under this chapter. All business of the licensee shall be conducted in the name of and under the control of the licensee.

(j) No licensee, officer, director, partner, manager, or employee of a private investigator shall knowingly and directly solicit employment from any person who has directly sustained bodily injury or from that person's spouse or other family member to obtain authorization on behalf of the injured person as an investigator to investigate the accident or act which resulted in injury or death to that person or damage to the property of that person. Nothing in this subdivision shall prohibit the soliciting of employment from that injured person's attorney, insurance company, self-insured administrator, insurance adjuster, employer, or any other person having an indirect interest in the investigation of the injury. This subdivision shall not apply to any business agent or attorney employed by a labor organization. No licensee, officer, director, partner, or manager of a private investigator shall pay or compensate any of his or her employees or agents on the basis of a bonus, bounty, or quota system whereby a premium is placed on the number of employer or client rule violations or infractions purportedly discovered as a result of any investigation made by a licensee.

(k) No licensee shall use a fictitious name in connection with the official activities of the licensee's business.

(*l*) No private patrol operator licensee or officer, director, partner or manager of a private patrol operator licensee, or person required to be registered as a security guard pursuant to this chapter shall use or wear a baton or exposed firearm as authorized by this chapter unless he or she is wearing a uniform which complies with the requirements of Section 7539.3.

SEC. 2. Section 7539.3 is added to the Business and Professions Code, to read:

7539.3. Any person referred to in subdivision (*l*) of Section 7539 who uses or wears a baton or exposed firearm as authorized pursuant to this chapter shall wear a patch on each arm that reads "private security" and that includes the name of the company by which the person is employed or for which the person is a representative. The patch shall be clearly visible at all times. The patches of a private patrol operator licensee, or his or her employees or representatives shall be of a standard design approved by the director.

SEC. 3. Section 7544.6 of the Business and Professions Code is amended to read:

7544.6. No person required to be registered as a security guard pursuant to this chapter shall do any of the following:

(a) Fail to carry on his or her person, while on duty, a valid and current security guard registration card or an unexpired temporary registration card issued pursuant to Section 7546.3.

(b) Fail to carry on his or her person a valid and current firearms permit when carrying a firearm on duty.

(c) Carry or use a firearm unless he or she possesses a valid and current firearms permit issued pursuant to this chapter.

(d) Fail to report to his or her employer within 24 hours of the incident the circumstances surrounding any incident involving the discharge of any firearm in which he or she is involved while acting within the course and scope of his or her employment.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 675

An act to amend Sections 1543 and 1569.43 of the Health and Safety Code, relating to care facilities.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 1543 of the Health and Safety Code is amended to read:

1543. Notwithstanding any other provision of this chapter, the district attorney of every county, and city attorneys in those cities which have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to Sections 71099 and 72193 of the Government Code, shall, upon their own initiative or upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation within his or her county of any provisions of this chapter.

SEC. 2. Section 1569.43 of the Health and Safety Code is amended to read:

1569.43. Notwithstanding any other provisions of this chapter, the district attorney of every county and city attorneys in these cities which have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to Sections 71099 and 72193 of the Government Code shall, upon their own initiative or upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation of this chapter within his or her county.

SEC. 3. Notwithstanding Section 17610 of the Government Code,

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

CHAPTER 676

An act to amend the heading of Chapter 2 (commencing with Section 40701) of Division 16 of, to amend Sections 40702, 40703, 40731, 40732, 40761, 40781, 40782, 40811, 40871, 40872, 40873, 40874, 40901, 40931, 40932, 40933, 40934, 40935, 40961, 40962, 40963, 41001, 41002, 41003, 41005, and 41009 of, to amend the headings of Article 7 (commencing with Section 40901) and Article 10 (commencing with Section 41001) of Chapter 2 of Division 16 of, to add Sections 40730, 40760, 40810, 40930, and 41000 to, and to repeal Section 40762 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. The heading of Chapter 2 (commencing with Section 40701) of Division 16 of the Food and Agricultural Code is amended to read:

CHAPTER 2. STANDARDS FOR TOMATOES

SEC. 2. Section 40702 of the Food and Agricultural Code is amended to read:

40702. "Processing purposes" means tomatoes intended for the commercial production of processed products such as sliced, diced, quartered, halved, and whole tomatoes, tomato paste, puree, pulp, catsup, sauce, tomatoes in oil, juice, powder, flakes, and similar manufactured tomato products.

SEC. 3. Section 40703 of the Food and Agricultural Code is amended to read:

40703. "Committee" means the Processing Tomato Advisory Committee.

SEC. 4. Section 40730 is added to the Food and Agricultural Code, to read:

40730. The director shall not enforce this article during the period that any marketing order or commission covering the same subject is in effect.

SEC. 5. Section 40731 of the Food and Agricultural Code is amended to read:

40731. The standards which are established as authorized by this chapter are the only standards of quality for processing tomatoes that the director shall enforce.

SEC. 6. Section 40732 of the Food and Agricultural Code is amended to read:

40732. Tomatoes for processing purposes, except hard green tomatoes for use in the manufacture of green tomato products, shall conform to the standards established under this chapter.

SEC. 7. Section 40760 is added to the Food and Agricultural Code, to read:

40760. The director shall not enforce this article during the period that any marketing order or commission covering the same subject is in effect. Section 58601) of Division 21 covering the same subject.

SEC. 8. Section 40761 of the Food and Agricultural Code is amended to read:

40761. The committee may submit to the director proposed regulations under this chapter. The director may adopt and enforce regulations for the following:

(a) Minimum standards and tolerances, for processing tomatoes which shall be cause for rejection by the director. However, no emergency regulations shall be established which raise or lower standards and tolerances.

(b) Minimum standards for color of processing tomatoes based on a comminuted raw product sample which shall be cause for rejection by the director. However, no emergency regulations shall be established which tend to raise or lower the comminuted color readings.

(c) Standards for processing tomatoes which shall not be cause for rejection by the director.

(d) Sampling and inspection procedures for processing tomatoes.

(e) Fees calculated to cover expected costs involved in the department performing the services specified in this chapter and in carrying out the regulations adopted under this chapter.

(f) Sanitation, equipment, inspection stations, and load identification data.

(g) Other regulations which are reasonably necessary for the administration and enforcement of this chapter.

SEC. 9. Section 40762 of the Food and Agricultural Code is repealed.

SEC. 10. Section 40781 of the Food and Agricultural Code is amended to read:

40781. The director may, for the purpose of inspection, enter any place where processing tomatoes may be found. The director may

take for inspection samples as may be necessary to determine if any uncertified lot, load, or container of processing tomatoes complies with the standards established pursuant to this chapter. The director may subject samples to any method of inspection or testing as prescribed by regulation.

SEC. 11. Section 40782 of the Food and Agricultural Code is amended to read:

40782. The director may cause the prosecution of any person violating any provision of this chapter, and may seize and hold the portion of any lot or load of tomatoes for processing purposes involved in a violation as may, in his or her judgment, be necessary as evidence.

SEC. 12. Section 40810 is added to the Food and Agricultural Code, to read:

40810. The director shall not enforce this article during the period that any marketing order or commission covering the same subject is in effect.

SEC. 13. Section 40811 of the Food and Agricultural Code is amended to read:

40811. The director shall inspect deliveries of tomatoes for processing purposes.

SEC. 14. Section 40871 of the Food and Agricultural Code is amended to read:

40871. Loads of tomatoes which are offered for delivery by a producer to a processor in accordance with the terms of a contract between them shall be given inspection as may be required without undue delay and within a reasonable time after the load arrives at the processor or other point which is specified for the inspection.

SEC. 15. Section 40872 of the Food and Agricultural Code is amended to read:

40872. Any load of tomatoes which is so offered for inspection and delivery that is rendered unsuitable for processing purposes as a direct result of unwarranted delay in inspection, willfully or negligently caused or permitted by the processor, shall be paid for by the processor at the full price that is agreed upon for tomatoes suitable for processing purposes and on the basis that the tomatoes were of the grade, quality, and condition which is stipulated in the contract.

If no price is stipulated in the contract, payment shall be made by the processor to the producer on the basis of the then prevailing market price for tomatoes of the grade, quality, and condition which is specified in the contract.

SEC. 16. Section 40873 of the Food and Agricultural Code is amended to read:

40873. In addition to any other remedy, the producer so offering for inspection and delivery any load of tomatoes that has incurred any added handling costs as a direct result of the unwarranted delay in inspection and delivery, willfully or negligently caused or permitted by a processor, may recover the amount of the added

handling costs by an action at law against the processor.

SEC. 17. Section 40874 of the Food and Agricultural Code is amended to read:

40874. No producer shall have any rights under this article unless he shall register each load of tomatoes with the processor at the time he offers the load for inspection and delivery. The registration shall be made by obtaining from the processor a certificate, which the processor is, by this provision, required to furnish, that states the time of arrival of the load at the processor or other specified inspection point.

SEC. 18. The heading of Article 7 (commencing with Section 40901) of Chapter 2 of Division 16 of the Food and Agricultural Code is amended to read:

Article 7. Discrimination in Furnishing Raw Product Containers

SEC. 19. Section 40901 of the Food and Agricultural Code is amended to read:

40901. The failure of a processor willfully and without due cause to furnish raw product containers to a producer as agreed upon, or any willful discrimination against any producer in this regard, shall subject such processor to an action for all damages which are sustained by the producer as a direct result of the failure or discrimination, and judgment against any processor may be entered in the discretion of the court either for the amount of the damages sustained or for three times the amount. Treble damages may, however, only be awarded if the producer has furnished the processor written notice of the claimed failure or discrimination within 48 hours after the claimed failure or discrimination.

SEC. 20. Section 40930 is added to the Food and Agricultural Code, to read:

40930. The director shall not enforce this article during the period that any marketing order or commission covering the same subject is in effect.

SEC. 21. Section 40931 of the Food and Agricultural Code is amended to read:

40931. Each processor that receives deliveries of tomatoes for processing purposes is hereby designated as the authorized agent of the director to collect the inspection and certification fees which are chargeable to the processor and to each producer that delivers tomatoes.

SEC. 22. Section 40932 of the Food and Agricultural Code is amended to read:

40932. The cost of the inspection and certification shall be borne equally by both the processor and the producer.

SEC. 23. Section 40933 of the Food and Agricultural Code is amended to read:

40933. Any money which is collected pursuant to this article shall be remitted to the director weekly during the tomato processing

season for deposit into the Department of Food and Agriculture Fund to be used in carrying out the purposes of this chapter.

SEC. 24. Section 40934 of the Food and Agricultural Code is amended to read:

40934. Except as otherwise provided in this article, any money which is so collected and not used for the purposes of this chapter shall be returned to the processors from whom it was received for distribution to the processors and producers from whom the money was originally collected, in proportion to their several interests.

SEC. 25. Section 40935 of the Food and Agricultural Code is amended to read:

40935. If the director determines, as to any money heretofore or hereafter collected as inspection and certification fees, that the return of the money with respect to any processing season is impracticable because of the smallness of the amounts returnable, or for any other reason, the money so collected shall not be so returned but shall remain in the Department of Food and Agriculture Fund and be available for expenditure for the purposes of this chapter in any subsequent year.

SEC. 26. Section 40961 of the Food and Agricultural Code is amended to read:

40961. It is unlawful for any person to deliver or to accept tomatoes for processing purposes, or to process any tomatoes, which have not been certified as meeting the requirements of this chapter or the regulations established pursuant to this chapter.

SEC. 27. Section 40962 of the Food and Agricultural Code is amended to read:

40962. It is unlawful for any person to deliver to a processor or for any processor to accept delivery of any load of tomatoes which has been rejected for failing to comply with the standards established pursuant to this chapter, until the load has been reconditioned to comply with the standards, reinspected, and a certificate issued by the proper enforcing officer.

SEC. 28. Section 40963 of the Food and Agricultural Code is amended to read:

40963. It is unlawful for any person to remove, deface, or destroy, any warning tag or notice which has been placed by a proper enforcing officer upon a rejected lot or load of tomatoes for processing purposes.

SEC. 29. The heading of Article 10 (commencing with Section 41001) of Chapter 2 of Division 16 of the Food and Agricultural Code is amended to read:

Article 10. Processing Tomato Advisory Committee

SEC. 30. Section 41000 is added to the Food and Agricultural Code, to read:

41000. The director shall not enforce this article during the period that any marketing order or commission covering the same

subject is in effect.

SEC. 31. Section 41001 of the Food and Agricultural Code is amended to read:

41001. There is in the department the Processing Tomato Advisory Committee, which consists of 10 members. The director shall appoint five members who shall be producers of tomatoes for processing and five members who shall be representatives of processors engaged in the processing of tomatoes. The director may appoint one additional member of the committee, who shall be a public member.

Upon the director's request, the committee shall submit to the director the names of three or more natural persons, each of whom shall be a citizen and resident of this state and not a producer, shipper, or processor nor financially interested in any producer, shipper, or processor, for appointment by the director as a public member of the committee. The director may appoint one of the nominees as the public member on the committee. If all nominees are unsatisfactory to the director, the committee shall continue to submit lists of nominees until the director has made a selection. Any vacancy in the office of the public member of the committee shall be filled by appointment by the director from the nominee or nominees similarly qualified submitted by the committee. The public member of the committee shall represent the interests of the general public in all matters coming before the committee and shall have the same voting and other rights and immunities as other members of the committee.

SEC. 32. Section 41002 of the Food and Agricultural Code is amended to read:

41002. It is hereby declared, as a matter of legislative determination, that producers of tomatoes for processing and processors engaged in processing tomatoes appointed to the Processing Tomato Advisory Committee pursuant to this article are intended to represent and further the interest of a particular agricultural industry concerned, and that the representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to the committee, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

SEC. 33. Section 41003 of the Food and Agricultural Code is amended to read:

41003. In making selection of the membership of the committee, the director shall take into consideration the recommendations of organizations and associations of producers of tomatoes for processing and of processors of tomatoes for processing.

SEC. 34. Section 41005 of the Food and Agricultural Code is amended to read:

41005. The committee shall be advisory to the director on all matters pertaining to standards for tomatoes for processing purposes.

The committee may do any of the following:

(a) Recommend to the director administrative regulations which relate to the administration and enforcement of this chapter.

(b) Recommend to the director the institution and promotion of scientific research.

(c) Recommend to the director the sampling for conditions not currently provided for in this chapter or regulations adopted pursuant to this chapter.

(d) Advise the director on all matters pertaining to this chapter including the annual budget and revenue necessary to accomplish the purpose of this chapter.

SEC. 35. Section 41009 of the Food and Agricultural Code is amended to read:

41009. The director shall appoint an alternate member for each committee member. In making the appointments the director shall appoint a producer as alternate for each producer member and a processor representative as alternate for each processor representative, and shall give consideration to the representative of the member for whom the alternate is designated to serve.

CHAPTER 677

An act to add Section 7579.1 to the Government Code, relating to special education.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 7579.1 is added to the Government Code, to read:

7579.1. (a) Prior to the discharge of any handicapped child who has an active individualized education program from a public hospital, proprietary hospital, or residential medical facility pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2 of Part 30 of the Education Code, a licensed children's institution or foster family home pursuant to Article 5 (commencing with Section 56155) of Chapter 2 of Part 30 of the Education Code, or a state hospital for the developmentally disabled or mentally disordered, the following shall occur:

(1) The operator of the hospital or medical facility, or the agency that placed the child in the licensed children's institution or foster family home, shall, at least 10 days prior to the discharge of a handicapped child, notify in writing the local educational agency in which the special education program for the child is being provided, and the receiving special education local plan area where the child is being transferred, of the impending discharge.

(2) The operator or placing agency, as part of the written notification, shall provide the receiving special education local plan area with a copy of the child's individualized education program, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's individualized education program in the receiving special education local plan area.

(b) Once the handicapped child has been discharged, it shall be the responsibility of the receiving local educational agency to ensure that the handicapped child receives an appropriate educational placement that commences without delay upon his or her discharge from the hospital, institution, facility, or foster family home in accordance with Section 56325 of the Education Code. Responsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which the child resides pursuant to Sections 56156.5, 56156.6, and 56167 of the Education Code.

(c) Special education local plan area directors shall document instances where the procedures in subdivision (a) are not being adhered to and report these instances to the Superintendent of Public Instruction.

SEC. 2. The State Department of Education shall submit a report to the Legislature on any problems with the implementation of this act on or before July 1, 1991.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 678

An act to amend Section 270 of the Code of Civil Procedure, and to amend Section 72194.5 of the Government Code, relating to courts.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 270 of the Code of Civil Procedure is amended to read:

270. (a) Notwithstanding Section 269 or any other provision of law, the Judicial Council shall establish a demonstration project to assess the costs, benefits, and acceptability of utilizing audio and video recording as a means of producing a verbatim record of proceedings in up to 75 superior court departments.

The Judicial Council shall select the counties to participate in the project, but shall include in its selection the Counties of Alameda, Los Angeles, Orange, Sacramento, San Mateo, Santa Cruz, and Solano.

In each county, the project shall only commence after the board of supervisors adopts a resolution finding that there are sufficient funds for the project, and the superior court adopts local rules for implementation of the project. The demonstration project in each county shall terminate on January 1, 1994.

(b) In courtrooms operating under the demonstration project, audio or video recording may be used in lieu of the verbatim record prepared by a court reporter except in any criminal or juvenile proceedings.

(c) The Judicial Council shall adopt the following: (1) specifications for audio and video recording equipment; (2) rules for courtroom monitoring of audio and video recording; (3) standards for the training of personnel and maintenance of equipment for audio and video recording; and (4) rules for certification of transcripts produced by means of audio and video recording.

(d) An audio or video recording or transcript produced therefrom when certified as being an accurate recording, video taping, or transcript of the testimony and proceedings in a case, is prima facie evidence of that testimony and those proceedings.

(e) A transcript of a proceeding in a court of the demonstration project shall be provided by the court to a party in the same manner and form and at the same cost as a transcript prepared and delivered by an official court reporter. If a portion of a video or audio recording fails or is unable to be understood, a transcript of such portion of the proceeding shall designate such condition as "inaudible" and "unintelligible," respectively.

(f) No presently employed court reporter shall have his or her hours of employment reduced as a result of the demonstration

project nor shall be required to prepare a transcript of a proceeding in a court of the demonstration project.

(g) The Judicial Council shall report to the Legislature on or before January 1, 1992, and thereafter as the Legislature may require, as to the costs, benefits, and acceptability of such audio or video recording as a method of keeping the verbatim court record.

(h) The Joint Rules Committee shall appoint an advisory committee consisting of two certified shorthand reporters, one person skilled in courtroom audio recording, one person skilled in courtroom video recording, two judges experienced in trial work, one court administrator, and two attorneys experienced in trial work to evaluate the demonstration project, and it shall report its findings and recommendations, including minority views, if any, to the Legislature at the same times as the Judicial Council reports pursuant to subdivision (g). The advisory committee shall be afforded access to all material relating to the conduct and operation of the demonstration project, including, but not limited to, copies of audio and video tapes, logs thereof, transcripts, transcript requests, and the identity of any vendor and consultants involved in the demonstration project.

SEC. 2. Section 72194.5 of the Government Code is amended to read:

72194.5. Whenever an official court reporter or a temporary court reporter is unavailable to report an action or proceeding in a municipal or justice court, subject to the availability of approved equipment and equipment monitors, the municipal or justice court may order that the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. The court shall assign available reporters first to report preliminary hearings and then to other proceedings. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 679

An act to amend Section 395.06 of the Military and Veterans Code, relating to state military service.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 395.06 of the Military and Veterans Code is amended to read:

395.06. (a) Every officer and enlisted member of the California National Guard who, in order to undertake active military duty in the service of the state when the Governor has issued a proclamation of a state of insurrection pursuant to Section 143, or a proclamation of a state of extreme emergency or when the California National Guard is on active duty pursuant to Section 146, has left a position, other than a temporary position, in private employment, receives a certificate of satisfactory service in the California National Guard, is still qualified to perform the duties of that position, and makes application within 40 days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position or to a position of similar seniority, status, and pay without loss of retirement or other benefits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, and shall not be discharged from the position without cause within one year after being restored to the position.

(b) Every officer and enlisted member who has left a part-time position in private employment for purposes of service pursuant to subdivision (a), receives a certificate of satisfactory service in the California National Guard, is still qualified to perform the duties of that position, and makes application within five days after release from service shall be considered as on leave of absence during that period and shall be restored by the former employer to the former position, or to a position of similar seniority, status, and pay, if any exist, and shall not be discharged from the position without cause within one year after being restored to the position.

(c) If any employer fails or refuses to comply with this section, the superior court of the county in which the employer maintains a place of business may, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of this section, specifically require the employer to comply with this section and compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing and shall advance it on the calendar. Upon application to the district attorney of the county in which the employer maintains a place of business by any person claiming to be

entitled to the benefits of this section, the district attorney, if reasonably satisfied that the person is entitled to these benefits, shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

CHAPTER 680

An act to add Section 615 to the Elections Code, and to add Section 6254.4 to the Government Code, relating to information.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 615 is added to the Elections Code, to read:

615. (a) With respect to a voter who registers or reregisters to vote by means of a confidential affidavit of registration pursuant to subdivision (b) of Section 6254.4 of the Government Code:

(1) Except as provided in Section 6254.4 of the Government Code, the home address, telephone number, occupation, and precinct number of the voter shall be replaced by the word "confidential" on every computer terminal, list, affidavit, duplicate affidavit, or any other medium routinely available to the public at the clerk's office.

(2) The home address, telephone number, occupation, and precinct number of a person granted confidentiality pursuant to Section 6254.4 of the Government Code shall be provided to the following:

(A) An election official, candidate, proponent, or committee provided pursuant to Section 600, 603, 604, 605, 611, or 611.1, provided that the election official, candidate, proponent, or committee treasurer requests the index, cards, or tape in writing signed by the election official, candidate, proponent, or committee treasurer.

(B) A faculty member or researcher with an accredited educational institution for the purpose of academic research, provided the information is requested in writing signed by the faculty member or researcher.

(b) The home address of a voter to whom confidentiality is granted shall be released whenever the person's vote is challenged pursuant to Sections 1403, 1405 to 1408, inclusive, or 14216 to 14229, inclusive. The address shall be released pursuant to this section only to the challenger, to elections officials, and to other persons as necessary to make or defend against, or to adjudicate, the challenge.

(c) If a person who has registered or reregistered by means of a

confidential affidavit becomes a candidate for elective office, and during the filing period for that election, another person declares his or her candidacy for the same office, the clerk shall immediately transfer the confidential information concerning that candidate to the public record, and from that time through the day following the date of the election for that office the candidate shall not be entitled to confidentiality pursuant to this section as to either current or past registration records.

(d) No action in negligence may be maintained against any governmental entity or officer or employee thereof as a result of disclosure of the information which is the subject of this section unless by a showing of gross negligence or willfulness.

SEC. 2. Section 6254.4 is added to the Government Code, to read:

6254.4. (a) The home address, telephone number, occupation, and precinct number of any active or retired judge or court commissioner, any active or retired district attorney or assistant district attorney, any active or retired public defender or assistant public defender, or any active or retired peace officer as defined in Section 830.1, subdivision (a), (b), (d), or (e) of Section 830.2, or Section 830.5, of the Penal Code, provided the peace officer is employed by the Department of Corrections or the California Youth Authority, or of the spouse or children of a peace officer living with the peace officer, appearing in any record of any voter registration affidavit is confidential if the person requests confidentiality of that information at the time of registration or reregistration, and shall not be disclosed to any person, except to any other governmental agency or to any person engaged in the business of examining public records and files for the primary purpose of reporting those portions of the public records which impart constructive notice under the laws relating to land and land titles, and except as prohibited by Section 1808.4 of the Vehicle Code, or pursuant to Section 615 of the Elections Code. Confidentiality granted under this section shall apply only to records prepared or generated on or after the date that the voter is granted confidentiality.

(b) A person who requests confidentiality of the information specified in subdivision (a) shall register or reregister to vote by means of a confidential affidavit of registration form which shall be prescribed by the Secretary of State and which shall be attested to under penalty of perjury by the affiant that he or she is a person entitled to confidential treatment pursuant to this section.

(c) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address. Any record shall be open to public inspection to the extent otherwise provided by law if the address is completely obliterated or otherwise removed from the record.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 681

An act to amend Section 15630 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) (1) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else, immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

(2) The reports required by this section should contain the following information unless the information is unavailable by the person reporting:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(b) Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of elder or dependent adult abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse either to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else. If the conduct involves criminal activity not already covered by subdivision (a), it may be immediately reported to the appropriate law enforcement agency.

(c) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of abuse of an elder or a dependent adult, 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 the 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.

(d) The reporting duties under this section are individual, and no supervisor or administrator shall 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, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(e) (1) An adult protective services agency shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of physical abuse of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

Only a written report, sent within two working days, shall be required in the case of types of elder and dependent adult abuse other than physical abuse.

If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult

protective services agency shall immediately inform the person making the report that he or she must make it to the long-term care ombudsman coordinator or to a local law enforcement agency. The adult protective services agency shall not accept the reports.

(2) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse involving physical abuse or neglect determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be such a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(f) A law enforcement agency shall immediately or as soon as practically possible report by telephone to the long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or a dependent adult. A law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(g) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent.

A long-term care ombudsman coordinator and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, which has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the time at which the report becomes a matter of

public record.

(h) When a county adult protective services agency, a long-term care ombudsman coordinator, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(i) Each long-term care ombudsman coordinator shall report to the county adult protective services agency monthly on the reports it receives pursuant to this chapter. The reports shall be on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(j) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

The county's report to the department shall include reports it receives from the long-term care ombudsman coordinator pursuant to subdivision (i).

The State Department of Social Services shall refer to the bureau monthly summaries of the reports of elder and dependent adult abuse, neglect, and abandonment which it receives from county adult protective services agencies.

SEC. 2. Section 1 of this act shall become operative July 1, 1990.

CHAPTER 682

An act to add Section 1597.059 to the Health and Safety Code, relating to child care.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989]

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

SECTION 1. The Legislature hereby finds and declares that there is a critical shortage of qualified child day care center staff and that current regulations dictating supervision ratios for aides do not permit cost-efficient utilization of this job class. Further, since there

are no minimum educational standards for aides, there is no incentive to begin career-oriented training.

SEC. 2. Section 1597.059 is added to the Health and Safety Code, to read:

1597.059. (a) The State Department of Social Services shall develop guidelines and procedures to permit an aide to assist a fully qualified child care teacher in the supervision of up to 18 preschool age children, with the provision that the aide shall complete at least two accredited postsecondary semester units or equivalent quarter units of early childhood education or child development per semester or quarter, commencing with the first semester or quarter following initial employment and continuing until six units have been completed.

(b) The department shall immediately prepare proposed regulations for a public hearing concerning the requirements of subdivision (a).

(c) A status report on the development of the regulations shall be submitted by the department to the Legislature no later than June 1, 1990.

(d) For purposes of this section, "preschool age children" means children who are enrolled in a child day care center licensed by the department and who are not enrolled in either an infant care center or a schoolage child day care center, as these terms are defined in Title 22 of the California Code of Regulations.

(e) The Legislative Analyst shall evaluate the program authorized by this section and report to the Legislature no later than December 30, 1992. The evaluation shall include, but not be limited to, the advantages and disadvantages of changing the child-staff ratios on the quality of care, the number of day care centers that make use of this option, the increase in the number of children served, the effect the program has on encouraging aides to begin and continue career-oriented training, and a recommendation as to whether the program should be continued.

(f) This section shall remain in effect only until June 30, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1993, deletes or extends that date.

CHAPTER 683

An act to amend Sections 500 and 25101 of the Corporations Code, relating to securities.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 500 of the Corporations Code is amended to read:

500. Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) except as follows:

(a) The distribution may be made if the amount of the retained earnings of the corporation immediately prior thereto equals or exceeds the amount of the proposed distribution.

(b) The distribution may be made if immediately after giving effect thereto:

(1) The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) would be at least equal to 1¼ times its liabilities (not including deferred taxes, deferred income and other deferred credits); and

(2) The current assets of the corporation would be at least equal to its current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense of the corporation for such fiscal years, at least equal to 1¼ times its current liabilities; provided, however, that in determining the amount of the assets of the corporation profits derived from an exchange of assets shall not be included unless the assets received are currently realizable in cash; and provided, further, that for the purpose of this subdivision "current assets" may include net amounts which the board has determined in good faith may reasonably be expected to be received from customers during the 12-month period used in calculating current liabilities pursuant to existing contractual relationships obligating such customers to make fixed or periodic payments during the term of the contract or, in the case of public utilities, pursuant to service connections with customers, after in each case giving effect to future costs not then included in current liabilities but reasonably expected to be incurred by the corporation in performing such contracts or providing service to utility customers. The amount of any distribution payable in property shall, for the purpose of this chapter, be determined on the basis of the value at which the property is carried on the corporation's financial statements in accordance with generally accepted accounting principles. Paragraph (2) of subdivision (b) is

not applicable to a corporation which does not classify its assets into current and fixed under generally accepted accounting principles. For the purpose of applying this section to a distribution by a corporation of cash or property in payment in whole or in part of an obligation incurred by the corporation in connection with the purchase of its shares, there shall be added to retained earnings any amount that had been deducted therefrom at the time the obligation was incurred, but not in excess of the principal of the obligation which remains unpaid immediately prior to the distribution and there shall be deducted from liabilities any amount which had been added thereto at the time the obligation was incurred, but not in excess of the principal of the obligation which will remain unpaid after the distribution.

(c) This section does not apply to a corporation licensed as a broker-dealer under Chapter 2 (commencing with Section 25210) of Part 3 of Division 1 of Title 4, if immediately after giving effect to any distribution the corporation is in compliance with the net capital rules of the Commissioner of Corporations and the Securities and Exchange Commission.

SEC. 2. Section 25101 of the Corporations Code is amended to read:

25101. The following securities are exempt from the provisions of Section 25130:

(a) Any security issued by a person which is the issuer of any security listed on a national securities exchange, or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., which exchange or system is certified by rule or order of the commissioner.

(b) Any security (except limited or general partnership interests) issued by a person which (i) is the issuer of any security listed on a national securities exchange which is not certified by the commissioner pursuant to subdivision (a) hereof, (ii) is the issuer of any security registered under Section 12(g) of the Securities Exchange Act of 1934 or is exempt from registration under Section 12 by Section 12(g) (2) (G) of that act, or (iii) is registered under the Investment Company Act of 1940, if in any such case, there has been filed with the commissioner a notice in such form as the commissioner shall specify by rule setting forth all of the following:

(1) The name of the issuer, the date of its organization, and the jurisdiction under whose laws it is organized.

(2) The issuer's taxpayer identification number as assigned by the federal Department of Internal Revenue and, if applicable, the issuer's file number under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 as assigned by the federal Securities and Exchange Commission or other appropriate federal regulatory agency.

(3) A statement that the issuer has a currently effective registration under Section 12 of the Securities Exchange Act of 1934 (specifying the subsection thereof) or the Investment Company Act

of 1940, or that it is exempt from registration under Section 12 by Section 12(g)(2)(G) thereof.

(4) A statement that the issuer has a class of equity securities held by 500 or more persons and has total assets exceeding one million dollars ($1,000,000), determined in such manner as is provided by rule of the commissioner or, in the absence of a rule with respect to a determination of total assets, in accordance with generally accepted accounting principles.

(5) A description of each security of the issuer which is to be exempted pursuant to this subdivision, and a statement that each class of common stock described in that notice, if any, possesses full voting rights equal per share to the voting rights possessed by any other class of common stock of the issuer.

(6) An undertaking to file a supplemental notice if any of the facts stated in the notice previously filed with the commissioner shall, to the knowledge of the filer of that notice, cease to be true.

(7) The name and address of the person filing the notice, the signature of that person or of the authorized principal officer of that person (and the name of that principal officer), and a verification to the best knowledge or belief of the person signing the notice of all of the information contained in that notice.

The notice provided for herein may be filed by the National Association of Securities Dealers, Inc., the issuer, any broker-dealer registered under this law or any holder of record or beneficially of any of the securities covered by the notice. Except in the case of a notice filed by an issuer, the exemption provided by this subdivision shall lapse 13 months after the filing of the notice.

(c) The exemption provided by subdivision (a) or (b) shall not apply to any of the following:

(1) Securities offered pursuant to a registration under the Securities Act of 1933 or pursuant to the exemption afforded by Regulation A under that act if the aggregate offering price of the securities offered pursuant to that exemption exceeds fifty thousand dollars ($50,000).

(2) Securities which the commissioner has found, after notice and, if requested as hereinafter provided, hearing, to be the subject of a notice or supplemental notice filed pursuant to subdivision (b) which contains any statement which is, or which was at the time of filing, materially untrue. Notice hereunder shall be given to the person named pursuant to paragraph (7) of subdivision (b), to the issuer unless the notice or supplemental notice was filed by the issuer, and to licensed broker-dealers. The notice shall state the reasons for the issuance of the notice and that the exemption pursuant to this section for the security identified therein may be terminated unless, within 10 business days, either a notice or supplemental notice is filed in accordance with subdivision (b) or a written request for hearing is received, that hearing to commence within 15 business days of the receipt of the notice unless the commissioner consents to a later date An order terminating an

exemption pursuant to this paragraph shall be effective when issued or at such time thereafter as the commissioner may provide.

(3) All securities of an issuer when the commissioner has found the issuer has ceased to have any securities registered under Section 12 of the Securities Exchange Act of 1934 or the issuer of which has ceased to have a class of equity securities held by 500 or more persons or total assets exceeding one million dollars ($1,000,000). An order may be issued under this paragraph without notice or hearing if the facts on which it is based are stated in a notice or supplemental notice filed pursuant to subdivision (b) or are stated in a certificate filed with the Securities and Exchange Commission pursuant to Section 12(g) (4) of the Securities Exchange Act of 1934; otherwise, the order shall be issued only as provided in paragraph (2) of this subdivision.

CHAPTER 684

An act to amend Section 18717 of the Government Code, relating to state employees.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 18717 of the Government Code is amended to read:

18717. (a) The board shall develop objective criteria for determining the application of the state safety category of membership in the Public Employees' Retirement System to positions in the State Civil Service. Upon the request of the Department of Personnel Administration or an employee organization, the board shall then determine which classes of positions meet all or part of the elements of the criteria and shall list the positions in order based upon the degree in which their duties meet the criteria. An employee organization which requests a determination with respect to a class of position previously determined not to meet the criteria shall submit a written argument supporting the assertion that the class of position meets the criteria. The board, if it finds the written argument to be unpersuasive, may refuse to commence determination proceedings unless and until either the Department of Personnel Administration requests a determination with respect to that class of position or the employee organization submits to the board a supporting argument which the board finds persuasive. The board shall indicate to the department whether the classes qualify for state safety membership. The Public Employees' Retirement System and employing agencies shall assist and cooperate with the board in preparation of the report.

(b) The board shall transmit the report directly to the

department, which shall make a copy available to the exclusive representative of any employee organization upon its written request.

(c) The department may use the results of the study in subsequent negotiations with the exclusive employee representatives; however, the report shall in no way obligate the department to take any action or make any recommendations as it relates to state safety membership.

(d) The department shall not recommend safety membership for any class of employees who have not been determined by the board to meet the established criteria.

(e) For classes of employees recommended for state safety membership by a memorandum of understanding reached pursuant to Section 3517.5, a copy of the report authorized under this section shall be submitted to the Legislature with the signed memorandum of understanding.

CHAPTER 685

An act to amend Section 2878 of the Business and Professions Code, relating to licensed vocational nursing.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 2878 of the Business and Professions Code is amended to read:

2878. The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence of the conviction.

(3) The use of advertising relating to nursing which violates Section 17500.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing, or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(h) Impersonating another licensed vocational nurse or a registered nurse, or permitting or allowing another person to use his or her certificate for the purpose of nursing the sick or afflicted.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(j) The use of excessive force upon, or the mistreatment or abuse of, any patient. For the purposes of this subdivision, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.

CHAPTER 686

An act to amend Sections 631 and 632 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 631 of the Welfare and Institutions Code is amended to read:

631. (a) Except as provided in subdivision (b), whenever a minor is taken into custody by a peace officer or probation officer, except when the minor willfully misrepresents himself or herself as 18 or more years of age, the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within that period of time a petition to declare the minor a ward has been filed pursuant to this chapter or a criminal complaint against the minor has been filed in a court of competent jurisdiction.

(b) Except when the minor represents himself or herself as 18 or more years of age, whenever a minor is taken into custody by a peace officer or probation officer without a warrant on the belief that the minor has committed a misdemeanor that does not involve violence, the threat of violence, or possession or use of a weapon, and if the minor is not currently on probation or parole, the minor shall be released within 48 hours after having been taken into custody ,

excluding nonjudicial days, unless a petition has been filed to declare the minor to be a ward of the court and the minor has been ordered detained by a judge or referee of the juvenile court pursuant to Section 635. In all cases involving the detention of a minor pursuant to this subdivision, any decision to detain the minor more than 24 hours shall be subject to written review and approval by a probation officer who is a supervisor as soon as possible after it is known that the minor will be detained more than 24 hours. However, if the initial decision to detain the minor more than 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval.

(c) Whenever a minor who has been held in custody for more than 24 hours by the probation officer is subsequently released and no petition is filed, the probation officer shall prepare a written explanation of why the minor was held in custody for more than 24 hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, guardian, or other person having care or custody of the minor.

SEC. 2. Section 632 of the Welfare and Institutions Code is amended to read:

632. (a) Except as provided in subdivision (b), unless sooner released, a minor taken into custody under the provisions of this article shall, as soon as possible but in any event before the expiration of the next judicial day after a petition to declare the minor a ward or dependent child has been filed, be brought before a judge or referee of the juvenile court for a hearing to determine whether the minor shall be further detained. Such a hearing shall be referred to as a "detention hearing."

(b) Whenever a minor is taken into custody without a warrant on the belief that he or she has committed a misdemeanor not involving violence, a threat of violence, or possession or use of weapons, if the minor is not currently on probation or parole, he or she shall be brought before a judge or referee of the juvenile court for a detention hearing as soon as possible, but no later than 48 hours after having been taken into custody, excluding nonjudicial days, after a petition to declare the minor a ward has been filed. In all cases involving the detention of a minor pursuant to this subdivision where the minor will not be brought before the judge or referee of the juvenile court within 24 hours, the decision not to bring the minor before the judge or referee within 24 hours shall be subject to written review and approval by a probation officer who is a supervisor as soon as possible after it is known that the minor will not be brought before the judge or referee within 24 hours. However, if the decision not to bring the minor before the judge or referee within 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval.

(c) If the minor is not brought before a judge or referee of the juvenile court within the period prescribed by this section, he or she

shall be released from custody.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 687

An act to amend Section 15373.2 of the Government Code, relating to economic development, and making an appropriation therefor.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 15373.2 of the Government Code is amended to read:

15373.2. (a) In order to carry out the provisions of this chapter, there is hereby created in the State Treasury the Rural Economic Development Fund.

(b) The fund shall receive state funds appropriated to it, repayment of loans and interest on those loans pursuant to this chapter, interest which accrues to the moneys in the fund pursuant to subdivision (c), fees or charges pursuant to subdivision (d), and penalties prescribed by the panel.

(c) (1) 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. The moneys resulting from this investment shall be used to support the three rural small business assistance and development centers previously established through the department and the Employment Development Department. The department shall grant these interest moneys to the centers upon request to provide for the continued operation of the centers.

(2) If sufficient interest moneys are not available at a time when the centers require additional funds, the department shall lend the centers necessary funds from the Rural Economic Development Fund if the expected interest earnings from the fund will repay the loans. Funds received under this subdivision shall not be considered when the department reviews and approves applications pursuant to

Article 4 (commencing with Section 15397.3). Each center shall receive a maximum of one hundred thousand dollars ($100,000) each fiscal year.

(3) Interest earnings in excess of three hundred thousand dollars ($300,000) per fiscal year shall be available for expenditure by the department pursuant to this chapter. The expenditures of these interest earnings in excess of three hundred thousand dollars ($300,000) shall include the costs associated with the provision of ongoing legal counsel to the Infrastructure Review Panel, created pursuant to Article 5 (commencing with Section 15373.6) and reimbursement of expenses incurred by designated panel members while in the conduct of official panel business. The interest earnings in excess of three hundred thousand dollars ($300,000) may also be used by the department for administrative support and local assistance costs of activities consistent with the purposes of this chapter, and may be used in an amount not to exceed seventy-five thousand dollars ($75,000) annually for support of the California Main Street Program (Chapter 8 (commencing with Section 15399)). Services rendered as a result of this increased support shall be targeted for Main Street Demonstration and Self-Initiated Cities in Rural Renaissance eligible counties defined in Section 15373.1.

(d) In order to defray costs to the department for administration of Article 5 (commencing with Section 15373.6), the department may impose reasonable charges on all applications, and approved loans. 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 include, but are not limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, removal and storage for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(e) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated to, and shall remain available for expenditure by, the department for the purposes of this chapter only until July 1, 1991, and on that date any remaining funds shall revert to the Special Account for Capital Outlay.

(f) No money in the fund shall be used in lieu of any existing state infrastructure financing program, including, but not limited to, the State Transportation Improvement Program or the Clean Water Bond Program.

CHAPTER 688

An act to amend Section 1367.2 of the Health and Safety Code, and to amend Sections 10123.6 and 11512.14 of, and to add Section 10123.14 to, the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 1367.2 of the Health and Safety Code is amended to read:

1367.2. (a) On and after January 1, 1990, every health care service plan that covers hospital, medical, or surgical expenses on a group basis shall offer coverage for the treatment of alcoholism under such terms and conditions as may be agreed upon between the group subscriber and the health care service plan. Every plan shall communicate the availability of such coverage to all group subscribers and to all prospective group subscribers with whom they are negotiating.

(b) If the group subscriber or policyholder agrees to such coverage or to coverage for treatment of chemical dependency, or nicotine use, the treatment may take place in facilities licensed to provide alcoholism or chemical dependency services under Chapter 2 (commencing with Section 1250) of Division 2.

SEC. 2. Section 10123.6 of the Insurance Code is amended to read:

10123.6. On and after January 1, 1990, every insurer issuing group disability insurance which covers hospital, medical, or surgical expenses shall offer coverage for the treatment of alcoholism under such terms and conditions as may be agreed upon between the group policyholder and the insurer. Every insurer shall communicate the availability of such coverage to all group policyholders and to all prospective group policyholders with whom they are negotiating.

If the group subscriber or policyholder agrees to such coverage or to coverage for treatment of chemical dependency, or nicotine use, the treatment may take place in facilities licensed to provide alcoholism or chemical dependency services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

Treatment for nicotine use may be subject to separate deductibles, copayments, and overall cost limitations as determined by the policy.

SEC. 3. Section 10123.14 is added to the Insurance Code, to read:

10123.14. On and after January 1, 1990, every self-insured employee welfare benefit plan containing hospital, medical, or surgical expense benefits or service benefits may provide coverage for the treatment of alcoholism, chemical dependency, or nicotine use under such terms and conditions as may be agreed upon between

the self-insured welfare benefit plan and the member, where the treatment may take place in facilities licensed to provide alcoholism or chemical dependency services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

Treatment for nicotine use may be subject to separate deductibles, copayments, and overall cost limitations as determined by the plan.

SEC. 4. Section 11512.14 of the Insurance Code is amended to read:

11512.14. On and after January 1, 1990, every nonprofit hospital service plan that covers hospital, medical or surgical expenses on a group basis shall offer coverage for the treatment of alcoholism, under such terms and conditions as may be agreed upon between the plan and the group contract holder. Every nonprofit hospital service plan shall communicate the availability of such coverage to all group contract holders, and to all group contract holders with whom they are negotiating.

If the group subscriber or policyholder agrees to such coverage or to coverage for treatment of chemical dependency, or nicotine use, the treatment may take place in facilities licensed to provide alcoholism or chemical dependency services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

Treatment for nicotine use may be subject to separate deductibles, copayments, and overall cost limitations as determined by the plan.

SEC. 5. Nothing in this act shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in an existing policy or plan. The Legislature intends in this act to provide that chemical dependency services are deemed to be covered if the policy or plan includes coverage for chemical dependency.

CHAPTER 689

An act to amend Section 14105.4 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 14105.4 of the Welfare and Institutions Code is amended to read:

14105.4. (a) The department shall schedule and conduct a public regulatory hearing to consider the addition of a drug to, or the deletion of a drug from, the Medi-Cal drug formulary five working days subsequent to the Medical Therapeutic and Drug Advisory Committee meeting which shall meet at least every four months.

The public hearing may consist of written testimony only, and the hearing record shall be closed at the end of the public hearing.

(b) The department shall make available 45 days prior to the public hearing the department's estimate of any anticipated costs or savings to the state from adding a drug product to, or deleting a drug product from, the Medi-Cal drug formulary.

(c) Whenever the department accepts a completed petition to add a drug product to the Medi-Cal drug formulary and it is not processed pursuant to Section 14105.9, it shall be scheduled for review at the next regularly scheduled Medical Therapeutic and Drug Advisory Committee meeting and public regulatory hearing, unless the meeting and hearing are scheduled to occur within 120 days, in which case the drug product may be scheduled for the following hearing.

(d) The director shall issue a final decision regarding the drug product and shall submit any regulation adding a drug product to, or deleting a drug product from, the Medi-Cal drug formulary to the Office of Administrative Law, along with the completed rulemaking record, within seven months after the hearing prescribed in subdivision (a). This section shall not, however, be construed in a manner which results in the disapproval or invalidation of a regulation for failure to comply with the time frames prescribed in this subdivision and subdivisions (a) and (c).

(e) (1) Except as provided in paragraph (2), the criteria used by the department in deciding whether a drug product shall be added to or deleted from the formulary shall be limited to the criteria adopted as department regulations. The criteria shall be specific and unambiguous.

(2) Notwithstanding paragraph (1), either of the following may be submitted by the manufacturer in lieu of the Summary Basis of Approval prepared by the federal Food and Drug Administration for that drug:

(A) The federal Food and Drug Administration's approval or approvable letter for the drug and federal Food and Drug Administration's approved labeling.

(B) The federal Food and Drug Administration's medical officers' and pharmacologists' reviews and the federal Food and Drug Administration's approved labeling.

(f) Departmental requests for information from persons filing drug petitions to which this section applies shall be specific and unambiguous and shall be made solely for the purpose of addressing the criteria utilized in accordance with subdivision (e).

(g) All published studies received by the department pursuant to a drug petition prior to the close of the public regulatory hearing record shall be accepted and considered by the department.

(h) Whenever the director decides to reject a petition to add a drug product to, or delete a drug product from, the formulary, the director shall notify the petitioner directly and in writing indicating the reason and specifying the criteria utilized in reaching the

decision.

(i) The department shall accept a petition for a drug that has been rejected by the director upon the submission of another complete petition containing substantial new information that addresses the reason or reasons for rejection stated by the director pursuant to subdivision (h). Any petition accepted pursuant to this subdivision shall be processed in accordance with subdivision (c), or Section 14105.9, whichever is applicable.

CHAPTER 690

An act to add Section 33105.6 to the Public Resources Code, relating to recreation.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 33105.6 is added to the Public Resources Code, to read:

33105.6. The recreational trail corridor for the Rim of the Valley Trail shall include the Santa Clarita Woodlands portion of the Santa Susana Mountains. The executive director of the conservancy shall file a map with the Secretary of State by March 1, 1990, showing the revised trail corridor boundary including the Santa Clarita Woodlands. The boundaries of the addition to the trail corridor shall substantially conform to the boundaries of the Santa Clarita Woodlands depicted in the map included in the Preliminary Study of Possible Parkland Acquisition in the Santa Susana Mountains (March 1, 1989) by the Department of Parks and Recreation. Nothing in this section shall be interpreted to inhibit the development of facilities necessary for the protection of public health and safety.

CHAPTER 691

An act to amend Section 5405 of the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 5405 of the Business and Professions Code is amended to read:

5405. Notwithstanding any other provision of this chapter, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any interstate or primary highway, other than any of the following:

(a) Directional or other official signs or notices that are required or authorized by law, including, but not limited to, signs pertaining to natural wonders and scenic and historical attractions, and which comply with regulations adopted by the director relative to their lighting, size, number, spacing, and any other requirements as may be appropriate to implement this chapter which are consistent with national standards adopted by the United States Secretary of Transportation pursuant to subdivision (c) of Section 131 of Title 23 of the United States Code.

(b) Advertising displays advertising the sale or lease of the property upon which they are located, if all advertising displays within 660 feet of the edge of the right-of-way of a bonus segment comply with the regulations adopted under Sections 5251 and 5415.

(c) Advertising displays which advertise the business conducted, services rendered, or goods produced or sold upon the property upon which the advertising display is placed, if the display is upon the same side of the highway as the advertised activity; and if all advertising displays within 660 feet of the right-of-way of a bonus segment comply with the regulations adopted under Sections 5251, 5403, and 5415; and except that no advertising display shall be placed after January 1, 1971, if it contains flashing, intermittent, or moving lights (other than that part necessary to give public service information, including, but not limited to, the time, date, temperature, weather, or similar information, or a message center display as defined in subdivision (d)).

(d) (1) Message center displays which comply with Article 6 (commencing with Section 5350) and Article 7 (commencing with Section 5400). As used in this subdivision, message center displays are displays which have a changeable message which may be changed by electronic processes or by remote control. The illumination of a message center display is not the use of a flashing, intermittent, or moving light for purposes of subdivision (b) of Section 5408, except that no message center display may include any illumination which is in motion or appears to be in motion or changes in intensity or exposes its message for less than four seconds, nor may the interval between messages be less than one second. No message center display may be placed within 1,000 feet of another message center display on the same side of the highway. No message center display may be placed in violation of Section 131 of Title 23 of the United States Code.

(2) Any message center display located beyond 660 feet from the edge of the right-of-way of an interstate or primary highway and permitted by a city, county, or city and county on or before December 31, 1988, is in compliance with Article 6 (commencing

with Section 5350) and Article 7 (commencing with Section 5400) for purposes of this section.

(3) Any message center display legally placed on or before December 31, 1989, which does not conform with this section may continue to be maintained under its existing criteria if it advertises only the business conducted, services rendered, or goods produced or sold upon the property upon which the display is placed.

(4) This subdivision does not prohibit the adoption by a city, county, or city and county of restrictions or prohibitions affecting off-premises message center displays which are equal to or greater than those imposed by this subdivision, if that ordinance or regulation does not restrict or prohibit on-premises advertising displays, as defined in Chapter 2.5 (commencing with Section 5490).

(e) Advertising displays erected or maintained pursuant to regulations of the director, not inconsistent with the national policy set forth in subdivision (f) of Section 131 of Title 23 of the United States Code and the standards promulgated thereunder by the Secretary of Transportation, and designed to give information in the specific interest of the traveling public.

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

CHAPTER 692

An act to add Section 66516 to the Government Code, relating to the Metropolitan Transportation Commission.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 66516 is added to the Government Code, to read:

66516. The commission, in coordination with the transit operator coordinating council established by the commission pursuant to Section 29142.4 of the Public Utilities Code, shall adopt rules and regulations to promote the coordination of fares and schedules for all public transit systems within its jurisdiction. The commission shall require every system to enter into a joint fare revenue sharing

agreement with connecting systems consistent with the commission's rules and regulations.

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 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 693

An act to amend Sections 418.10, 484.040, 706.105, 720.320, 877.6, and 1005 of the Code of Civil Procedure, to amend Section 1043 of the Evidence Code, and to amend Section 946.6 of the Government Code, relating to civil procedure.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 418.10 of the Code of Civil Procedure is amended to read:

418.10. (a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion either or both:

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

(2) To stay or dismiss the action on the ground of inconvenient forum.

(b) The notice shall designate, as the time for making the motion, a date not more than 30 days after filing of the notice. The notice shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The service and filing of the notice shall extend the defendant's time to plead until 15 days after service upon him or her of a written notice of entry of an order denying his or her motion, except that for good cause shown the court may extend the defendant's time to plead for an additional period not exceeding 20 days.

(c) If the motion is denied by the trial court, the defendant, within 10 days after service upon him or her of a written notice of entry of an order of the court denying his or her motion, or within any further time not exceeding 20 days that the trial court may for good cause

allow, and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or staying or dismissing the action. The defendant shall file or enter his or her responsive pleading in the trial court within the time prescribed by subdivision (b) unless, on or before the last day of the defendant's time to plead, he or she serves upon the adverse party and files with the trial court a nctice that he or she has petitioned for a writ of mandate. The service and filing of the notice shall extend the defendant's time to plead until 10 days after service upon him or her of a written notice of the final judgment in the mandate proceeding. The time to plead may for good cause shown be extended by the trial court for an additional period not exceeding 20 days.

(d) No default may be entered against the defendant before expiration of his or her time to plead, and no motion under this section, or under Section 473 or 473.5 when joined with a motion under this section, or application to the court or stipulation of the parties for an extension of the time to plead, shall be deemed a general appearance by the defendant.

SEC. 2. Section 484.040 of the Code of Civil Procedure is amended to read:

484.040 No order or writ shall be issued under this article except after a hearing. At the times prescribed by subdivision (b) of Section 1005, the defendant shall be served with all of the following:

(a) A copy of the summons and complaint.

(b) A notice of application and hearing.

(c) A copy of the application and of any affidavit in support of the application.

SEC. 3. Section 706.105 of the Code of Civil Procedure is amended to read:

706.105. (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a

notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed unless continued by the court for good cause. At the time prescribed by subdivision (b) of Section 1005, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the judgment debtor and, if the claim of exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of the service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order which reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer

who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date which precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds that amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of the order but prior to the receipt of notice of its termination, the judgment debtor may recover those amounts only from the levying officer if the levying officer still holds those amounts or, if those amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over those amounts to the levying officer, the employer shall promptly pay those amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. The appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

SEC. 4. Section 720.320 of the Code of Civil Procedure is amended to read:

720.320. (a) At the time prescribed in subdivision (b) of Section 1005, the petitioner shall do both of the following:

(1) Serve notice of the time and place of the hearing on the creditor or the third person (whichever person is not the petitioner) and on the debtor. Service shall be made personally or by mail.

(2) File a copy of the notice of hearing with the levying officer.

(b) The notice of the hearing shall include a statement that the

purpose of the hearing is to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the third-party claim.

SEC. 5. Section 877.6 of the Code of Civil Procedure is amended to read:

877.6. (a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice thereof in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within such additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

(3) The running of any period of time after which an action would be subject to dismissal pursuant to Section 583 shall be tolled during the period of review of a determination pursuant to this subdivision.

SEC. 6. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment

under Section 484.040 of the Code of Civil Procedure.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030 of the Code of Civil Procedure.

(3) Notice of Hearing for Claim of Exemption under Section 706.105 of the Code of Civil Procedure.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10 of the Code of Civil Procedure.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6 of the Code of Civil Procedure.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320 of the Code of Civil Procedure.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025 of the Code of Civil Procedure.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days before the time appointed for the hearing. However, if the notice is served by mail, the required 15-day period of notice before the time appointed for the hearing shall be increased by five days if the place of mailing and the place of address are within the State of California, 10 days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 days if either the place of mailing or the place of address is outside the United States. The provisions of subdivision (a) of Section 1013, extending the time within which a right may be exercised or an act may be done, do not apply to a notice of motion governed by this section. All papers opposing a motion so noticed shall be filed with the court and served on each party at least five court days, and all reply papers at least two court days before the time appointed for the hearing.

The court, or a judge thereof, may prescribe a shorter time.

SEC. 7. Section 1043 of the Evidence Code is amended to read:

1043. (a) In any case in which discovery or disclosure is sought of peace officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records. The written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are

sought.

(b) The motion shall include all of the following:

(1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard.

(2) A description of the type of records or information sought.

(3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records.

(c) No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions of this section except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of the hearing by the governmental agency identified as having the records.

SEC. 8. Section 946.6 of the Government Code is amended to read:

946.6. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a court which would be a competent court for the trial of an action on the cause of action to which the claim relates and which is located in a county or judicial district which would be a proper place for the trial of the action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court.

(b) The petition shall show each of the following:

(1) That application was made to the board under Section 911.4 and was denied or deemed denied.

(2) The reason for failure to present the claim within the time limit specified in Section 911.2.

(3) The information required by Section 910.

The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:

(1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from Section 945.4.

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time.

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the Attorney General, if the respondent is the state. However, if the petition involves a claim arising out of alleged actions or inactions of the Department of Transportation, service of the petition and notice of the hearing shall be made on the Attorney General or the Director of Transportation. Service on the Attorney General may be accomplished at any of the Attorney General's offices in Los Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of Transportation may be accomplished only at the Department of Transportation's headquarters office in Sacramento.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from Section 945.4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter.

CHAPTER 694

An act to add Sections 1540.2, 1569.406, and 1596.8915 to the Health and Safety Code, relating to care facilities.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 1540.2 is added to the Health and Safety Code, to read:

1540.2. Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, agent, or resident of a community care facility, of an impending or proposed inspection or evaluation of that

facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

SEC. 2. Section 1569.406 is added to the Health and Safety Code, to read:

1569.406. Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, agent, or resident of a residential care facility for the elderly of an impending or proposed inspection or evaluation of that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

SEC. 3. Section 1596.8915 is added to the Health and Safety Code, to read:

1596.8915. Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, or agent of a child day care facility of an impending or proposed inspection or evaluation of that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 695

An act to amend Section 4525 of the Government Code, relating to public contracts.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 4525 of the Government Code is amended to read:

4525. For purposes of this chapter, the following terms have the following meanings:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, engineering, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, engineering, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, engineering, land surveying, and construction project management services.

(d) "Architectural, engineering, and land surveying services" includes those professional services of an architectural, engineering, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

SEC. 2. Section 4525 of the Government Code is amended to read:

4525. For purposes of this chapter, the following terms have the following meanings:

(a) "Firm" means any individual. firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, engineering, and land surveying services" includes those professional services of an architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

SEC. 3. Section 2 of this bill incorporates amendments to Section 4525 of the Government Code proposed by this bill and SB 658. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 4525 of the Government Code, and (3) this bill is enacted after SB 658, in which case Section 4525 of the Government Code, as amended by SB 658, 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 696

An act to amend Section 33216 of the Public Resources Code, relating to the Santa Monica Mountains Conservancy.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 33216 of the Public Resources Code is amended to read:

33216. This division shall This division shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 697

An act to amend Section 270 to the Code of Civil Procedure, relating to court reporters.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 270 of the Code of Civil Procedure is amended to read:

270. (a) Notwithstanding Section 269 or any other provision of law, the Judicial Council shall establish a demonstration project to assess the costs, benefits, and acceptability of utilizing audio and video recording as a means of producing a verbatim record of proceedings in up to 11 superior court departments selected from the following counties:

(1) Not more than five departments in Los Angeles County.

(2) Not more than three departments in Orange County.

(3) Not more than two departments in Riverside County at the county seat.

(4) Not more than two departments in the central or west district of San Bernardino County.

(5) Not more than three departments in San Diego County.

(6) Not more than two departments in Santa Cruz County.

In each county, the project shall only commence after the board of supervisors adopts a resolution finding that there are sufficient funds for the project, and the superior court adopts local rules for implementation of the project. The demonstration project in each county shall terminate on or after January 1, 1991, but not later than January 1, 1992.

(b) In courtrooms operating under the demonstration project, audio or video recording may be used in lieu of the verbatim record prepared by a court reporter except in any criminal or juvenile proceedings.

(c) The Judicial Council shall adopt the following: (1) specifications for audio and video recording equipment; (2) rules for courtroom monitoring of audio and video recording; and (3) rules for certification of transcripts produced by means of audio and video recording.

(d) An audio or video recording or transcript produced therefrom when certified as being an accurate recording, videotaping, or transcript of the testimony and proceedings in a case, is prima facie evidence of that testimony and those proceedings.

(e) A transcript of a proceeding in a court of the demonstration project shall be provided by the court to a party in the same manner and form and at the same cost as a transcript prepared and delivered by an official court reporter. If a portion of a video or audio recording

fails or is unable to be understood, a transcript of such portion of the proceeding shall designate such condition as "inaudible" and "unintelligible," respectively.

(f) No presently employed permanent court reporter shall have his or her hours of employment reduced as a result of the demonstration project nor shall be required to prepare a transcript of a proceeding in a court of the demonstration project.

(g) The Judicial Council shall report to the Legislature on or before January 1, 1989, and thereafter as the Legislature may require, as to the costs, benefits, and acceptability of such audio or video recording as a method of keeping the verbatim court record.

(h) The Joint Rules Committee shall appoint an advisory committee consisting of two certified shorthand reporters, one person skilled in courtroom audio recording, one person skilled in courtroom video recording, two judges experienced in trial work, one court administrator, and two attorneys experienced in trial work to evaluate the demonstration project, and it shall report its findings and recommendations, including minority views, if any, to the Legislature at the same times as the Judicial Council reports pursuant to subdivision (g). The advisory committee shall be afforded access to all material relating to the conduct and operation of the demonstration project, including, but not limited to, copies of audio and video tapes, logs thereof, transcripts, transcript requests, and the identity of any vendor and consultants involved in the demonstration project.

SEC. 2. Section 1 of this act shall not become operative if Assembly Bill 1854 is enacted and amends Section 270 of the Code of Civil Procedure to take effect on or before January 1, 1990.

CHAPTER 698

An act to amend Sections 1213, 1214, 2898, 2920, 2924b, 2924c, 2924.3, 2931a, 2931b, 2934a, and 2954.10 of the Civil Code, and to amend Sections 580b, 580d, and 726 of the Code of Civil Procedure, relating to real property.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 22, 1989]

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

SECTION 1. Section 1213 of the Civil Code is amended to read:

1213. Every conveyance of real property or an estate for years therein acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of such a recorded conveyance may be recorded in any other county and when so

recorded the record thereof shall have the same force and effect as though it was of the original conveyance and where the original conveyance has been recorded in any county wherein the property therein mentioned is not situated a certified copy of the recorded conveyance may be recorded in the county where such property is situated with the same force and effect as if the original conveyance had been recorded in that county.

SEC. 2. Section 1214 of the Civil Code is amended to read:

1214. Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless the conveyance shall have been duly recorded prior to the record of notice of action.

SEC. 3. Section 2898 of the Civil Code is amended to read:

2898. (a) A mortgage or deed of trust given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

(b) The priority of the lien of a mortgage or deed of trust on an estate for years in real property shall be determined in the same manner as for determining the priority of a lien of a mortgage or deed of trust on real property.

SEC. 4. Section 2920 of the Civil Code is amended to read:

2920. (a) A mortgage is a contract by which specific property, including an estate for years in real property, is hypothecated for the performance of an act, without the necessity of a change of possession.

(b) For purposes of Sections 2924 to 2924h, inclusive, "mortgage" also means any security device or instrument, other than a deed of trust, that confers a power of sale affecting real property or an estate for years therein, to be exercised after breach of the obligation so secured, including a real property sales contract, as defined in Section 2985, which contains such a provision.

SEC. 5. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed,

shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof and the book and page where the deed of trust or mortgage is recorded or the recorder's number and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, 19__, in Book _____ page _____ records of _____ County, (or filed for record with recorder's serial number _____, _____ County) California, executed by _____ as trustor (or mortgagor) in which _____, is named as beneficiary (or mortgagee) and _____ as trustee be mailed to

_____ at _____.

Name Address

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature _____"

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(1) Within 10 days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the "last known address" of each trustor or mortgagor means the last business or residence address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur

no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(c) The mortgagee, trustee, or other person authorized to record the notice of default shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The Office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a "Notice of Lien for Postponed Property Taxes" has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail, an envelope, sent by registered

or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, which has recorded a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924 does not contain a request of the trustor or mortgagor for special notice at the address of the person given therein or does contain such a request but no address of the person is given therein and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 days after the filing of the notice of default. In lieu of publication a copy of the notice of default may be delivered personally to the trustor or mortgagor within that 10 days or at any time before publication is completed.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully

prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in any such request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

SEC. 6. Section 2924c of the Civil Code is amended to read:

2924c. (a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance or advances made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust or mortgage and the obligation secured thereby (including reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust or mortgage, and trustee's or attorney's fees, subject to subdivision (d)), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, that person may request the beneficiary or the mortgagee or their successors in interest to cause to be executed and recorded a notice of rescission which rescinds the declaration of default and demand for sale and upon receipt of a written request the beneficiary or mortgagee or their successors in interest shall cause to be executed

and recorded a notice of rescission. The request to execute and record a notice of rescission shall be directed to the person whose name and address is set forth in the notice required by subdivision (b). The beneficiary, or the mortgagee or their successors in interest, shall cause the notice of rescission to be recorded within 30 days of the receipt of the written request.

No charge, except for the recording fee, shall be made for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____,
(Date)

and will increase until your account becomes current. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay the amount stated above. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

(Name of beneficiary or mortgagee)

(Mailing address)

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]"

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or paragraph (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement upon the written request of the trustor pursuant to Section 2924g made to either the beneficiary or trustee not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee.

(d) Trustee's or attorney's fees which may be charged pursuant to

subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed two hundred dollars ($200) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

In the event the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period which exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created hereby is terminated five business days prior to the date of sale set

forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term "business day" has the same meaning as specified in Section 9.

SEC. 7. Section 2924.3 of the Civil Code is amended to read:

2924.3. (a) Except as provided in subdivisions (b) and (c), a person who has undertaken as an agent of a mortgagee, beneficiary, or owner of a promissory note secured directly or collaterally by a mortgage or deed of trust on real property or an estate for years therein, to make collections of payments from an obligor under the note, shall mail the following notices, postage prepaid, to each mortgagee, beneficiary or owner for whom the agent has agreed to make collections from the obligor under the note:

(1) A copy of the notice of default filed in the office of the county recorder pursuant to Section 2924 on account of a breach of obligation under the promissory note on which the agent has agreed to make collections of payments, within 15 days after recordation.

(2) Notice that a notice of default has been recorded pursuant to Section 2924 on account of a breach of an obligation secured by a mortgage or deed of trust against the same property or estate for years therein having priority over the mortgage or deed of trust securing the obligation described in paragraph (1), within 15 days after recordation or within three business days after the agent receives the information, whichever is later.

(3) Notice of the time and place scheduled for the sale of the real property or estate for years therein pursuant to Section 2924f under a power of sale in a mortgage or deed of trust securing an obligation described in paragraphs (1) or (2), not less than 15 days before the scheduled date of the sale or not later than the next business day after the agent receives the information, whichever is later.

(b) An agent who has undertaken to make collections on behalf of mortgagees, beneficiaries or owners of promissory notes secured by mortgages or deeds of trust on real property or an estate for years therein shall not be required to comply with the provisions of sudivision (a) with respect to a mortgagee, beneficiary or owner who is entitled to receive notice pursuant to subdivision (3) of Section 2924b or for whom a request for notice has been recorded pursuant to subdivision (2) of Section 2924b if the agent reasonably believes that the address of the mortgagee, beneficiary, or owner described in Section 2924b is the current business or residence address of that person.

(c) An agent who has undertaken to make collections on behalf of mortgagees, beneficiaries or owners of promissory notes secured by mortgages or deeds of trust on real property or an estate for years therein shall not be required to comply with the provisions of paragraph (1) or (2) of subdivision (a) if the agent knows or reasonably believes that the default has already been cured by or on behalf of the obligor.

(d) Any failure to comply with the provisions of this section shall

not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

SEC. 8. Section 2931a of the Civil Code is amended to read:

2931a. In any action brought to determine conflicting claims to real property, or for partition of real property or an estate for years therein, or to foreclose a deed of trust, mortgage, or other lien upon real property, or in all eminent domain proceedings under Section 1250.110 et seq., of the Code of Civil Procedure against real property upon which exists a lien to secure the payment of taxes or other obligations to an agency of the State of California, other than ad valorem taxes upon the real property, the state agency charged with the collection of the tax obligation may be made a party. In such an action, the court shall have jurisdiction to determine the priority and effect of the liens described in the complaint in or upon the real property or estate for years therein, but the jurisdiction of the court in the action shall not include a determination of the validity of the tax giving rise to the lien or claim of lien. The complaint or petition in the action shall contain a description of the lien sufficient to enable the tax or other obligation, payment of which it secures, to be identified with certainty, and shall include the name and address of the person owing the tax or other obligation, the name of the state agency that recorded the lien, and the date and place where the lien was recorded. Services of process in the action shall be made upon the agency, officer, board, commission, department, division, or other body charged with the collection of the tax or obligation. It shall be the duty of the Attorney General to represent the state agency in the action.

SEC. 9. Section 2931b of the Civil Code is amended to read:

2931b. In all actions in which the State of California is named a party pursuant to the provisions of Section 2931a and in which real property or an estate for years therein is sought to be sold, the Attorney General may, with the consent of the Department of Finance, bid upon and purchase that real property or estate for years.

SEC. 10. Section 2934a of the Civil Code is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968.

(2) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page where the trust deed is recorded and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated

to the trustee named in the deed of trust. A substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(3) As an alternative, a substitution may be accomplished with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary, or beneficiaries, by recording a single document without the necessity of (1) setting forth the names of all trustors and (2) the recording of the dates for all the deeds of trust for which a substitution of trustee is being made. However, no notice of default shall be valid unless a substitution complying with paragraph (2) has first been recorded.

(b) If the substitution is effected after a notice of default has been recorded but prior to the giving of the notice of sale, the beneficiary or beneficiaries shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b, and shall also give a copy of the substitution to the trustee then of record. In those cases, the substitution shall contain an acknowledgment signed and acknowledged by the trustee then of record of a receipt of a copy, or an affidavit of personal service of a copy, or of publication of notice of it in accordance with Section 6061 of the Government Code (showing also that a copy of the substitution had been mailed to the trustee at the trustee's last known address), and an affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

SEC. 11. Section 2954.10 of the Civil Code is amended to read:

2954.10. An obligee which accelerates the maturity date of the principal and accrued interest, pursuant to contract, on any loan secured by a mortgage or deed of trust on real property or an estate for years therein, upon the conveyance of any right, title, or interest in that property, may not claim, exact, or collect any charge, fee, or penalty for any prepayment resulting from that acceleration.

The provisions of this section shall not apply to a loan other than a loan secured by residential real property or any interest therein containing four units or less, in which the obligor has expressly waived, in writing, the right to repay in whole or part without penalty, or has expressly agreed, in writing, to the payment of a penalty for prepayment upon acceleration. For any loan executed on

or after January 1, 1984, this waiver or agreement shall be separately signed or initialed by the obligor and its enforcement shall be supported by evidence of a course of conduct by the obligee of individual weight to the consideration in that transaction for the waiver or agreement.

SEC. 12. Section 580b of the Code of Civil Procedure is amended to read:

580b. No deficiency judgment shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale, or under a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of that real property or estate for years therein, or under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser.

Where both a chattel mortgage and a deed of trust or mortgage have been given to secure payment of the balance of the combined purchase price of both real and personal property, no deficiency judgment shall lie at any time under any one thereof if no deficiency judgment would lie under the deed of trust or mortgage on the real property or estate for years therein.

SEC. 13. Section 580d of the Code of Civil Procedure is amended to read:

580d. No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property or an estate for years therein hereafter executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.

This section does not apply to any deed of trust, mortgage or other lien given to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or which is made by a public utility subject to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

SEC. 14. Section 726 of the Code of Civil Procedure is amended to read:

726. (a) There can be but one form of action for the recovery of any debt or the enforcement of any right secured by mortgage upon real property or an estate for years therein, which action shall be in accordance with the provisions of this chapter. In the action the court may, by its judgment, direct the sale of the encumbered real property or estate for years therein (or so much of the real property or estate for years as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, the expenses of levy and sale, and the amount due plaintiff, including, where the mortgage provides for the payment of attorney's fees, the sum for attorney's fees as the court shall find reasonable, not exceeding the

amount named in the mortgage.

(b) The decree for the foreclosure of a mortgage or deed of trust secured by real property or estate for years therein shall declare the amount of the indebtedness or right so secured and, unless judgment for any deficiency there may be between the sale price and the amount due with costs is waived by the judgment creditor or a deficiency judgment is prohibited by Section 580b, shall determine the personal liability of any defendant for the payment of the debt secured by the mortgage or deed of trust and shall name the defendants against whom a deficiency judgment may be ordered following the proceedings prescribed in this section. In the event of waiver, or if the prohibition of Section 580b is applicable, the decree shall so declare and there shall be no judgment for a deficiency. In the event that a deficiency is not waived or prohibited and it is decreed that any defendant is personally liable for the debt, then upon application of the plaintiff filed at any time within three months of the date of the foreclosure sale and after a hearing thereon at which the court shall take evidence and at which hearing either party may present evidence as to the fair value of the real property or estate for years therein sold as of the date of sale, the court shall render a money judgment against the defendant or defendants for the amount by which the amount of the indebtedness with interest and costs of levy and sale and of action exceeds the fair value of the real property or estate for years therein sold as of the date of sale. In no event shall the amount of the judgment, exclusive of interest from the date of sale and of costs exceed the difference between the amount for which the real property or estate for years therein was sold and the entire amount of the indebtedness secured by the mortgage or deed of trust. Notice of the hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for the hearing. Upon application of any party made at least 10 days before the date set for the hearing the court shall, and upon its own motion the court at any time may, appoint one of the probate referees provided for by law to appraise the real property or estate for years therein sold as of the time of sale. The probate referee shall file the appraisal with the clerk and the appraisal is admissible in evidence. The probate referee shall take and subscribe an oath to be attached to the appraisal that the referee has truly, honestly and impartially appraised the real property or estate for years therein to the best of the referee's knowledge and ability. Any probate referee so appointed may be called and examined as a witness by any party or by the court itself. The court shall fix the compensation, in an amount as determined by the court to be reasonable, but the fees shall not exceed similar fees for similar services in the community where the services are rendered, which may be taxed and allowed in like manner as other costs.

(c) No person holding a conveyance from or under the mortgagor of real property or estate for years therein, or having a lien thereon,

which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action need be made a party to the action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the person holding the unrecorded conveyance or lien as if the person had been a party to the action. Notwithstanding Section 701.630, the sale of the encumbered real property or estate for years therein does not affect the interest of a person who holds a conveyance from or under the mortgagor of the real property or estate for years therein mortgaged, or has a lien thereon, if the conveyance or lien appears of record in the proper office at the time of the commencement of the action and the person holding the recorded conveyance or lien is not made a party to the action.

(d) If the real property or estate for years therein mortgaged consists of a single parcel, or two or more contiguous parcels, situated in two or more counties, the court may, in its judgment, direct the whole thereof to be sold in one of the counties, and upon these proceedings, and with like effect, as if the whole of the property were situated in that county.

(e) If a deficiency judgment is waived or prohibited, the real property or estate for years therein shall be sold as provided in Section 716.020. If a deficiency judgment is not waived or prohibited, the real property or estate for years therein shall be sold subject to the right of redemption as provided in Sections 729.010 to 729.090, inclusive.

(f) Notwithstanding this section or any other provision of law to the contrary, any person authorized by this state to make or arrange loans secured by real property or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property or an estate for years therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.

(g) Subdivision (f) does not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars ($150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.

(h) Any action maintained pursuant to subdivision (f) for damages shall not constitute a money judgment for deficiency, or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.

SEC. 15. It is the intent of the Legislature in enacting this act to clarify that the "one action rule" set forth in Section 726 of the Code

of Civil Procedure applies to leasehold mortgages, which is consistent with the legislative history of Section 726 and the Commercial Code and is consistent with other statutes contained in the Code of Civil Procedure, the Civil Code, and the Commercial Code regarding the creation and enforcement of mortgages and deeds of trust. This act is specifically intended to abrogate the holding in Taylor v. Bouissiere, 195 Cal. App. 3d 1197, that the enforcement rights in leasehold mortgages are to be governed by the rules regarding personal property, which is inconsistent with this legislative history and other statutes and would result in a gap in the method of enforcement, because the rules regarding enforcement of personal property interests are specifically made inapplicable to leasehold mortgages.

Nothing in this act shall be construed to affect the applicability of the code sections amended by this act to the lien of mortgages or deeds of trust in estates in real property specified in subdivisions (1) and (2) of Section 761 of the Civil Code.

CHAPTER 699

An act to amend Section 830.11 of the Penal Code, relating to power of arrest, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 22, 1989.]

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

SECTION 1. Section 830.11 of the Penal Code is amended 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.

(4) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(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. 2. Section 830.11 of the Penal Code is amended 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 10000) and Part 2 (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.

(4) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of

the State Lands Commission.

(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. 3. Section 2 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by both this bill and SB 1316. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 830.11 of the Penal Code, and (3) this bill is enacted after SB 1316, in which case Section 830.11 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 1316, at which time Section 2 of this bill shall become operative.

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 Department of Justice currently provides enforcement and investigation services for the State Lands Commission under contract. The Department of Justice is not able to provide personnel for these activities after June 30, 1989. In order that the State Lands Commission may continue with enforcement and investigation relative to the laws and property it administers, it is necessary that this act go into immediate effect.

CHAPTER 700

An act to amend Section 53066 of, to add Section 53066.3 to, the Government Code, relating to cable television.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. (a) The Legislature declares that because federal and state courts are examining the permissible scope of regulation of cable television under the First Amendment, it is in the public interest to declare a comprehensive policy involving the governmental interests pertinent to the regulation of a cable television franchise.

(b) The Legislature finds and declares the following:

(1) The First Amendment interests regarding the provision and

reception of cable television are varied and numerous.

(2) Access to aboveground facilities may be conditioned upon the franchisee's ability to minimize any unreasonable impact on the aesthetics of private and public property in the area.

(3) Access to facilities such as utility poles and conduits may be limited, so long as the limitation is not contrary to the intent of Section 767.5 of the Public Utilities Code, and may be regulated to reflect the policies of the city, county, or city and county regarding the public's right to receive information from a diversity of sources.

(4) Access to facilities such as easements, rights-of-way, and streets may be limited to effectuate certain local governmental interests, such as, but not limited to, minimizing unreasonable disruption of existing underground facilities and unreasonable disruption of traffic.

(5) If a city, county, or city and county elects to grant an additional franchise in any given area, it shall weigh the positive and negative impacts on the community being served.

SEC. 2. Section 53066 of the Government Code is amended to read:

53066. (a) Any city or county or city and county in the State of California may, pursuant to such provisions as may be prescribed by its governing body, authorize by franchise or license the construction of a community antenna television system. In connection therewith, the governing body may prescribe such rules and regulations as it deems advisable to protect the individual subscribers to the services of such community antenna television system.

(b) The award of the franchise or license may be made on the basis of quality of service, rates to the subscriber, income to the city, county or city and county, experience and financial responsibility of the applicant plus any other consideration that will safeguard the local public interest, rather than a cash auction bid.

(c) The maximum franchise fee for any franchise or license hereafter awarded pursuant to this section or pursuant to any ordinance adopted under authority of this section by any city or county or city and county shall be 5 percent of the grantee's gross receipts from its operations within such city or county or city and county. Intrastate telecommunications services subject to taxation under Part 22 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code shall not be included, prior to July 1, 1988, in the gross receipts subject to any cable television franchise fee.

(d) Any cable television franchise or license awarded by a city or county or city and county pursuant to this section may authorize the grantee thereof to place wires, conduits and appurtenances for the community antenna television system along or across such public streets, highways, alleys, public properties, or public easements of said city or county or city and county. Public easements, as used in this section, shall include but shall not be limited to any easement created by dedication to the city or county or city and county for

public utility purposes or any other purpose whatsoever.

(e) No person may commence the construction of a cable television system without a franchise or license granted by the city, county, or city and county in which the cable television system will operate.

SEC. 3. Section 53066.3 is added to the Government Code, to read:

53066.3. (a) If a city, county, or city and county elects to grant an additional cable television franchise in an area where a franchise has already been granted to a cable television operator, it shall do so only after a public hearing noticed pursuant to Section 6066, in a newspaper of general circulation as defined in Section 6000, where all of the following have been considered:

(1) Whether there will be significant positive or negative impacts on the community being served.

(2) Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area.

(3) Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code.

(4) Whether the franchise applicant has the technical and financial ability to perform.

(5) Whether there is any impact on the franchising authority's interest in having universal cable service.

(6) Whether other societal interests generally considered by franchising authorities will be met.

(7) Whether the operation of an additional cable television system in the community is economically feasible.

(8) Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.

(b) Nothing in this section prevents any city, county, or city and county from considering the approval or denial of an additional cable service franchise in all or any part of the area of the city, county, or city and county, or the imposing of additional terms and conditions upon the granting of the franchise, as the city, county, or city and county determines is necessary or appropriate.

(c) The city, county, or city and county shall make a final determination as to whether to grant the additional franchise within *six months of the application date unless the jurisdiction can establish* that the applicant has unreasonably delayed proceedings designed to consider the matters set forth in paragraphs (1) to (8), inclusive, of subdivision (a).

(d) Any franchise to provide cable television service in an area already franchised and served by an existing cable operator shall require the franchisee to wire and serve the same geographical area, and shall contain the same public, educational, and governmental access requirements that are set forth in the existing franchise.

CHAPTER 701

An act to add Sections 3705.6 and 4009.6 to the Elections Code, relating to initiative measures.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 3705.6 is added to the Elections Code, to read:

3705.6. On or before April 1 of each odd-numbered year, the county clerk of each county shall file a report with the Secretary of State containing the following information:

(a) The number of county initiative petitions circulated during the preceding two calendar years which did not qualify for the ballot, and the number of these proposed initiatives for which reports were prepared pursuant to Section 3705.5.

(b) With respect to county initiative measures that qualified for the ballot in the preceding two calendar years, the number which were approved by the voters, and the number of these ballot measures for which reports were prepared pursuant to Section 3705.5.

(c) With respect to county initiative measures that qualified for the ballot in the preceding two calendar years, the number which were not approved by the voters, and the number of these ballot measures for which reports were prepared pursuant to Section 3705.5.

SEC. 2. Section 4009.6 is added to the Elections Code, to read:

4009.6. On or before April 1 of each odd-numbered year, the clerk of each legislative body shall file a report with the Secretary of State containing the following information:

(a) The number of municipal initiative petitions circulated during the preceding two calendar years which did not qualify for the ballot, and the number of these proposed initiatives for which reports were prepared pursuant to Section 4009.5.

(b) With respect to municipal initiative measures that qualified for the ballot in the preceding two calendar years, the number which were approved by the voters, and the number of these ballot measures for which reports were prepared pursuant to Section 4009.5.

(c) With respect to municipal initiative measures that qualified for the ballot in the preceding two calendar years, the number which were not approved by the voters, and the number of these ballot measures for which reports were prepared pursuant to Section 4009.5.

SEC. 3. The Legislature declares that this act mandates a new program or higher level of service by local agencies or school

districts. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the state by this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 702

An act to amend Sections 1203.01 and 1774 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 1203.01 of the Penal Code is amended to read:

1203.01. Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted. Immediately after the filing of those statements and reports, the clerk of the court shall mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the Department of Corrections at the prison or other institution to which the person convicted is delivered. Within 60 days after judgment has been pronounced, the clerk shall mail a copy of the charging documents, the transcript of the proceedings at the time of the defendant's guilty plea, if the defendant pleaded guilty, and the transcript of the proceedings at the time of sentencing, with postage prepaid, to the prison or other institution to which the person convicted is delivered. The clerk shall also mail a copy of any statement submitted by the court, district attorney, or law enforcement agency, pursuant to this section, with postage prepaid, addressed to the attorney for the defendant, if any, and to the

defendant, in care of the Department of Corrections, and a copy of any statement submitted by the attorney for the defendant, with postage prepaid, shall be mailed to the district attorney.

SEC. 2. Section 1774 of the Penal Code, as added by Senate Bill 25 of the 1989–90 Regular Session of the Legislature, is amended to read:

1774. Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted. Immediately after the filing of those statements and reports, the clerk of the court shall mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the Department of Corrections at the prison or other institution to which the person convicted is delivered. Within 60 days after judgment has been pronounced, the clerk shall mail a copy of the charging documents, the transcript of the proceedings at the time of the defendant's guilty plea, if the defendant pleaded guilty, and the transcript of the proceedings at the time of sentencing, with postage prepaid, to the prison or other institution to which the person convicted is delivered. The clerk shall also mail a copy of any statement submitted by the court, district attorney, or law enforcement agency, pursuant to this section, with postage prepaid, addressed to the attorney for the defendant, if any, and to the defendant in care of the Department of Corrections, and a copy of any statement submitted by the attorney for the defendant, with postage prepaid, shall be mailed to the district attorney.

SEC. 3. Section 2 of this bill shall only become operative if this bill and Senate Bill 25 are both chaptered, and become effective on January 1, 1990, Senate Bill 25 adds Section 1774 to the Penal Code, and this bill is chaptered last, in which case Section 1 of this bill shall not become operative.

CHAPTER 703

An act to amend Sections 69948, 69993, and 70045.6 of the Government Code, relating to courts.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the compensation for superior court reporters shall be that prescribed by Section 69993.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred dollars ($100) a day, or any fractional part thereof.

(e) In Mariposa County, the board of supervisors may, by ordinance or resolution, prescribe the rate of compensation for superior court reporters.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or any fractional part thereof.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Sections 70045.11 and 74839, the fee for reporting testimony and proceedings in contested cases is one hundred ten dollars ($110) per day, or any fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof; provided that the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

SEC. 2. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the compensation for superior court reporters shall be that prescribed by Section 69993.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and

proceedings in contested cases is one hundred dollars ($100) a day, or any fractional part thereof.

(e) In Mariposa County, the board of supervisors may, by ordinance or resolution, prescribe the rate of compensation for superior court reporters.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Sections 70045.11 and 74839, the fee for reporting testimony and proceedings in contested cases is one hundred ten dollars ($110) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance,

prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is one hundred twenty-five dollars ($125) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

SEC. 2.5. Section 69993 of the Government Code is amended to read:

69993. In San Joaquin County, each superior court reporter shall be paid a salary to be established by the San Joaquin County Board of Supervisors.

The number of superior court reporters shall not be less than the number of San Joaquin County Superior Court judicial positions.

SEC. 3. Section 70045.6 of the Government Code is amended to read:

70045.6. (a) In Kern County each regular reporter shall be paid a biweekly salary of one thousand four hundred five dollars and fifty-two cents ($1,405.52). The court reporter shall be paid biweekly pursuant to the payroll procedures in effect in the County of Kern.

(b) Beginning January 1, 1980, the board of supervisors may adjust the salary of each regular official reporter as part of its county employee compensation plan. Any adjustment to reporter salaries shall be effective on the same date as the effective date of the board's action to adjust compensation of other county employees. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

(c) In addition to the compensation provided for in this section, each regular official reporter shall be entitled to and shall receive, on the same basis as other county employees, the same benefits and privileges with respect to retirement, group insurance, sick leave, and vacations. Court reporters shall observe the same holidays as other court employees. For the purposes of determining participation in the county retirement system, the salary provided for such reporters in this section shall be deemed their entire compensation.

(d) Each pro tempore official reporter shall be paid one hundred dollars ($100) a day for the days he or she is actually on duty under

order of the court.

SEC. 4. Section 2 of this bill incorporates amendments to Section 69948 of the Government Code proposed by both this bill and AB 743. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 69948 of the Government Code, and (3) this bill is enacted after AB 743, in which case Section 69948 of the Government Code, as amended by AB 743, 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.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 704

An act to repeal Chapter 21 (commencing with Section 9900) of Division 3 of the Business and Professions Code, and to add Title 2.91 (commencing with Section 1812.500) to Part 4 of Division 3 of the Civil Code, relating to employment agencies, and making an appropriation therefor.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Chapter 21 (commencing with Section 9900) of Division 3 of the Business and Professions Code is repealed.

SEC. 2. Title 2.91 (commencing with Section 1812.500) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 2.91. EMPLOYMENT AGENCY, EMPLOYMENT COUNSELING, AND JOB LISTING SERVICES ACT

CHAPTER 1. GENERAL PROVISIONS

1812.500. This title shall be known and cited as the Employment Agency, Employment Counseling, and Job Listing Services Act.

1812.501. (a) The term "employment agency" or "agency" means:

(1) Any person who, for a fee or other valuable consideration to

be paid, directly or indirectly by a jobseeker, performs, offers to perform or represents it can or will perform any of the following services:

(A) Procures, offers, promises, or attempts to procure employment or engagements for others or employees for employers.

(B) Registers persons seeking to procure or retain employment or engagement.

(C) Gives information as to where and from whom this help, employment, or engagement may be procured.

(D) Provides employment or engagements.

The term "employment agency" or "agency" shall not mean or include any employment counseling service or any job listing service.

(2) Any person who offers, as one of its main objects or purposes, to procure employment for any person who will pay for its services, or that collects dues, tuition, or membership or registration fees of any sort, where the main object of the person paying the same is to secure employment.

(b) (1) The term "employment counseling service" means any person who offers, advertises or represents it can or will provide any of the following services for a fee: career counseling, vocational guidance, aptitude testing, executive consulting, personnel consulting, career management, evaluation, or planning, or the development of resumés and other promotional materials relating to the preparation for employment. The term "employment counseling service" shall not mean or include persons who provide services strictly on an hourly basis with no financial obligation required of the consumer beyond the hourly fee for services rendered. An "employment counseling service" does not include the functions of an "employment agency" as defined in subdivision (a).

(2) The term "employment counseling service" does not include:

(A) Businesses which are retained by, act solely on behalf of, and are compensated solely by, prior or current employers, which do not require any "customer" to sign a contract, and do not in any way hold any "customer" liable for fees.

(B) Any provider of vocational rehabilitation in which the counseling services are paid for by insurance benefits, where the counseling is provided as a result of marital dissolution or separation proceedings to prepare one of the spouses for reentry into the job market and where the fees are paid by some party other than the person receiving the counseling services.

The exemption provided in this subdivision does not apply to any vocational rehabilitation counselor who receives any payments directly from the individual customer receiving the counseling.

(C) Any person who engages solely in the preparation of resumés and cover letters, provided that the resumé writing service does not advertise or hold itself out as offering other job seeking or placement services and does not charge more than three hundred dollars ($300) for any resumé, cover letter, or combination of both to any single

customer in any individual transaction.

(D) Any public educational institution.

(E) Any private educational institution established solely for educational purposes which, as a part of its curriculum, offers employment counseling to its student body and which institution conforms to the requirements of Section 94310 of the Education Code.

(F) A psychologist or psychological corporation licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 providing psychological assessment, career or occupational counseling, or consultation and related professional services within their scope of practice.

(G) Educational psychologists licensed pursuant to Chapter 13 (commencing with Section 4986) of Division 2 providing counseling services within their scope of practice.

(c) The term "job listing service" means any person who provides, offers, or represents it can or will provide any of the following services, for a fee or other valuable consideration to be paid, directly or indirectly, by the jobseeker in advance of, or contemporaneously with, performance of these services: matches jobseekers with employment opportunities, providing or offering to provide jobseekers lists of employers or lists of job openings or like publications, or preparing resumés or lists of jobseekers for distribution to potential employers, but not otherwise providing or representing it can or will provide services for procurement of employment.

(d) A "nurse's registry" as defined in subdivision (b) of Section 1812.524 is an employment agency. However, unless otherwise provided for in this title, a nurse's registry shall not be required to comply with Chapter 2 (commencing with Section 1812.503) regulating employment agencies but shall instead be required to comply with Chapter 7 (commencing with Section 1812.524).

(e) "Jobseeker" means a person seeking employment.

(f) "Employer" means any individual, company, partnership, association, corporation, or agent, employee or representative for whom or for which an employment agency or job listing service attempts to obtain an employee or to place a jobseeker.

(g) "Job order" means any written or oral instruction, direction, or permission granted by an employer or its agent to an employment agency or job listing service to refer jobseekers for a specified job.

(h) "Domestic agency" means any agency which provides or attempts to provide employment by placement of domestic help in private homes.

(i) "Deposit" means any money or valuable consideration received by an employment agency or job listing service from a jobseeker for referring the jobseeker to a position of employment prior to the jobseeker's acceptance of a position.

(j) "Fee" means:

(1) Any money or other valuable consideration paid, or promised

to be paid, for services rendered or to be rendered by any person conducting an employment agency, employment counseling service, or job listing service under this title.

(2) Any money received by any person in excess of that which has been paid out by him for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(k) "Registration fee" means any charge made, or attempted to be made, by an employment agency for registering or listing an applicant for employment, for letter writing, or any charge of a like nature made, or attempted to be made without having a bona fide order for the placement of the applicant in a position.

(*l*) "Person" means any individual, corporation, partnership, trust, association, or other organization.

1812.502. (a) This title does not apply to any person who provides any of the services described in subdivision (a) of Section 1812.501 and who charges fees exclusively to employers for those services. The exemption from regulation provided by this subdivision does not apply to any person who provides babysitting or domestic employment for others. This subdivision does not apply to an employment counseling service as defined in subdivision (b) of Section 1812.501.

(b) This title shall not apply to any nonprofit corporation, organized for the purpose of economic adjustment, civic betterment, and the giving of vocational guidance and placement to its members, or others, including employment counseling services, when all of the following conditions exist:

(1) None of the directors, officers, or employees thereof receive any profit other than a nominal salary for services performed for the organization or corporation.

(2) No fee is charged for those services, though a voluntary contribution may be requested.

(3) Membership dues or fees charged are used solely for maintenance of the organization or corporation.

(c) Nothing in this title shall apply to a nonprofit corporation which has been formed in good faith for the promotion and advancement of the general professional interests of its members and which maintains a placement service principally engaged in securing employment for such members with the state or any county, city, district or other public agency under contracts providing employment for one year or longer, or any nonprofit corporation exempted by subdivision (b).

(d) This title shall not apply to a labor organization as defined in Section 1117 of the Labor Code, a newspaper of general circulation, bona fide newsletter, magazine, trade or professional journal, or other publication of general circulation, the main purpose of which is dissemination of news, reports, trade or professional information, or information not intended to assist in locating, securing, or procuring employment or assignments for others.

(e) As used in this title, "employment agency" or "agency" does

not include a nursing school, business school, or vocational school, except that if such a school charges a fee for placement, the school shall be an employment agency within the meaning of this title.

(f) (1) A job listing service which meets the requirements specified in paragraph (2) shall not be subject to any of the following: Sections 1812.515, 1812.516, 1812.517, and 1812.518; subdivisions (a) and (b), and paragraph (3) of subdivision (c), and subdivision (d) of Section 1812.519; paragraph (2) of subdivision (b), and subdivisions (c), (d), (e), and (f) of Section 1812.520; and Section 1812.521.

(2) A job listing service shall be exempt pursuant to paragraph (1) if it complies with all of the following:

(A) Does not provide, offer, or imply the offer of, services related to employment.

(B) Does not offer or sell lists of employers or job openings to jobseekers on an in-person basis.

(C) Maintains records of all its advertisements, identified by date and publication, and the sources of information used for the preparation of lists of employers and job openings, from which can be determined the accuracy of any statistics regarding success rate or similar statistics used in its advertising, promotional materials, or oral or written statements to jobseekers.

(D) Identifies, on each list of employers and job openings, its general source of information for jobs included on that list when the source of information is a publication or other public record.

(E) Provides, at or before the time of delivery of the list, a prominent written statement to the jobseeker granting the jobseeker a right to return the list for an immediate refund of the purchase price during a stated period of time which expires not less than 10 days from the date of delivery of the list. The list shall be deemed returned upon delivery to the address from which it was obtained or upon deposit in the mail properly addressed to that address, with postage prepaid.

CHAPTER 2. EMPLOYMENT AGENCIES

1812.503. (a) Every employment agency subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be three thousand dollars ($3,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or

omissions, or failure to provide the services of the employment agency in performance of the contract with the jobseeker, by the employment agency or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No employment agency shall conduct any business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the employment agency and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any employment agency fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the employment agency shall cease to conduct any business unless and until such time as a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) (1) When a deposit has been made in lieu of the bond pursuant to this section and Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(2) Approval and payment of the claims by the Secretary of State shall be in accordance with subdivisions (b), (c), (d), and (e) of Section 1812.105.

(3) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the employment agency, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the employment agency by the Secretary of State.

(4) When any claim or claims against a deposit in lieu of bond have been paid so as to reduce the principal amount of the deposit remaining available to pay claims below the principal amount required by this section, the employment agency shall cease to conduct any business unless and until such time as sufficient additional moneys have been deposited in the agency's deposit account with the Secretary of State to bring the deposit account balance available for the payment of claims up to the minimum amount required by this section.

1812.504. (a) Every employment agency shall give a written contract to every jobseeker from whom a fee or deposit is to be received, whether directly or indirectly. The original of the contract shall be given to the jobseeker at the time the jobseeker signs the contract and before the employment agency accepts any fee or deposit or the jobseeker becomes obligated to pay any such fee or

deposit. The contract shall contain all of the following:

(1) The name, address, and telephone number of the employment agency, and, if the employment agency has more than one office or location, the address and telephone number of the principal office or location providing services to the jobseeker.

(2) The name and address of the person giving the order for help, the date and consecutive number of the receipt of the order by the agency, and its manner of transmission.

(3) The name of the jobseeker, the name and address of the person to whom the jobseeker is sent for employment, and the address where the jobseeker is to report for employment.

(4) The date and consecutive number of the contract.

(5) The amount of the fee to be charged and to be collected from the jobseeker, including a statement that if the employment is terminated, the fee may not exceed gross earnings of the jobseeker in that employment, and the amount of the fee paid or advanced by the prospective employer and by whom paid or advanced.

(6) The kind of work or employment.

(7) The daily hours of work; the wages or salary, including any consideration or privilege; the benefits; and any other conditions of employment.

(8) If any labor trouble exists at the place of employment, that fact shall be stated in the contract.

(9) A contract expiration date which shall not be later than 180 days from the date of the referral or signing of the contract, whichever occurs first.

(10) Any other term, condition, or understanding agreed upon between the agency and the jobseeker.

(11) The following statement, with the caption in type no smaller than 10-point boldfaced type and the remainder in a size no smaller than that generally used throughout the contract, and in full capitals, boldface, or italics:

RIGHT TO REFUND

"If you pay all or any portion of a fee and fail to accept employment, the employment agency shall, upon your request, return the amount paid to you within 48 hours after your request for a refund.

"If you leave employment for just cause or are discharged for reasons other than misconduct connected with your work within 90 days from the starting date of employment, the agency shall reduce your fee to that payable for temporary employment and shall refund any excess paid within 10 days of your request for a refund.

"No fee larger than that for temporary employment may be charged to you for employment lasting 90 days or less unless the agency's fee schedules, contracts, and agreements provide for a further charge if you leave employment without just cause or are discharged for misconduct in connection with your work.

"If any refund due is not made within the time limits set forth above, the employment agency shall pay you an additional sum equal to the amount of the refund."

(b) All contracts shall be dated and shall be made and numbered consecutively, both copies to be signed by the jobseeker and the person acting for the employment agency. The original shall be given to the jobseeker and one copy shall be kept on file at the employment agency.

(c) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

(d) When a referral is made by telephone the agency shall execute the contract or receipt in triplicate and shall mail the original and duplicate to the jobseeker on the day the referral is made, with instructions that they be signed by the jobseeker and the duplicate returned to the agency. The date of mailing the contract or receipt to the jobseeker shall be entered thereon by the agency. The same contract or receipt shall not be used for more than one referral.

1812.505. (a) (1) An employment agency shall provide a copy of the agency's jobseeker fee schedule and payment terms to any jobseeker from whom a fee or deposit is to be received, prior to the jobseeker being interviewed by a counselor. The jobseeker fee schedule shall indicate the percentage of both the projected annual and first month's total gross earnings represented by those fees.

(2) In the schedule, the various employments or salary ranges by which the fee is to be computed or determined shall be classified, and in each class the maximum fee shall be fixed and shall include the charges of every kind rendered by the agency in each case or transaction on behalf of the prospective employee. Changes in the schedule may be made, but no change shall become effective until posted for not less than seven days in a conspicuous place in the agency.

(3) A copy of the schedule in effect shall be kept posted in the employment agency in a conspicuous place, and the posted schedule and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies.

(4) A copy of all fee schedules, and of all changes therein, shall be kept on file at the employment agency, retrospectively, for a period of one year.

(b) No fee charged or collected shall be in excess of the fee as scheduled.

(c) No employment agency shall accept, directly or indirectly, a registration fee of any kind.

(d) No employment agency may take from a jobseeker a confession of judgment, a promissory note or notes, or an assignment of wages to cover its fees.

(e) The employment agency shall give a receipt to every

jobseeker from whom a deposit is received. No other deposit or prepayment of any kind may be required by an agency. If the jobseeker accepts employment, the deposit shall be applied to the fee to be paid by the jobseeker.

(f) (1) If a jobseeker leaves employment for just cause or is discharged for reasons other than misconduct connected with the jobseeker's work within 90 days from the starting date of employment, the agency shall reduce the fee payable by the jobseeker to that payable for temporary employment under subdivision (g) and shall refund any fee paid in excess of that amount.

(2) No charge may be made to or obligation to pay incurred by any jobseeker beyond that authorized by subdivision (g) for employment lasting 90 days or less, unless the agency's fee schedules, contracts, and agreements specifically provide for a further charge if the jobseeker leaves employment without just cause or is discharged for misconduct in connection with his or her work, and then only if lack of just cause or misconduct exists. Otherwise, the agency shall retain or charge only the fee for temporary employment for any employment lasting 90 days or less from the starting date of employment.

(3) Notwithstanding subdivision (a) and this subdivision, in no instance in which the employment accepted is subsequently terminated shall the fee charged or obligation to pay incurred by a jobseeker be greater than the total gross earnings of the jobseeker in that employment. This provision shall be stated in all agency contracts issued pursuant to Section 1812.504.

(g) The fee payable by the jobseeker for temporary employment shall not exceed $\frac{1}{90}$ of the fee for permanent employment for each consecutive calendar day during the period that the jobseeker is employed or compensated as though employed.

(h) (1) If a jobseeker accepts employment in which the jobseeker is to be paid on the basis of straight commissions, or a drawing account against commissions, or either a drawing account or salary plus commissions, the fee payable by the jobseeker may be predicated upon the projected total gross earnings during the first year of employment as estimated by the employer.

(2) Upon the conclusion of a jobseeker's first 12 months of employment, a computation of his or her actual total gross earnings may be provided by the jobseeker to the agency, and, predicated upon appropriate proof of earnings, an adjustment in the fee shall be made in which either the agency shall refund to the jobseeker any excess fee paid by him or her or the jobseeker shall pay to the agency any deficiency thereon.

(3) If the jobseeker's employment is terminated prior to the conclusion of the first 12 months of employment, the actual total gross earnings of the jobseeker for the period of employment shall be projected to 12 months on a pro rata basis as though the jobseeker had been employed for the entire period of 12 months, and a

computation shall be made thereon. The fee paid or payable by the jobseeker shall be predicated upon that computation as though the jobseeker had been so employed.

(i) If an employment agency sends a jobseeker for employment and the jobseeker accepts employment other than that position specified in the bona fide order for employment to which the jobseeker was sent, but with the same employer, then the agency shall be entitled to a fee for the employment of the jobseeker, payable by the jobseeker, computed under the terms of the fee schedule in effect in the agency at the time of referral, provided that the jobseeker accepts employment within 180 days of the date of referral. The expiration date of the referral shall be stated in the contract.

In interagency disputes concerning the earning of a fee for placement of a jobseeker, the fee shall be earned by the agency responsible for the jobseeker being placed. A reasonable effort shall be made by the billing agency that it is entitled to the fee. The jobseeker shall be responsible for only one full fee for any single placement, and that fact shall be so stated in the contract.

(j) (1) No employment agency shall divide fees with an employer, an agent, or other employee of an employer or person to whom help is furnished.

(2) No employment agency shall charge any jobseeker a fee for accepting employment with such employment agency or any subsidiary of that agency.

(3) No employment agency shall charge any jobseeker a fee when help is furnished to an employer, an agent, any employee of an employer, a member, or person who has a financial interest in the employment agency.

1812.506. (a) If a jobseeker paying or becoming obligated to pay a fee, or making a deposit on a fee for placement fails to accept employment, the employment agency shall, upon request by the jobseeker, repay the amount of the deposit or fee to the jobseeker. Unless the deposit is returned within 48 hours after request, the employment agency shall pay to the jobseeker an additional sum equal to the amount of the deposit. A notice to this effect shall be inserted in all contracts between the agency and the jobseeker, and in all receipts given to the jobseeker for cash payment in advance of employment, and in the schedule of fees posted in the office of the agency.

(b) (1) All employment provided by any employment agency to any jobseeker from whom a fee is to be received shall be considered permanent only if it lasts longer than 90 days. If a jobseeker leaves the job or is discharged within the first 90 days of employment, the agency shall make a refund or reduction of the fee to the temporary fee amount unless the agency's fee schedules, contracts, and agreements specifically provide for a further charge if the jobseeker leaves employment without just cause or is discharged for misconduct in connection with his or her work.

(2) "Just cause" or "discharge for reasons other than misconduct" includes, but is not limited to, the following:

(A) Wages or salary less than that agreed upon between the jobseeker and the employer.

(B) Receiving a payroll check which is not honored by the bank upon which it was drawn.

(C) Working hours, working days, or working shifts significantly different than those agreed upon between the jobseeker and the employer.

(D) Receiving a work assignment, subsequent to accepting the job, which is substantially different from that agreed upon between the jobseeker and the employer.

(E) Being assigned to a job location different from that which was agreed upon between the jobseeker and the employer.

(F) The jobseeker's lack of physical ability to perform duties connected with the position agreed upon between the jobseeker and the employer unless the provisions of subparagraph (E) of paragraph (3) apply.

(G) A lockout or strike causing loss of pay.

(H) The jobseeker's lack of physical ability to perform duties connected with the position unless the provisions of subparagraph (E) of paragraph (3) apply.

(J) The jobseeker's entry into active service in the armed forces.

(K) Physical or economic destruction of the business.

(L) The death of the jobseeker (any refund in that case shall be paid to the estate of the jobseeker).

(3) "Lack of just cause" or a discharge for "misconduct" includes, but is not limited, to:

(A) Abandonment of the job by the jobseeker.

(B) Conviction of the jobseeker, subsequent to employment, of a crime when conviction temporarily or permanently prevents the jobseeker from fulfilling the terms of employment.

(C) Willful violation of lawful company policies or rules by the jobseeker.

(D) Willful failure to perform lawful duties appropriate to employment by the jobseeker.

(E) Acts of the jobseeker constituting misrepresentation or withholding of information directly related to education, work experience, responsibility, physical ability, or training, that would have caused the employer to refuse employment.

(c) (1) Except as otherwise provided in subdivision (a), a refund when due shall be made within 10 working days after request therefor from the jobseeker.

(2) Alternatively, if the decision of the agency is not to make a refund, the agency shall notify the jobseeker in writing, within the 10-day working period specified in paragraph (1), as to the specific reasons why the refund is not being made.

(3) If the agency fails to properly notify the jobseeker pursuant to paragraph (2) or fails to tender a refund within the time allowed, the

agency shall be liable to the jobseeker in the amount of an additional sum equal to the amount of the refund.

1812.507. (a) No employment agency shall accept a fee from any jobseeker, or send any jobseeker for employment, without having obtained, orally or in writing, a bona fide job order for employment.

(b) An agency shall identify itself as an employment agency to the employer in all instances in which it contacts an employer for the purpose of soliciting a job order. All job orders shall be recorded in writing. A job order for employment shall be considered to have been given by an employer to an employment agency under the following conditions:

(1) The employer, or his or her agent, orally or in writing, registers a request or gives permission that the agency recruit or refer jobseekers who meet the employer's stated job specifications and the employer furnishes such information as required by subdivision (a) of Section 1812.504. A job order is valid for the referral of any qualified jobseeker until it is filled or canceled by the employer, and may serve as the basis for agency advertising. The agency is required to recontact the employer within 30 days to ensure that the position is still vacant prior to any additional advertising or referral of jobseekers.

(2) When an agency has brought the qualifications of a specific jobseeker to the attention of an employer and the employer has expressed interest in that jobseeker either by agreeing to interview the jobseeker, or by requesting that the agency furnish him or her with the jobseeker's resumé or other written history or data, or by initiating direct contact with the jobseeker as a result of information furnished by the agency, that action by the employer shall constitute a job order only for the jobseeker discussed and is not valid for advertisement, unless the contact by the agency resulted in a job order for a specific position sufficient under paragraph (1). If the employer has no position open but merely wishes to explore the possible employment of the jobseeker and the jobseeker is to be responsible for the placement fee, that fact shall be indicated on the jobseeker's referral contract.

(c) No employment agency shall refer a jobseeker to a job knowing or having reason to know that:

(1) The job does not exist or the jobseeker is not qualified for the job.

(2) The job has been described or advertised by or on behalf of the agency in a false, misleading, or deceptive manner.

(3) The agency has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.

1812.508. (a) No employment agency shall make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the agency will provide to jobseekers.

(b) (1) No employment agency shall publish or cause to be published any false, fraudulent, or misleading information,

representation, notice, or advertisements.

(2) All advertisements of an employment agency shall contain the correct name of the employment agency and one of the following:

(A) The street address of the agency's place of business.

(B) The correct telephone number of the agency at its place of business.

(3) Every employment agency, except a nurses' registry shall use, as part of its name, either the designation "agency" or "personnel service."

(4) No employment agency shall give any false information or make any false promises or representations concerning an engagement or employment to any jobseeker who registers or applies for an engagement or employment or help.

(c) (1) Where an employment agency job advertisement includes a description of the placement fee associated with the advertised job, the employment agency shall describe the placement fee in a manner which either clearly indicates whether or not a jobseeker shall be responsible for the placement fee or in accordance with the following terms and provisions:

(A) "FEE" means the jobseeker pays the entire placement fee.

(B) "NO FEE" means the jobseeker pays no portion of the placement fee.

(2) Where "NO FEE" jobs are advertised and the agency also administers placement for "FEE" jobs, the advertisement shall state "ALSO FEE JOBS" in type of equal size, prominence, and boldness as "NO FEE" notations.

(3) A group job advertisement which includes a description of the placement fee shall describe the placement fee either separately for each job, or by use of the proper term as a heading under which all applicable jobs shall be listed. All those headings shall be in type and of the same size, prominence, and boldness.

(d) Special requirements not usually associated with a job shall be specified in any advertisement. When the location of the position advertised is more than 50 miles from the employment agency office responsible for the advertisement, it shall state either the location or that the job is "nonlocal." Special benefits of the job, if advertised, shall be specifically described and substitute terms or symbols such as "extras" or "+" shall not be sufficient.

(e) An advertised salary shall be based upon the starting salary contained in the job order. An advertised range of starting salaries shall be specified by preceding the minimum salary and maximum salary by the terms "from" and "to" respectively. When the job order contains only the maximum amount of a salary range, that advertised salary shall be preceded by the word "to." If a maximum salary is dependent upon the jobseeker's experience, the advertised salary may be described by listing the minimum salary and the term "up Depending on Experience" or "up D.O.E." The words "open" and "negotiable" or words or symbols of like import shall not be used as a substitute for the salary. If an advertised salary is based in whole

or in part on commissions, that fact shall be indicated in the advertisement.

(f) All employment agencies shall maintain a record of all advertised jobs, correlated to show the date and the publication in which the advertisement appeared and the job order number of each job advertised, retrospectively for a period of one year.

1812.509. (a) No employment agency shall, when employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Division 9 (commencing with Section 10501) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in that employment.

(b) Every employment agency shall notify each jobseeker before sending the jobseeker in response to a request for employment whether a labor contract is in existence at the establishment to which the jobseeker is being sent, and whether union membership is required.

(c) No employment agency shall send a jobseeker to any place where a strike, lockout, or other labor trouble exists without notifying the jobseeker of that fact and shall in addition thereto enter a statement of those conditions upon the contract or receipt given to the jobseeker.

(d) No babysitting, domestic, or other employment agency which procures babysitting or domestic employment for employers shall refer babysitters or domestics for any employment without first conducting a personal inteview of the jobseeker and making a reasonable effort to verify the experience or training of the jobseeker.

CHAPTER 3. EMPLOYMENT COUNSELING SERVICES

1812.510. (a) Every employment counseling service subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be ten thousand dollars ($10,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts of omissions, or failure to provide the services of the employment counseling service in performance of the contract with the customer by the employment counseling service or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No employment counseling service shall conduct any

business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the employment counseling service and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any employment counseling service fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the employment counseling service shall cease to conduct any business unless and until such time as a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) (1) When a deposit has been made in lieu of the bond pursuant to this section and Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(2) Approval and payment of the claims by the Secretary of State shall be in accordance with subdivisions (b), (c), (d), and (e) of Section 1812.105.

(3) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the employment counseling service other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the employment counseling service by the Secretary of State.

(4) When any claim or claims against a deposit in lieu of bond have been paid so as to reduce the principal amount of the deposit remaining available to pay claims below the principal amount required by this section, the employment counseling service shall cease to conduct any business unless and until such time as sufficient additional moneys have been deposited in the service's deposit account with the Secretary of State to bring the deposit account balance available for the payment of claims up to the minimum amount required by this section.

1812.511. (a) Every contract for employment counseling services shall be in writing. An original and one copy of the contract shall be given to the customer at the time the customer signs the contract and before the employment counseling service accepts any fee or deposit or the customer becomes obligated to pay any such fee or deposit. The contract shall contain all of the following:

(1) The name, address, and telephone number of the employment counseling service.

(2) The name and address of the person signing the contract and

the person to whom the employment counseling services are to be provided.

(3) A description of the services to be provided; a statement when those services are to be provided; the duration of the contract; and refund provisions as appropriate, to be applicable if the described services are not provided according to the contract.

(4) The amount of the fee to be charged to or collected from the person receiving the services or any other person, and the date or dates when that fee is required to be paid.

(5) The following statement, in type no smaller than 10-point boldfaced type:

"No verbal or written promise or guarantee of any job or employment is made or implied under the terms of this contract."

(6) The following statement, in immediate proximity to the space reserved for the customer's signature, in type no smaller than 10-point boldfaced type:

YOUR RIGHT TO CANCEL

/enter date of transaction/

"You may cancel this contract for employment counseling services, without any penalty or obligation, if notice of cancellation is given, in writing, within three business days from the above date.

"To cancel this contract, just mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, or send a telegram containing a notice of cancellation, to (name of employment counseling service) at (address of its place of business), NOT LATER THAN MIDNIGHT OF /date/."

CANCELLATION NOTICE

I hereby cancel this contract.

Dated:_____

_____Customer's Signature"

Until the employment counseling service has complied with this section the customer may cancel the employment counseling services contract.

(b) All contracts shall be dated and shall be made and numbered consecutively in triplicate, the original and each copy to be signed by the customer and the person acting for the employment counseling service. The original and one copy shall be given to the customer and the other copy shall be kept on file at the employment counseling service.

(c) The full agreement between the parties shall be contained in

a single document containing those elements set forth in this section.

1812.512. (a) (1) An employment counseling service shall provide a copy of its fee schedule and payment terms to any customer from whom a fee or deposit is to be received, prior to the customer being interviewed by a counselor, agent, or employee.

(2) In the schedule, the maximum fee shall be fixed and shall include the charges of every kind rendered by the employment counseling service in each case or transaction on behalf of the prospective employee. Changes in the fee schedule may be made, but no change shall become effective until posted for not less than seven days in a conspicuous place in the employment counseling service.

(3) A copy of the schedule in effect shall be kept posted in the employment counseling service in a conspicuous place, and the posted schedule and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies.

(4) A copy of all fee schedules, and of all changes therein, shall be kept on file at the employment counseling service, retrospectively for a period of one year.

(b) No fee charged or collected shall be in excess of the fee as scheduled.

(c) No employment counseling service shall accept, directly or indirectly, a registration fee of any kind.

(d) No employment counseling service may take from a customer a confession of judgment, a promissory note or notes, or an assignment of wages to cover its fees.

1812.513. (a) No employment counseling service shall make or cause to be made any false, misleading, or deceptive advertisements or representations concerning the services that the employment counseling service will provide to customers.

(b) (1) No employment counseling service shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements.

(2) All advertisements of an employment counseling service shall contain the correct name of the employment counseling service and one of the following:

(A) The street address of the employment counseling service's place of business.

(B) The correct telephone number of the employment counseling service at its place of business.

(c) No employment counseling service shall give any false information or make any false promises or representations concerning engagement or employment to any customer, or make any verbal or written promise or guarantee of any job or employment.

(d) An employment counseling service shall maintain a record of all advertisements for the service, correlated to show the date and

the publication in which the advertisement appeared, retrospectively, for a period of one year.

(e) No employment counseling service shall, by its choice of name or by advertisement or representation, represent itself to be an employment agency or to perform the job placement services of an employment agency.

CHAPTER 4. JOB LISTING SERVICES

1812.515. (a) Every job listing service subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be ten thousand dollars ($10,000) for each location. A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of misrepresentation, deceit, unlawful acts of omissions, or failure to provide the services of the job listing service in performance of the contract with the jobseeker, by the job listing service or its agent, representatives, or employees while acting within the scope of their employment.

(c) (1) No job listing service shall conduct any business without having a current surety bond in the amount prescribed by this chapter and filing a copy of the bond with the Secretary of State, identifying the bond and the date of cancellation or termination.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the job listing service and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any job listing service fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the job listing service shall cease to conduct any business unless and until such time as a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) (1) When a deposit has been made in lieu of bond pursuant to this section and Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(2) Approval and payment of the claims by the Secretary of State shall be in accordance with subdivisions (b), (c), (d), and (e) of

Section 1812.105.

(3) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the job listing service other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the job listing service by the Secretary of State.

(4) When any claim or claims against a deposit in lieu of bond have been paid so as to reduce the principal amount of the deposit remaining available to pay claims below the principal amount required by this section, the job listing service shall cease to conduct any business unless and until such time as sufficient additional moneys have been deposited in the service's deposit account with the Secretary of State to bring the deposit account balance available for the payment of claims up to the minimum amount required by this section.

1812.516. (a) Every job listing service shall give a written contract to every jobseeker from whom a fee or deposit is to be received, whether directly or indirectly. The original and one copy of the contract shall be given to the jobseeker at the time the jobseeker signs the contract and before the job listing service accepts any fee or deposit or the jobseeker becomes obligated to pay any such fee or deposit. The contract shall contain all of the following:

(1) The name of the job listing service and the addresses and telephone numbers of the principal office of the job listing service and the location providing the listing services to the jobseeker.

(2) The amount of the fee to be charged and to be collected from the jobseeker.

(3) A description of the service to be performed by the job listing service, including significant conditions, restrictions, and limitations where applicable.

(4) A description of the jobseeker's specifications for the employment opportunity in clear language understandable to the jobseeker, including, but not limited to, the following:

(A) Kind of work or employment.

(B) Interests of jobseeker.

(C) Qualifications of jobseeker.

(D) Daily hours of work, the wages or salary, benefits, and other conditions of employment.

(E) Location of job.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) The following statement, in immediate proximity to the space reserved for the jobseeker's signature, in type no smaller than 10-point boldfaced type:

YOUR RIGHT TO CANCEL

/enter date of transaction/

"You may cancel this contract for job listing services without any penalty or obligation, if notice of cancellation is given, in writing, within three business days from the above date.

"To cancel this contract, just mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, to (name of job listing service) at (address of its place of business), NOT LATER THAN MIDNIGHT OF /date/."

CANCELLATION NOTICE

I hereby cancel this contract.

Dated:_____

_____Customer's Signature"

Until the job listing service has complied with this section the jobseeker may cancel the job listing service's contract.

(7) The following statement, with the caption in type no smaller than 10-point boldfaced type and the remainder in a size no smaller than that generally used throughout the contract, and in full capitals, boldface, or italics:

"RIGHT TO REFUND"

"If, within seven business days after payment of a fee or deposit, the job listing service has not supplied you with at least three available employment opportunities meeting the specifications of the contract as to type of job; interests of jobseeker; qualifications of jobseeker; hours, salary, benefits, and other conditions of employment; location of job; and any other specifications expressly set forth in the contract, the full amount of the fee or deposit paid shall be refunded to you upon your request.

"If you do not obtain a job through the services of the job listing service, or if you obtain employment which lasts less than 90 days, any amount paid in fees or deposits in excess of a twenty-five dollar ($25) service charge shall be refunded to you, upon your request after expiration of the contract.

"Any refund due must be made to you within 10 days of your request. If the refund is not made in that time, the job listing must pay to you an additional sum equal to the amount of your fee or deposit."

(8) If any labor trouble exists at the place of employment, that fact

shall be stated in the listing of that employment provided to the jobseeker.

(b) All contracts shall be dated and shall be made and numbered consecutively in triplicate, the original and each copy to be signed by the jobseeker and the person acting for the job listing service. The original and one copy shall be given to the jobseeker and the other copy shall be kept on file at the job listing service.

(c) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

1812.517. (a) (1) A job listing service shall provide a copy of the service's fee schedule and payment terms to any jobseeker from whom a fee or deposit is to be received, prior to the jobseeker being interviewed by a counselor or other agent or employee.

(2) In the schedule, the maximum fee shall be fixed and shall include the charges of every kind rendered by the job listing service in each case or transaction on behalf of the prospective employee. Changes in the fee schedule may be made, but no change shall become effective until posted for not less than seven days in a conspicuous place in the job listing service.

(3) A copy of the schedule in effect shall be kept posted in the job listing service in a conspicuous place, and the posted schedule and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies.

(4) A copy of all fee schedules, and of all changes therein, shall be kept on file at the job listing service, retrospectively, for a period of one year.

(b) No fee charged or collected shall be in excess of the fee as scheduled.

(c) No job listing service may take from a jobseeker a confession of judgment, a promissory note or notes, or an assignment of wages to cover its fees.

(d) The fee charged shall not be based on a portion or percentage of the salary or wages earned or to be earned in the employment obtained through use of the job listing service.

(e) (1) No job listing service shall divide fees with an employer, an agent, or other employee of any employer or person to whom help is furnished.

(2) No job listing service shall charge any jobseeker a fee for accepting employment with that job listing service or any subsidiary of that service.

(3) No job listing service shall charge any jobseeker a fee when help is furnished to an employer, an agent, any employee of any employer, a member, or person who has a financial interest in the job listing service.

1812.518. (a) (1) A job listing service shall refund in full any advance fee paid and cancel any other obligation incurred by the jobseeker if the job listing service does not, within seven business days after execution of the contract, supply at least three

employment opportunities then available to the jobseeker and meeting the specifications of the contract.

(2) A job listing service will be deemed to have supplied information meeting the specifications of the jobseeker if the information supplied meets the contract specifications with reference to: type of job; interests of jobseeker; qualifications of jobseeker; hours, salary, benefits, and other conditions of employment; location of job; and any other specifications expressly set forth in the contract.

(b) A job listing service shall refund any amount over and above a twenty-five dollar ($25) service charge and cancel any other obligation incurred by the jobseeker if the jobseeker does not obtain a job, or if employment, once obtained, lasts less than 90 days.

(c) A job listing service shall make all refunds required under this section within 10 days after the jobseeker requests such refund. Unless the refund is made within that time, the job listing service shall pay the jobseeker an additional sum equal to the amount of the deposit.

1812.519. (a) No job listing service shall accept a fee from any jobseeker, or send any jobseeker for employment, without having obtained, orally or in writing, a bona fide job order for employment.

(b) A job listing service shall identify itself as a job listing service to the employer in all instances in which it contacts an employer for the purposes of soliciting a job order. All job orders shall be recorded in writing. A job order for employment shall be considered to have been given by an employer to a job listing service under the following conditions:

(1) The employer, or his or her agent, orally or in writing, registers a request or gives permission that the job listing service recruit or refer jobseekers who meet the employer's stated job specifications and the employer furnishes such information as required by subdivision (a) of Section 1812.516.

(2) A job order is valid for the referral of any qualified jobseeker until it is filled or canceled by the employer, and may serve as the basis for job listing service advertising. The job listing service is required to recontact the employer within the four-day period immediately preceding dissemination of the job listing information to ensure that the position is still vacant prior to any additional advertising or referral of jobseekers.

(c) No job listing service shall refer a jobseeker to a job knowing or having reason to know that:

(1) The job does not exist or the jobseeker is not qualified for the job.

(2) The job has been described or advertised by or on behalf of the job listing service in a false, misleading, or deceptive manner.

(3) The job listing service has not obtained written or oral permission to list the job from the employer or an authorized agent of the employer.

(d) No job listing service shall exchange job orders with an

employment agency which charges a placement fee.

1812.520. (a) No job listing service shall make or cause to be made any false, misleading or deceptive advertisements or representations concerning the services that the job listing service will provide to jobseekers.

(b) (1) No job listing service shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements.

(2) All advertisements of a job listing service shall contain the correct name of the job listing service and one of the following:

(A) The street address of the job listing service's place of business.

(B) The correct telephone number of the job listing service at its place of business.

(3) No job listing service shall give any false information or make any false promises or representations concerning an engagement or employment to any jobseeker.

(4) No job listing service shall, by its name or by advertisement or representation, represent itself to be an employment agency or to perform the services of an employment agency.

(c) Special requirements not usually associated with a job shall be specified in any advertisement. When the location of the position advertised is more than 50 miles from the job listing service office responsible for the advertisement, it shall state either the location or that the job is "nonlocal." Special benefits of the job, if advertised, shall be specifically described and substitute terms or symbols such as "extras" or "+" shall not be sufficient.

(d) An advertised salary shall be based upon the starting salary contained in the job order. An advertised range of starting salaries shall be specified by preceding the minimum salary and maximum salary by terms "from" and "to" respectively. When the job order contains only the maximum amount of a salary range, that advertised salary shall be preceded by the word "to." If a maximum salary is dependent upon the jobseeker's experience, the advertised salary may be described by listing the minimum salary and the term "up Depending on Experience" or "up D.O.E." The words "open" and "negotiable" or words or symbols of like import shall not be used as a substitute for the salary. If an advertised salary is based in whole or in part on commissions, that fact shall be indicated in the advertisement.

(e) All job listing services shall maintain a record of all advertised jobs, correlated to show the date and the publication in which the advertisement appeared and the job order number of each job advertised, retrospectively for a period of one year.

1812.521. (a) No job listing service shall, when employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Division 9 (commencing with Section 10501) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in that employment.

(b) Every job listing service shall notify each jobseeker before sending the jobseeker in response to a request for employment whether a labor contract is in existence at the establishment to which the jobseeker is being sent, and whether union membership is required.

(c) No job listing service shall send a jobseeker to any place where a strike, lockout, or other labor trouble exists without notifying the jobseeker of that fact and shall in addition thereto enter a statement of those conditions upon the contract or receipt given to the jobseeker.

CHAPTER 5. RECORDS

1812.522. (a) All books, records, files, the schedules, and other papers required by this title to be kept by any employment agency, employment counseling service, or job listing service shall be open at all reasonable hours to the inspection of the representative of the Attorney General, any district attorney, or any city attorney. Every employment agency, employment counseling service, and job listing service shall furnish to the representative of the Attorney General, any district attorney, or any city attorney upon request a true copy of those books, records, files, the schedules, and papers or any portion thereof, and shall make such reports as the Attorney General prescribes.

(b) If any employment agency, employment counseling service, or job listing service also engages in any other business which is not subject to this title, the records of the agency or service pertaining to matters under the jurisdictions of this title shall be kept separate and apart from the records of that other business.

CHAPTER 6. REMEDIES AND ENFORCEMENT

1812.523. (a) Any person who violates any provision of this title is guilty of a misdemeanor. The Attorney General, any district attorney, or any city attorney may prosecute misdemeanor actions.

(b) Actions for violation of this title, including, but not limited to, equity proceedings to restrain and enjoin such a violation, may be instituted by the Attorney General, any district attorney, or any city attorney. This section shall not be deemed to prohibit the enforcement by any person of any right provided by this or any other law.

(c) If any person uses any untrue or misleading statement, information, or advertisement to sell its services or fails to comply with the applicable provisions of this title, or the contract does not comply with the applicable provisions of this title, then the contract shall be void and unenforceable as contrary to public policy and the jobseeker, customer, or nurse shall be entitled to the return of all sums paid.

(d) Any person who is injured by any violation of this title or by

the breach of a contract subject to this title may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the jobseeker, customer, or nurse to the person subject to this title. If the person subject to this title refuses or is unwilling to pay the damages awarded, the amount awarded may be satisfied out of the security required by this title. If the plaintiff prevails, the plaintiff shall be awarded a reasonable attorney's fee and costs. If the court determines that the breach or violation was willful, by clear and convincing evidence, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(e) The provisions of this title are not exclusive and do not relieve the parties subject to this title from the duty to comply with all other applicable laws.

(f) The remedies provided in this title are not exclusive and shall be in addition to any other remedies or procedures provided in any other law.

(g) Any waiver by the consumer, jobseeker, or nurse of the provisions of this title shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by a person subject to this title to have a jobseeker, customer, or nurse waive rights given by this title shall constitute a violation of this title.

(h) If any provisions of this title or the application thereof to any person or circumstances is held unconstitutional, the remainder of the title and the application of that provision to other persons and circumstances shall not be affected thereby.

CHAPTER 7. NURSES' REGISTRIES

1812.524. (a) "Nursing service" means the assignment of a nurse, as a private duty, self-employed, licensed registered nurse, licensed vocational nurse, or practical nurse to render service to a patient under the direction or supervision of a physician or surgeon registered to practice in this state.

(b) "Nurses' registry" means a person who engages in the business of obtaining and filling commitments for nursing service. A nurse's registry which makes or plans to make referrals for nurses' employment other than private duty nursing shall comply with Chapters 1 (commencing with Section 1812.500) and 2 (commencing with Section 1812.503) of this title with respect to those referrals.

(c) "Private duty nurse" means a self-employed nurse rendering service in the care of either a physically or mentally ill patient under the direction of a physician or surgeon, but who is paid by either the patient or the designated agent of the patient and who accepts the responsibilities of a self-employed private contractor.

1812.525. (a) Every nurses' registry subject to this title shall maintain a bond issued by a surety company admitted to do business

in this state. The principal sum of the bond shall be three thousand dollars ($3,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to provide the services of the nurses' registry in performance of the contract with the nurse by the nurses' registry or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No nurses' registry shall conduct any business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the nurses' registry and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any nurses' registry fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the nurses' registry shall cease to conduct any business unless and until such time as a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) (1) When a deposit has been made in lieu of bond pursuant to this section and Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(2) Approval and payment of the claims by the Secretary of State shall be in accordance with subdivisions (b), (c), (d), and (e) of Section 1812.105.

(3) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the nurses' registry other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the nurses' registry by the Secretary of State.

(4) When any claim or claims against a deposit in lieu of bond have been paid so as to reduce the principal amount of the deposit remaining available to pay claims below the principal amount required by this section, the nurses' registry shall cease to conduct

any business unless and until such time as sufficient moneys have been deposited in the registry's deposit account with the Secretary of State to bring the deposit account balance available for the payment of claims up to the minimum amount required by this section.

1812.526. Nurses' registries may enter into a continuing contract with private duty nurses covering the assignment of those nurses by the nurses' registries. The continuing contract shall state:

(a) The name, address, and telephone number of the nurses' registry.

(b) The name, address, and telephone number of the nurse.

(c) The current fee schedule of the nurses' registry.

(d) The date of its execution by the nurses' registry and the nurse.

(e) The contract shall specify that the provisions thereof are to govern only the assignment of private duty nurses and shall do all of the following:

(1) Designate the nurses' registry as the continuous agent of the nurse for purposes of assignment.

(2) Provide that the contract in effect may be terminated at any time by written notice given by one to the other for any future assignment.

(3) Provide for delivery to the nurse at the time of the execution of the contract a written schedule of the rates of nurses' charges currently agreed to between the nurses' registry and the nurse for the nurse's services to the patient.

(4) State that the nurses' registry will immediately notify the nurse in writing of all subsequent changes in the rates to be charged the patient for services, and that the nurse shall agree to abide by these rates.

(5) Contain express undertakings by the nurses' registry that it shall continuously maintain true and correct records of orders and assignments as provided in this title.

(6) Provide that the nurses' registry shall periodically and at least once each month render to the nurse a written statement of all fees claimed to be due the nurses' registry, and further that the statement shall adequately identify each assignment as to the inception date and period of service covered by the claim, including the name of the patient and the amount of service fee claimed.

(7) Contain appropriate wording advising the nurse of his or her right to dispute the correctness of any service fee claimed by the nurses' registry in the written statement referred to above, and that in the absence of objections within a reasonable time, any such service fee may be presumed to be correctly charged.

(8) Include any other term, condition, or understanding agreed upon between the nurses' registry and the nurse.

(f) Each contract shall be numbered consecutively in original and duplicate, both to be signed by the nurse and the nurses' registry. The original shall be given to the nurse and the duplicate shall be kept on file at the nurses' registry within the nurses' records.

(g) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

1812.527. (a) (1) A nurses' registry shall provide a copy of the registry's fee schedule and payment terms to any nurse from whom a fee or deposit is to be received, prior to the nurse being interviewed by the registry.

(2) In the schedule, the maximum fee shall be fixed and shall include the charges of every kind rendered by the nurses' registry in each case or transaction on behalf of the nurse. Changes in the fee schedule may be made, but no change shall become effective until posted for not less than seven days in a conspicuous place in the nurses' registry.

(3) A copy of the schedule in effect shall be kept posted in the nurses' registry in a conspicuous place, and the posted schedule and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies.

(4) A copy of all fee schedules, and of all changes therein, shall be kept on file at the nurses' registry, retrospectively for a period of one year.

1812.528. It shall be the duty of the nurses' registry to verify in writing the claims as to the experience or training listed on the application and to keep a file of those records in the nurse's folder within the nurses' registry. It shall also be the duty of the person interviewing the jobseeker to require the jobseeker to exhibit his or her license as issued by the Board of Registered Nursing or the Board of Vocational Nurse and Psychiatric Technician Examiners, with a notation to be made on the application by the interviewer that the license has been inspected and the date of expiration of the license.

1812.529. Each nurses' registry shall continuously maintain in its offices true and correct permanent log sheets and other records which shall disclose, in addition to the other information required, the date and hour of the receipt by the nurses' registry of each order for a private duty nurse, and the date and hour of the making or giving of each assignment to the nurse by the nurses' registry, the name of the nurse assigned, the name of the patient and the address where the nurse is assigned, the name of the attending physician, the date the assignment is to start, the period of actual service for each assignment, and the amount of the fee charged for each assignment. No nurses' registry, his or her agent or employees, shall make any false entry in those records. The nurses' registry shall maintain the log sheets and records required by this section respectively for a period of one year.

1812.530. (a) No nurses' registry shall accept, directly or indirectly, a registration fee of any kind.

(b) No nurses' registry may take from a nurse a confession of judgment, or promissory note, or an assignment of wages to cover its fees.

1812.531. No nurses' registry shall divide fees with any physician

and surgeon, nurse, hospital, patient, or any agent or employee of any of these.

1812.532. In the event that a nurses' registry collects from a nurse a fee or expenses for an assignment, and the nurse fails to obtain the assignment, or the nurse fails to be paid for the assignment, the nurses' registry shall upon demand therefor, repay to the nurse the fee and expenses so collected. Unless repayment is made within 48 hours after demand, the nurses' registry shall pay to the nurse an additional sum equal to the amount of the fee.

1812.533. (a) No nurses' registry shall make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that registry will provide to nurses.

(b) (1) No nurses' registry shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements.

(2) All advertisements of a nurses' registry shall contain the correct name of the nurses' registry and one of the following:

(A) The street address of the registry's place of business.

(B) The correct telephone number of the registry at its place of business.

(3) No nurses' registry shall give any false information or make any false promises or representations concerning an assignment or employment to any nurse who registers or applies for an assignment or employment.

(c) Every nurses' registry shall maintain a record of all advertisements, correlated to show the date and the publication in which the advertisement appeared, retrospectively for a period of one year.

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

SEC. 4. (a) The Department of Consumer Affairs shall submit, on or before March 31, 1990, to the Legislature, a preliminary report regarding the implementation of this act. This preliminary report shall include, but not be limited to, the following:

(1) A survey of all district attorneys and city attorneys in this state regarding implementation of this act, including the fiscal impact of implementation on each of their operations.

(2) The department's plan for phasing out the Bureau of Personnel Services.

(3) The department's plan and methodology for collecting the

data for the final report to the Legislature required by subdivision (b).

(b) The department shall submit, on or before June 30, 1991, a final report to the Legislature regarding implementation of this act. This final report shall include, but not be limited to, the following:

(1) Statistical data from local and state agencies concerning the incidence and resolution of consumer complaints regarding employment agencies as described in this act.

(2) Fiscal data concerning the operational costs associated with implementation of this act.

(3) Data concerning the amount of fines and penalties collected under this act.

(4) An analysis of the adequacy of this act in regulating employment agencies and providing effective redress of abuses and consumer complaints.

(5) Recommendations for any necessary legislation involving this act.

SEC. 5. The unencumbered balance of any funds remaining in the Bureau of Personnel Services Fund on January 1, 1990, are hereby appropriated to the Department of Consumer Affairs for the purpose of closing out the operations of the Bureau of Personnel Services and for preparing the two reports mandated by Section 4 of this act. Upon completion of the final report due on or before June 30, 1991, all unencumbered funds remaining in the Bureau of Personnel Services Fund shall be transferred to the General Fund.

CHAPTER 705

An act to amend and repeal Section 9902.6 of, and to repeal Section 9902.7 of, the Business and Professions Code, relating to employment agencies.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 9902.6, as added to the Business and Professions Code by Section 3 of Chapter 912 of the Statutes of 1986, is amended to read:

9902.6. On and after July 1, 1987, this chapter does not apply to any person who provides any of the services described in subdivision (a), (b), or (c) of Section 9902 and who charges fees exclusively to employers for those services. The exemption from licensure and regulation provided by this section does not apply to any person who provides babysitting or domestic employment for others.

This section does not apply to any employment counseling service, as defined in Section 9909.5.

SEC. 2. Section 9902.6, as added to the Business and Professions Code by Section 4 of Chapter 912 of the Statutes of 1986, is repealed.

SEC. 3. Section 9902.7 of the Business and Professions Code is repealed.

SEC. 4. This act shall not become operative if Assembly Bill 2113 of the 1989–90 Regular Session of the Legislature is chaptered and takes effect on or before January 1, 1990.

CHAPTER 706

An act to add Section 11022 to the Government Code, relating to state agencies.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 11022 is added to the Government Code, to read:

11022. Each state agency shall establish a procedure pursuant to which incoming telephone calls on any public line shall be answered within 10 rings during regular business hours as set forth in Section 11020, except where emergency or illness require adjustments to normal staffing levels. This requirement shall be met in every office where staff is available, unless compliance would require overtime or compensating time off.

CHAPTER 707

An act to amend Section 4021 of, and to add Section 4027.6 to, the Health and Safety Code, relating to health.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 4021 of the Health and Safety Code is amended to read:

4021. (a) The department may grant one or more variances from drinking water standards, treatment techniques, or requirements to a public water system which, because of characteristics of the raw water sources which are reasonably available to the system, cannot meet the requirements respecting the maximum contaminant levels of the drinking water, despite application of the best technology, treatment techniques, or other

means which the department finds are generally available, taking costs into consideration. Before the department may grant a variance under this section, the department shall find that the variance will not result in an unreasonable risk to the health of users.

(b) If the department grants a variance under subdivision (a), the supplier shall present a schedule acceptable to the department for the accomplishment, within one year of the date the variance is granted, of both of the following:

(1) Compliance with each contaminant level requirement with respect to which the variance was granted.

(2) Implementation of interim control measures which the department may require for each contaminant subject to the variance during the period ending with the date full compliance is required.

(c) The department may grant an exemption from any requirement respecting a maximum contaminant level or any treatment technique upon a finding that the public water system meets all of the following conditions:

(1) The system was in operation on the effective date of this chapter.

(2) The public water system is unable to comply with the contaminant level or treatment technique requirements due to compelling factors, which may include economic factors.

(3) The grant of the exemption will not result in an unreasonable risk to health.

If the department grants an exemption under this subdivision, the department shall prescribe a schedule as set forth in subdivision (b) which shall be subject to the same terms and conditions.

(d) Any schedule prescribed under this section shall require compliance with the drinking water standards with respect to each contaminant as expeditiously as the department may determine reasonable. Issuance of the variance or exemption shall be conditioned upon compliance with the schedule.

(e) Before any schedule prescribed under this section may take effect, the department shall provide an opportunity for a public hearing on the schedule. Notice of the public hearing shall be given by the department in writing to the operator of the public water system seeking the variance or exemption and to the public, as provided in Section 6061 of the Government Code, in a form prescribed by the department.

(f) No exemption and no schedule prescribed in connection with this chapter may continue for more than seven years.

(g) Notwithstanding subdivisions (a) to (f), inclusive, at the request of the board of directors of the Big Bear City Community Services District or the Twentynine Palms Water District or the Kinneola Irrigation District, the department shall grant a variance from the primary maximum contaminant level for fluoride contained in Title 22 of the California Code of Regulations unless the department, after a public hearing, determines that there is

substantial community opposition to the variance. A variance granted under this subdivision shall prohibit fluoride levels in excess of 75 percent of the federal Environmental Protection Agency standard or three milligrams per liter, whichever is higher, shall be valid for a period up to 30 years, and shall provide that the variance may be withdrawn upon reasonable notice by the department if the department determines that the community no longer accepts the fluoride level authorized in the variance. A variance shall not be granted under this subdivision to the Kinneola Irrigation District, until the district has first provided written notification to all customers which, at a minimum, includes the following information:

"The purpose of this notice is to advise you that the district intends to request a variance from the State Department of Health Services permitting us to provide water which, for approximately two months each year, will contain approximately 2.8 parts per million (ppm) flouride. This concentration of flouride will exceed the state standard of 1.6 ppm, and the federal secondary standard of 2.0 ppm." If substantial community concerns arise, the board of directors of the district which has jurisdiction shall conduct public hearings, determine the fluoride level which is acceptable to the community, and apply to the department for appropriate changes in the variance.

SEC. 2. Section 4027.6 is added to the Health and Safety Code, to read:

4027.6. Notwithstanding any other provision of law, at the request of the board of directors of the Big Bear City Community Services District or the Twentynine Palms Water District or the Kinneola Irrigation District, the State Department of Health Services shall grant a variance from the primary maximum contaminant level for fluoride contained in Title 22 of the California Code of Regulations unless the department, after a public hearing, determines that there is substantial community opposition to the variance. A variance granted under this subdivision shall prohibit fluoride levels in excess of 75 percent of the federal Environmental Protection Agency standard or three milligrams per liter, whichever is higher, shall be valid for a period up to 30 years, and shall provide that the variance may be withdrawn upon reasonable notice by the department if the department determines that the community no longer accepts the fluoride level authorized in the variance. A variance shall not be granted under this subdivision to the Kinneola Irrigation District, until the district has first provided written notification to all customers which, at a minimum, includes the following information:

"The purpose of this notice is to advise you that the district intends to request a variance from the State Department of Health Services permitting us to provide water which, for approximately two months each year, will contain approximately 2.8 parts per million (ppm) flouride. This concentration of flouride will exceed the state standard of 1.6 ppm, and the federal secondary standard of 2.0 ppm." If substantial community concerns arise, the board of directors of the

district which has jurisdiction shall conduct public hearings, determine the fluoride level which is acceptable to the community, and apply to the department for appropriate changes in the variance.

SEC. 3. Section 2 of this act shall only become operative if Assembly Bill 21 is enacted and becomes effective on or before January 1, 1990, and repeals Section 4021 of the Health and Safety Code, in which case Section 1 of this act shall not become operative.

CHAPTER 708

An act to amend Section 700 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 700 of the Insurance Code is amended to read:

700. (a) A person shall not transact any class of insurance business in this state without first being admitted for that class. Admission is secured by procuring a certificate of authority from the commissioner. The certificate shall not be granted until the applicant conforms to the requirements of this code and of the laws of this state prerequisite to its issue.

(b) The unlawful transaction of insurance business in this state in willful violation of the requirement for a certificate of authority is a public offense punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by fine not exceeding one hundred thousand dollars ($100,000), or by both, and shall be enjoined by a court of competent jurisdiction on petition of the commissioner.

(c) After the issuance of a certificate of authority, the holder shall continue to comply with the requirements as to its business set forth in this code and in the other laws of this state.

(d) Where a hearing is held under this section the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(e) The commissioner shall either issue or deny an application for a certificate of authority within 180 calendar days after the date the application is perfected. A perfected application is an application which is not materially deficient with respect to the requirements of this code and of the other laws of this state prerequisite to the issuance of a certificate of authority.

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

In order to ensure the availability of insurance coverage in the presently volatile insurance market and to facilitate and foster, without delay, the streamlining of the regulatory process so as to ensure competition in the insurance marketplace, it is necessary that this act go into effect immediately.

CHAPTER 709

An act to add and repeal Section 1363.1 of the Civil Code, relating to common interest developments.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 1363.1 is added to the Civil Code, to read:

1363.1. (a) A prospective managing agent of a common interest development shall provide a written statement to the board of directors of the association of a common interest development as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(1) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and shareholders holding greater than 10 percent of the shares of the corporation.

(2) Whether or not any relevant licenses such as architectural design, construction, engineering, real estate, or accounting have been issued by this state and are currently held by the persons specified in paragraph (1). If a license is currently held by any of those persons, the statement shall contain the following information:

(A) What license is held.

(B) The status of that license.

(C) The name of the licensee appearing on that license.

(3) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in paragraph (1), including, but not limited to, certified property manager or professional association manager. If any certification or designation is held, the statement shall include the following information:

(A) What the certification or designation is and what entity issued

it.

(B) The status of that certification or designation.

(C) The names in which the certification or designation is held.

(b) As used in this section, a "managing agent" is a person or entity, who for compensation or, in expectation of compensation, exercises control over the assets of a common interest development. A "managing agent" does not include any of the following:

(1) A full-time employee of the association.

(2) Any regulated financial institution operating within the normal course of its regulated business practice.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed unless a later enacted statute which is chaptered before January 1, 1997, deletes or extends that date.

CHAPTER 710

An act to amend Sections 56476, 56486, and 57103 of, and to add Section 57087.7 to, the Government Code, relating to local government.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 56476 of the Government Code is amended to read:

56476. (a) Except as provided in subdivision (b), upon the presentation of any petition or applications making a proposal for a reorganization, the commission may take proceedings pursuant to Part 3 (commencing with Section 56650) without referring the proposal to a reorganization committee, as provided in this part.

(b) The commission may refer to a reorganization committee any incorporation proposal that includes, or may be modified to include, any of the following changes of organization affecting an independent special district: consolidation, dissolution, formation, merger, or establishment of a subsidiary district.

SEC. 2. Section 56486 of the Government Code is amended to read:

56486. (a) The legislative body of each subject district shall appoint one or more members, not to exceed the maximum number specified by the commission, to represent the district on the reorganization committee. That legislative body may remove and replace any member previously appointed by it and may fill any vacancy in its membership upon the committee.

(b) In the case of a reorganization committee required pursuant to subdivision (b) of Section 56476, the county board of supervisors shall appoint one or more members, not to exceed the maximum

number specified by the commission, to represent the county on the reorganization committee. The county board of supervisors may appoint any person, including, but not limited to, an officer or employee of the county to represent the county on the reorganization committee. The county board of supervisors may remove and replace any member previously appointed by it and may fill any vacancy in its membership on the committee.

(c) In the case of a reorganization committee required pursuant to subdivision (b) of Section 56476, the commission shall appoint one or more members, not to exceed the maximum number specified by the commission to represent the county or each subject district, to represent the general public on the reorganization committee. A member appointed pursuant to this subdivision shall not be an officer or employee of any local agency. The commission may remove and replace any member previously appointed by it and may fill any vacancy in its membership on the committee.

SEC. 3. Section 57087.7 is added to the Government Code, to read:

57087.7. At any time prior to the adoption by the conducting authority of a resolution ordering a reorganization that includes an incorporation and the establishment of a subsidiary district or a merger, a petition may be filed with the clerk referring, by date of adoption, to the commission's resolution making determinations and requesting that a separate election be called, held, and conducted only within that district on the establishment of the subsidiary district or the merger. That election shall be conducted at the same time as the election on the incorporation. Any petition so filed shall be immediately examined and certified by the clerk by the same method and in the same manner as provided in Sections 56707 to 56711, inclusive, for the examination of petitions by the executive officer The conducting authority shall call, hold, and conduct any election upon the question of a merger or the establishment of a subsidiary district only within the district to be merged or established as a subsidiary district, if the clerk certifies that any petition so filed was signed by either of the following:

(a) In the case of a registered voter district, by not less than 10 percent of the registered voters of the district.

(b) In the case of a landowner-voter district, by not less than 10 percent of the number of landowner-voters within the district who also own not less than 10 percent of the assessed value of land within the district.

SEC. 4. Section 57103 of the Government Code is amended to read:

57103. In any resolution ordering a change of organization or reorganization subject to the confirmation of the voters, the conducting authority shall call an election:

(a) Within the territory of each city or district ordered to be incorporated, formed, disincorporated, dissolved or consolidated.

(b) Within the entire territory of each district ordered to be

merged with or established as a subsidiary district of a city, or both within the district and within the entire territory of the city outside the boundaries of the district.

(c) If the clerk certifies a petition pursuant to Section 57087.5 or 57087.7, within the territory of the district ordered to be merged with or established as a subsidiary district of a city.

(d) Within the territory ordered to be annexed or detached.

(e) If ordered by the commission pursuant to Section 56849 or 56850, both within the territory ordered to be annexed or detached and within all or the part of the city or district which is outside of the territory.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 711

An act to amend Section 39619.3 of the Education Code, relating to schools.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 39619.3 of the Education Code is amended to read:

39619.3. Notwithstanding any limitations imposed as a result of actions taken by the State Allocation Board pursuant to Section 39363, a school district shall be eligible to receive an apportionment pursuant to subdivision (b) of Section 39619, if it meets all of the following criteria:

(a) There are excess revenues that resulted from the sale of surplus sites upon which there was no encumbrance to the board.

(b) The Superintendent of Public Instruction has verified all of the following:

(1) The district had a fiscal emergency in any one or both of the 1987–88 and 1988–89 fiscal years.

(2) The fiscal emergency was caused primarily by required expenditures.

(3) The district has taken reasonable steps to address the fiscal emergency.

CHAPTER 712

An act to amend Section 13967 of the Government Code, relating to victims of crime.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 13967 of the Government Code is amended to read:

13967. (a) Upon a person being convicted of any crime in the State of California, the court shall, in addition to any other penalty provided or imposed under the law, order the defendant to pay restitution in the form of a penalty assessment in accordance with Section 1464 of the Penal Code. In addition, if the person is convicted of one or more felony offenses, the court shall impose a separate and additional restitution fine of not less than one hundred dollars ($100) and not more than ten thousand dollars ($10,000). In setting the amount of the fine for felony convictions, 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, any economic gain derived by the defendant as a result of the crime, and the extent to which others suffered losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Except as provided in Section 1202.4 of the Penal Code and subdivision (c) of this section, under no circumstances shall the court fail to impose the separate and additional restitution fine required by this section. This fine shall not be subject to penalty assessments as provided in Section 1464 of the Penal Code.

(b) Except as provided in subdivision (c), the fine imposed pursuant to this section shall be deposited in the Restitution Fund in the State Treasury. Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board for the purpose of indemnifying persons filing claims pursuant to this article. However, the funds appropriated pursuant to this section for administrative costs of the State Board of Control shall be subject to annual review through the State Budget process.

(c) In cases in which a victim has suffered economic loss as a result of the defendant's criminal conduct, and the defendant is denied probation, in lieu of imposing all or a portion of the restitution fine, the court shall order restitution to be paid to the victim. Notwithstanding subdivision (a), restitution shall be imposed in the amount of the losses, as determined. A restitution order imposed pursuant to this subdivision shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of

a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained by the victim against the defendant arising out of the crime for which the defendant was convicted.

Restitution ordered pursuant to this subdivision shall, to the extent possible, be of a dollar amount that is sufficient to fully reimburse the victim, or victims, for all determined economic losses incurred as the result of the defendant's criminal conduct.

For any order of restitution made pursuant to this subdivision, the defendant shall have the right to a hearing before the judge to dispute the determination made regarding the amount of restitution.

(d) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

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

CHAPTER 713

An act to amend Section 10127.7 of, and to add Sections 10127.9 and 10164.2 to, the Insurance Code, relating to insurance.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 10127.7 of the Insurance Code is amended to read:

10127.7. Every policy of individual life insurance with a face value of less than ten thousand dollars ($10,000) which is delivered or issued for delivery in this state on and after July 1, 1974, shall have

printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or to the agent through whom it was purchased. The period of time set forth by the insurer for return of the policy by the insured shall be clearly stated on the notice and this period shall be not less than 10 days nor more than 30 days. The insured may return the policy to the insurer at any time during the period specified in the notice. This delivery or mailing of the policy by the owner shall void the policy 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 refunded to the owner.

This section applies to all policies issued, amended, or delivered in this state on or after January 1, 1981, but prior to January 1, 1990, and applies to any renewal thereof. All policies subject to this section which are in effect on January 1, 1981, shall be construed to be in compliance with this section, and any provision in such a policy which is in conflict with this section shall be of no force or effect.

This section does not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in a policy.

SEC. 2. Section 10127.9 is added to the Insurance Code, to read:

10127.9. (a) Every policy of individual life insurance which is initially delivered or issued for delivery in this state on and after January 1, 1990, shall have printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or to the agent through whom it was purchased. The period of time set forth by the insurer for return of the policy by the insured shall be clearly stated on the notice and this period shall be not less than 10 days nor more than 30 days. The insured may return the policy to the insurer by mail or otherwise at any time during the period specified in the notice. By delivering or mailing the policy pursuant to this section during the cancellation period, the owner shall void the policy from the beginning, and the parties shall be in the same position as if no policy had been issued. All premiums paid and any policy fee paid for the policy shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the insured has canceled the policy.

(b) This section applies to all policies issued or delivered in this state on or after January 1, 1990, but does not apply to any policy subject to Section 10127.7. All policies subject to this section which are in effect on January 1, 1990, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(c) This section does not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy-change or conversion privilege provision

contained in a policy.

SEC. 3. Section 10164.2 is added to the Insurance Code, to read:

10164.2. For any policy of individual life insurance which is canceled by the insured or owner, the insurer shall return to the insured or owner all unearned premiums and other moneys due the insured or owner in relation to that policy as expeditiously as possible, but in no event more than 45 days from the date the insurer is notified that the insured or owner has canceled the policy and has received any claims forms and other forms required to complete the transaction. However, this section does not supersede the provisions of subdivision (f) of Section 10160 empowering an insurer to defer payment of cash surrender value for up to six months, to the extent that deferral is necessary to assure the solvency of the insurer.

CHAPTER 714

An act to repeal Chapter 5 (commencing with Section 13731) of Title 5 of Part 4 of the Penal Code, relating to law enforcement.

[Approved by Governor September 22, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Chapter 5 (commencing with Section 13731) of Title 5 of Part 4 of the Penal Code is repealed.

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

CHAPTER 715

An act to add Chapter 7.7 (commencing with Section 12929) to Part 6 of Division 6 of the Water Code, relating to water facilities.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Chapter 7.7 (commencing with Section 12929) is added to Part 6 of Division 6 of the Water Code, to read:

CHAPTER 7.7. ENVIRONMENTAL WATER ACT OF 1989

Article 1. General Provisions

12929. This chapter shall be known and may be cited as the Environmental Water Act of 1989.

12929.1. It is the intent of the Legislature, in enacting this chapter, to prescribe the purposes of the Environmental Water Fund, and to create, and prescribe the purposes of, the Environmental Water Program and the Water Quality Program.

12929.2. As used in this chapter, the following terms have the following meanings:

(a) "Department" means the Department of Water Resources.

(b) "Board" means the State Water Resources Control Board.

(c) "Mono Lake Basin" means Mono Lake and its watershed.

(d) "Environmental Water Program" means the Environmental Water Program created pursuant to Article 3 (commencing with Section 12929.20).

(e) "Mono Lake Committee" means the California nonprofit citizens organization formed to save Mono Lake.

(f) "Water Quality Program" means the Water Quality program created pursuant to Article 4 (commencing with Section 12929.30).

Article 2. Environmental Water Fund

12929.11. The department shall expend the money appropriated to it from the Environmental Water Fund for projects or programs concerning the water resources of the state that will contribute significant environmental benefits.

12929.14. From the funds appropriated to the department from the Environmental Water Fund, it is the intent of the Legislature that the department shall allocate the following amounts to programs and projects included in the Environmental Water Program:

(a) Seven million dollars ($7,000,000) per year in the 1991–92 to 1994–95 fiscal years, inclusive.

(b) Eight million dollars ($8,000,000) per year in the 1995–96 to

1998–99 fiscal years, inclusive.

12929.15. From the funds appropriated to the department from the Environmental Water Fund, it is the intent of the Legislature that the department shall allocate at least one million dollars ($1,000,000) per year in the 1990–91 to 1994–95 fiscal years, inclusive, to programs and projects included in the Water Quality Program. However, not more than five million dollars ($5,000,000) of the funds appropriated to the Environmental Water Fund pursuant to Section 12929.12 shall be appropriated for this purpose.

Article 3. Environmental Water Program

12929.20. The Legislature hereby finds and declares that diversions of water out of the Mono Lake Basin by the City of Los Angeles have lowered the water level of Mono Lake and that future water diversions need to be managed to protect Mono Lake and the Mono Lake Basin. The department, upon acceptance of an application or applications pursuant to Section 12929.21, shall expend money available from the Environmental Water Fund to preserve the wildlife and environment of the Mono Lake Basin.

12929.21. The City of Los Angeles, jointly with the Mono Lake Committee, may submit one or more grant applications to the department to protect and preserve the Mono Lake Basin. The grant applications shall benefit and enhance the lake's ecosystem and contribute to permanent protection of the Mono Lake Basin environment, including, but not limited to, nesting and migratory bird populations, air quality, fish, and other wildlife, as well as provide replacement water and power to the city. Any project funded by a grant shall not unreasonably affect fish, wildlife, or other instream beneficial uses.

12929.22. Funds expended for purposes of Section 12929.20 shall be expended only for an eligible project which is consistent with a grant application pursuant to Section 12929.21. The City of Los Angeles shall be the sole grantee for any funds expended for an eligible project.

For purposes of this section, "eligible project" means a water or power conservation project, a waste water reclamation project, a conjunctive use program, a groundwater recharge project, the enlargement of existing water or power facilities owned by the City of Los Angeles, electric power production facilities, or a water marketing program. Priority shall be given to projects or programs that conserve water or power that has been previously developed.

It is the intent of the Legislature that eligible projects are intended to find replacement water and power for the City of Los Angeles and to limit any impact of reduced diversions from the Mono Lake Basin on statewide water and power supplies, except for any reduced diversions ordered as specified in Section 12929.24. No money made available pursuant to this chapter shall be spent by the city to buy water from the Metropolitan Water District of Southern California.

12929.23. Until June 30, 1994, 60 percent of the funds that have been appropriated to the Environmental Water Program shall be reserved exclusively for the funding of applications pursuant to Section 12929.21. Applicants may also apply for funds that may be appropriated in the future to the Environmental Water Program. After July 1, 1994, all funds reserved by this section and all other funds that may be appropriated to the Environmental Water Program may be used either to protect and preserve the Mono Lake Basin or for programs and projects listed in Section 12929.26.

12929.24. The state shall not accept any application for funds pursuant to Section 12929.21 that would expend any state money to replace water or power supplies lost by the City of Los Angeles because of a final court judgment or final board order regarding the Mono Lake Basin.

12929.25. This chapter does not affect the rights or obligations of any party involved in litigation regarding the Mono Lake Basin.

12929.26. Other purposes eligible for funding under this chapter, subject to approval by the Legislature in the annual budget process, include all of the following:

(a) Restoration and enhancement of fisheries on the Upper Sacramento River, San Joaquin River, and elsewhere. Primary emphasis shall be on restoring and enhancing fisheries habitat.

(b) Acquisition, restoration, and enhancement of wetlands on the Pacific Flyway and elsewhere.

(c) Acquisition, restoration, and enhancement of riparian habitat on the Sacramento River, San Joaquin River, Sacramento-San Joaquin River Delta, and elsewhere.

The department shall confer with appropriate state and federal agencies on the feasibility of eligible projects.

Article 4. Water Quality Program

12929.30. The Water Quality Program includes projects or programs of public agencies throughout the state that will either (1) reduce the amounts of agricultural drainage water or (2), improve the quality of agricultural drainage water with the result of improving the quality of water used for agricultural, municipal, or industrial purposes.

12929.31. (a) It is the intent of the Legislature that the funds provided to the department from the Water Quality Program be used for studies to investigate cost-effective reduction methods, containment structures, and treatment facilities for the treatment, storage, and disposal of agricultural drainage water.

(b) For purposes of this section, "treatment facilities" means facilities or works to treat agricultural drainage water to remove or substantially reduce the level of constituents which pollute or threaten to pollute the waters of the state, including, but not limited to, processes utilizing ion exchange, desalting technologies such as reverse osmosis, biological treatment, agriforestry, and cogeneration.

Article 5. Administrative Provisions

12929.40. In developing its recommendations for the appropriation of funds pursuant to this chapter, the department shall consult with the Department of Fish and Game and other appropriate local, state, and federal agencies and interested private groups and members of the public.

12929.41. (a) Programs and projects pursuant to this chapter may be undertaken by means of any of the following:

(1) Direct expenditure by the department.

(2) Loans to public and private agencies.

(3) Grants to public agencies.

(4) Any combination of paragraphs (1), (2), and (3).

(b) All grants shall be matched by at least an equal amount from the applicant public agency.

12929.42. The department may seek participation by, or a sharing of costs with, the beneficiaries of programs and projects undertaken pursuant to this chapter, including, but not limited to, public and private local entities. The department may also seek federal funds or participation by, cost sharing with, or financial assistance from, federal agencies which have related programs.

12929.43. Money may be expended pursuant to this chapter for, among other purposes, acquisition of interests in real property.

12929.44. The department may adopt rules and regulations as it determines to be necessary to carry out this chapter.

12929.45. Any contract for a grant or loan entered into pursuant to this chapter shall include, but not be limited to, all of the following provisions:

(a) An estimate of the reasonable cost of the project or program.

(b) An agreement by the borrower or grantee to proceed expeditiously with, and complete, the project or program; to commence operation of any project upon completion and to properly operate and maintain the project in accordance with applicable provisions of law; to provide for the payment of the agency's share of the cost of the project or program, including the principal of, and the interest on, any state loan made pursuant to this chapter; and if appropriate, to apply for, and make reasonable efforts to secure, federal assistance for the project or program.

12929.46. All loan repayments received pursuant to this chapter shall be deposited in the fund from which the loan was made.

12929.47. The department shall submit an annual report to the Legislature of its activities under this chapter.

CHAPTER 716

An act to amend Section 11913 of, and to add Sections 12303, 12929.10, 12929.12, and 12929.13 to, the Water Code, relating to water resources.

[Approved by Governor September 22, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. This act shall be known as the Environmental Water Act of 1989.

SEC. 2. Section 11913 of the Water Code is amended to read:

11913. (a) The Legislature hereby declares its intent that, except as funds are provided pursuant to Section 11915, there shall be included in the budget for the department for each fiscal year, and in the Budget Act for each fiscal year, an appropriation from the General Fund of the funds necessary for enhancement of fish and wildlife and for recreation in connection with state water projects as provided in this chapter.

(b) Notwithstanding subdivision (a), the obligation of the State Water Resources Development System to reimburse the California Water Fund pursuant to paragraph (3) of subdivision (b) of Section 12937 shall be reduced by the total of unreimbursed department costs incurred in the 1988–89 fiscal year and each succeeding fiscal year for enhancement of fish and wildlife and for recreation pursuant to this chapter. The reduction shall be contingent upon annual approval by the Legislature, in the Budget Act or other act, of the department's allocation of those costs.

SEC. 3. Section 12303 is added to the Water Code, to read:

12303. (a) It is the intent of the Legislature that, subject to subdivision (b) of Section 12929.12, if twelve million dollars ($12,000,000) or any lesser amount is transferred pursuant to paragraph (3) of subdivision (b) of Section 12937 to the California Water Fund from the California Water Resources Development Bond Fund in each of the fiscal years 1990–91 to 1997–98, inclusive, and if six million dollars ($6,000,000) or any lesser amount is so transferred in the 1998–99 fiscal year, that amount shall be appropriated to the Delta Flood Protection Fund for the purposes specified in subdivision (b) of Section 12300, in lieu of the funds deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code. However, that the director, in consultation with the Department of Finance, may accelerate payments to the California Water Fund for reappropriation to the Delta Flood Protection Fund if the director deems it appropriate to do so.

(b) The obligation of the State Water Resources Development System to reimburse the California Water Fund, pursuant to

paragraph (3) of subdivision (b) of Section 12937, shall decrease by amounts equal to the amounts which are transferred from the California Water Resources Development Bond Fund to the California Water Fund and appropriated to the Delta Flood Protection Fund pursuant to subdivision (a).

(c) For any fiscal year, the Director of Finance, in consultation with the Director of Water Resources, may recommend in the Budget Act a source of funding for the Delta Flood Protection Fund which is different from that set forth in subdivision (a). If the Legislature approves the alternative source of funding, the portion of the State Water Resources Development System obligation specified in subdivision (b) which remains outstanding because of the selection of the alternative funding source shall be discharged pursuant to subdivision (b) of Section 11913.

SEC. 4. Section 12929.10 is added to the Water Code, to read:

12929.10. The Environmental Water Fund is hereby created in the State Treasury. There shall be deposited in the fund all moneys transferred or appropriated to the fund and all income derived from investment of moneys that are in the fund.

SEC. 5. Section 12929.12 is added to the Water Code, to read:

12929.12. (a) It is the intent of the Legislature that sixty-five million dollars ($65,000,00) of the funds which may be transferred, pursuant to paragraph (3) of subdivision (b) of Section 12937, to the California Water Fund from the California Water Resources Development Bond Fund, shall be appropriated to the Environmental Water Fund. It is the intent of the Legislature, subject to subdivision (b), to appropriate to the Environmental Water Fund one million dollars ($1,000,000) in the 1990–91 fiscal year and eight million dollars ($8,000,000) per year in fiscal years 1991–92 to 1998–99, inclusive. However, the director, in consultation with the Department of Finance, may accelerate payments to the California Water Fund for appropriation to the Environmental Water Fund if the director deems it appropriate to do so.

(b) It is the further intent of the Legislature that if the director determines that all or any portion of the amount which would otherwise be appropriated in any fiscal year to the Environmental Water Fund in accordance with subdivision (a), or to the Delta Flood Protection Fund pursuant to Section 12303, is required for continued construction of the State Water Resources Development System pursuant to Section 12938, the entire amount which would otherwise be appropriated to the Environmental Fund for that fiscal year shall be reduced to zero before any reduction is made in the amount to be appropriated to the Delta Flood Protection Fund. It is also the intent of the Legislature that any reduction in funds appropriated to the Environmental Water Fund and the Delta Flood Protection Fund pursuant to this subdivision be made up from funds transferred to the California Water Fund pursuant to paragraph (3) of subdivision (b) of Section 12937 in subsequent fiscal years.

SEC. 6. Section 12929.13 is added to the Water Code, to read:

12929.13. It is further the intent of the Legislature that the reductions and transfers described in Sections 11913, 12303, and 12929.12 shall continue until the obligation of the State Water Resources Development System to reimburse the California Water Fund pursuant to paragraph (3) of subdivision (b) of Section 12937 is satisfied.

SEC. 7. The Legislature finds and declares as follows:

(a) To the extent that the revenues of the State Water Resources Development System deposited in the State Water Resources Development Bond Fund are surplus to maintenance, operation, and replacement costs, to payment of principal and interest on bonds, and to reasonable reserves for each of these purposes, the system is obligated, pursuant to paragraph (3) of subdivision (b) of Section 12937 of the Water Code, to transfer those surplus funds to the California Water Fund as reimbursement for moneys used from that fund for construction of the system.

(b) A total of four hundred thirty-two million eight hundred thousand dollars ($432,800,000) from the California Water Fund has been used for construction of the State Water Resources Development System.

(c) Pursuant to the Davis-Dolwig Act (Chapter 10 (commencing with Section 11900) of Part 3 of Division 6 of the Water Code), the General Fund is currently obligated to reimburse the State Water Resources Development System one hundred seventy-two million two hundred ninety-one thousand dollars ($172,291,000) for unreimbursed costs incurred through June 30, 1988, for recreation and fish and wildlife enhancement, including capital costs, recreation land acquisition costs, operations and maintenance costs, and interest costs which have been borne by the State Water Resources Development System.

(d) Section 12912.5 of the Water Code declares the intent of the Legislature to annually appropriate five million dollars ($5,000,000) from moneys deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code to the Department of Water Resources for mitigation of adverse effects to water quality, fisheries, and wildlife in the Sacramento-San Joaquin River Delta, Suisun Marsh, San Francisco Bay, and the Salton Sea. Pursuant to Section 12912.5 of the Water Code, the General Fund is currently obligated to reimburse the State Water Resources Development System the amount of nine million four hundred seventy-eight thousand dollars ($9,478,000) for the General Fund share of costs expended through June 30, 1988, for mitigation facilities constructed in the Suisun Marsh pursuant to the Suisun Marsh Preservation Agreement entered into by the United States Bureau of Reclamation, the Department of Water Resources, the Department of Fish and Game, and the Suisun Resource Conservation District. This act provides a mechanism to meet this obligation in lieu of utilizing funds deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public

Resources Code.

(e) Section 12300 of the Water Code declares the intent of the Legislature annually through fiscal year 1998–99 to transfer twelve million dollars ($12,000,000) to the Delta Flood Protection Fund from moneys deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code and to appropriate those moneys for the following purposes:

(1) Local assistance for maintenance and improvement of delta levees.

(2) Special delta flood protection projects, subsidence studies, and monitoring.

(f) It is necessary and desirable to do the following:

(1) To offset the one hundred seventy-two million two hundred ninety-one thousand dollars ($172,291,000) for fish and wildlife enhancement and recreation and the nine million four hundred seventy-eight thousand dollars ($9,478,000) for Suisun Marsh facilities owed by the General Fund to the State Water Resources Development System against the four hundred thirty-two million eight hundred thousand dollars ($432,800,000) obligation of the State Water Resources Development System to the California Water Fund.

(2) To authorize the State Water Resources Development System to further reimburse the California Water Fund by depositing system revenues, as described in paragraph (3) of subdivision (b) of Section 12937 of the Water Code, in the California Water Fund for fiscal years 1989–90 to 1998–99, inclusive, for appropriation by the Legislature for the purposes specified in subdivision (e), in lieu of the appropriation of funds deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code.

(3) To provide for the continued offset of funds expended by the State Water Resources Development System for recreation and fish and wildlife enhancement pursuant to the Davis-Dolwig Act against the remaining obligation of the State Water Resources Development System to reimburse the California Water Fund.

SEC. 8. (a) The following obligations of the General Fund to reimburse the State Water Resources Development System for a total amount of one hundred eighty-one million seven hundred sixty-nine thousand dollars ($181,769,000) are hereby canceled:

(1) The obligation of the General Fund, in accordance with the Davis-Dolwig Act (Chapter 10 (commencing with Section 11900) of Part 3 of Division 6 of the Water Code), to reimburse the State Water Resources Development System the amount of one hundred seventy-two million two hundred ninety-one thousand dollars ($172,291,000) for expenditures through June 30, 1988, of system revenues on recreation and fish and wildlife enhancement.

(2) The obligation pursuant to Section 12912.5 of the Water Code to reimburse the State Water Resources Development System the amount of nine million four hundred seventy-eight thousand dollars ($9,478,000) for the state share of costs of mitigation facilities

constructed through June 30, 1988, pursuant to the Suisun Marsh Preservation Agreement.

(b) The obligation of the State Water Resources Development System to transfer surplus system revenues to the California Water Fund pursuant to paragraph (3) of subdivision (b) of Section 12937 of the Water Code as reimbursement for moneys utilized from the California Water Fund for construction of the system is hereby canceled in the amount of one hundred eighty-one million seven hundred sixty-nine thousand dollars ($181,769,000).

(c) The transfer of twelve million dollars ($12,000,000) from the California Water Fund to the Delta Flood Protection Fund pursuant to Item 3860-005-144 of the Budget Act of 1989 shall take effect upon the transfer of twelve million dollars ($12,000,000) from the California Water Resources Development Bond Fund to the California Water Fund pursuant to paragraph (3) of subdivision (b) of Section 12937 of the Water Code for further appropriation from the Delta Flood Protection Fund pursuant to Items 3860-001-176 and 3860-101-176 of the Budget Act of 1989. The transfer and appropriation shall be in lieu of appropriation of moneys deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code.

(d) The obligation of the State Water Resources Development System to reimburse the California Water Fund, pursuant to paragraph (3) of subdivision (b) of Section 12937 of the Water Code, shall decrease by the amount transferred from the California Water Resources Development Bond Fund to the California Water Fund pursuant to subdivision (c).

CHAPTER 717

An act to amend Section 66498.8 of the Government Code, relating to subdivisions.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 66498.8 of the Government Code is amended to read:

66498.8. (a) On or before January 1, 1986, a city, county, or city and county shall adopt ordinances or resolutions necessary or appropriate for the implementation of this chapter.

(b) If a city, county, or city and county receives a written request to implement this chapter, it shall adopt any ordinances or resolutions it determines necessary or appropriate to implement this chapter. The city, county, or city and county shall adopt the ordinances or resolutions not more than 120 days from the date the

request is made and any fee is paid to cover the direct expenses the city, county, or city and county determines it will incur in processing the ordinances or resolutions. The city, county, or city and county may arrange, with the person making the request, to collect fees from subdividers filing vesting tentative maps and to reimburse the person requesting the ordinance or resolution for any costs so advanced by that person.

(c) The local agency may charge subdividers who file vesting tentative maps a fee in an amount sufficient to recover the direct costs associated with establishing and adopting ordinances or resolutions pursuant to subdivision (a) or (b).

(d) No ordinances or resolutions adopted pursuant to subdivision (a) may require more information than that related to ordinances, resolutions, policies, or standards for the design, development, or improvement relating to the conferred rights, except where necessary:

(1) To permit the public agency to make the determination required by Section 21080.1 of the Public Resources Code, as provided by Section 65941.

(2) To comply with federal or state requirements.

CHAPTER 718

An act to add Section 10902 to the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 10902 is added to to the Revenue and Taxation Code, to read:

10902. (a) In the event of a constructive total loss, in which the repair value exceeds the market value of the vehicle less the anticipated salvage value, or an unrecovered total loss, due to a theft, of a vehicle, the in-lieu fee portion of the vehicle license fee that has been paid shall be refunded to the current registered owner (the owner of the salvage value of the vehicle), or credited against the vehicle license fee owed on the owner's replacement vehicle. The amount refunded or credited shall be based upon one-twelfth of the annual in-lieu fee for each full month that remains until the registration expires.

(b) No refund or credit shall be made pursuant to this section unless the vehicle owner has signed a declaration under penalty of perjury that he or she has not been cited or convicted of violating Section 23152 or 23153 of the Vehicle Code (relating to driving under the influence of alcohol or drugs) or Section 23103 as specified in

Section 23103.5 of that code (which involves a substitute for an original citation of driving under the influence) in connection with the owner's vehicle loss. If the owner has been cited under any of these code sections, the owner shall be entitled to the refund or credit upon presentation of either proof of dismissal of the citation or a finding of not guilty.

(c) The Department of Motor Vehicles may charge to vehicle owners requesting a refund or credit pursuant to this section a fee in an amount sufficient to cover the administrative costs of processing the request.

(d) In the case of a request for refund or credit with respect to a stolen vehicle, the vehicle owner shall not be entitled to a refund or credit prior to 60 days from the date the theft of the vehicle is reported to the police. If a refund is received or a credit is applied to another vehicle and the stolen vehicle is subsequently recovered, the owner shall return the amount refunded or credited. If the owner receives a refund or credit, and the destroyed or stolen vehicle is scrapped and subsequently repaired by another person, the new owner shall pay the full vehicle license fee.

(e) The Department of Motor Vehicles shall adopt regulations for the administration of the refunds and credits provided by this section.

(f) This section shall become operative on January 1, 1991.

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

CHAPTER 719

An act to add Section 1764.1 to the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 1764.1 is added to the Insurance Code, to read:

1764.1. Every nonadmitted insurer or surplus lines broker issuing a policy or policies of insurance shall, upon each application for a

policy and upon each policy issued by a nonadmitted insurer or surplus lines broker, prominently affix a legend in boldface 16-point type on the front page advising the applicant or insured (a) that the policy is issued by a nonadmitted insurer not subject to regulation by the California Department of Insurance, and (b) that the provisions of Article 15.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1, creating the California Insurance Guarantee Association, do not apply to any policy underwritten by a nonadmitted insurer.

CHAPTER 720

An act to amend Sections 44, 3519, 3520, 3706, 4004, 4005, 4008, 6494, and 22841 of the Elections Code, relating to elections.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 44 of the Elections Code is amended to read:

44. (a) Wherever any petition or paper is submitted to the clerk, each section of the petition or paper shall have attached to it a declaration signed by the circulator of the petition or paper, setting forth, in the circulator's own hand, the following:

(1) The printed name of the circulator.

(2) The residence address of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained.

(3) The dates between which all the signatures to the petition or paper were obtained.

(b) Each declaration submitted pursuant to this section shall also set forth the following:

(1) That the circulator circulated that section and saw the appended signatures being written.

(2) That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.

(c) The circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury, with the signature of his or her name at length, including given name, middle name or initial, or initial and middle name. The circulator shall state the date and the place of execution on the declaration immediately following his or her signature.

SEC. 2. Section 3519 of the Elections Code is amended to read:

3519. (a) Each section shall have attached thereto the declaration of the person soliciting the signatures setting forth the information required by Section 44 and stating that the circulator is

a registered voter of the state.

(b) The circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury, with the signature of his or her name at length, including given name, middle name or initial. The circulator shall state the date and the place of execution on the declaration immediately following his or her signature.

No other declaration thereto shall be required.

Petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing are qualified voters. Unless and until it be otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified voters.

SEC. 3. Section 3520 of the Elections Code is amended to read:

3520. (a) Each section of the petition shall be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all sections circulated in any county or city and county shall be filed at the same time. Once filed, no petition section shall be amended except by order of a court of competent jurisdiction.

(b) Within five days, excluding Saturdays, Sundays, and holidays, after the filing of the petition, the clerk or registrar of voters shall determine the total number of signatures affixed to the petition and shall transmit this information to the Secretary of State. If the total number of signatures filed with all county clerks is less than 100 percent of the number of qualified voters required to find the petition sufficient, the Secretary of State shall so notify the proponents and the county clerks and no further action shall be taken in regard to the petition.

(c) If the number of signatures filed with all county clerks is 100 percent or more of the number of qualified voters needed to declare the petition sufficient, the Secretary of State shall immediately so notify the county clerks.

(d) Within 15 days after this notification, excluding Saturdays, Sundays, and holidays, the clerk or registrar of voters shall determine the number of qualified voters who have signed the petition. If more than 500 names have been signed on sections of the petition filed with a county clerk, the clerk shall use a random sampling technique for verification of signatures, as determined by the Secretary of State. The random sample of signatures to be verified shall be drawn in such a manner that every signature filed with the county clerk shall be given an equal opportunity to be included in the sample. The random sampling shall include an examination of at least 500 or 5 percent of the signatures, whichever is greater. In determining from the records of registration what number of qualified voters have signed the petition, the clerk or registrar of voters may use the duplicate file of affidavits of registered voters or the facsimiles of voter's signatures, provided that the method of preparing and displaying the facsimiles complies with law.

(e) The clerk or registrar, upon the completion of the

examination, shall immediately attach to the petition, except the signatures thereto appended, a certificate properly dated, showing the result of the examination and shall immediately transmit the petition, together with the certificate, to the Secretary of State. A copy of this certificate shall be filed in the clerk's office.

(f) If the certificates received from all county clerks by the Secretary of State establish that the number of valid signatures does not equal 95 percent of the number of qualified voters needed to find the petition sufficient, the petition shall be deemed to have failed to qualify, and the Secretary of State shall immediately so notify the proponents and the county clerks.

(g) If the certificates received from all county clerks by the Secretary of State total more than 110 percent of the number of qualified voters needed to find the petition sufficient, the petition shall be deemed to qualify as of the date of receipt by the Secretary of State of certificates showing the petition to have reached the 110 percent, and the Secretary of State shall immediately so notify the proponents and the county clerks.

SEC. 4. Section 3706 of the Elections Code is amended to read:

3706. The petition shall be filed by the proponents, or by any person or persons authorized, in writing, by the proponents. All sections of the petition shall be filed at one time. Any sections of the petition not so filed shall be void for all purposes. Once filed, no petition section shall be amended except by order of a court of competent jurisdiction.

When the petition is filed, the county clerk shall determine the total number of signatures affixed to the petition. If, from this examination, the clerk determines that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required, the county clerk shall examine the petition in accordance with Section 3707 or 3708. If, from this examination, the clerk determines that the number of signatures, prima facie, does not equal or exceed the minimum number of signatures required, no further action shall be taken and the petition shall be preserved, as provided in Section 3756.

SEC. 5. Section 4004 of the Elections Code is amended to read:

4004. Within 10 days after the date of publication or posting, or both, of the notice of intention and title and summary, the proponents shall file a copy of the notice and title and summary as published or posted together with an affidavit made by a representative of the newspaper in which the notice was published or, if the notice was posted, by a voter of the city, certifying to the fact of publication or posting.

If the notice and title and summary are both published and posted pursuant to subdivision (b) of Section 4003, the proponents shall file affidavits as required by this section made by a representative of the newspaper in which the notice was published certifying to the fact that the notice was published and by a voter of the city certifying to the fact that the notice was posted.

These affidavits, together with a copy of the notice of intention and title and summary, shall be filed with the clerk of the legislative body of the city in his or her office during normal office hours as posted.

SEC. 6. Section 4005 of the Elections Code is amended to read:

4005. The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered voter of the city after publication or posting, or both, as required by Section 4003, of the title and summary prepared by the city attorney. Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney.

SEC. 7. Section 4008 of the Elections Code is amended to read:

4008. The petition shall be filed by the proponents or by any person or persons authorized in writing by the proponents. All sections of the petition shall be filed at one time. Once filed, no petition section shall be amended except by order of a court of competent jurisdiction.

When the petition is presented for filing, the clerk shall do all of the following:

(a) Ascertain the number of registered voters of the city last reported by the county clerk to the Secretary of State pursuant to Section 607 effective at the time the notice specified in Section 4002 was published.

(b) Determine the total number of signatures affixed to the petition. If, from this examination, the clerk determines that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required, the clerk shall accept the petition for filing. The petition shall be deemed as filed on that date. Any petition not accepted for filing shall be returned to the proponents.

SEC. 8. Section 6494 of the Elections Code is amended to read:

6494. (a) The nomination paper shall be in substantially the following form:

"NOMINATION PAPER

I, the undersigned signer for _____ for the _____ Party nomination to the office of _____, to be voted for at the primary election to be held on the _____ day of _____, 19__, hereby assert as follows:

I am a resident of _____ County and registered to vote at the address shown on this paper and affiliated with the _____ Party. I am not at this time a signer of any other nomination paper of any other candidate for the above-named office, or in case there are several places to be filled in the above-named office, I have not signed more nomination papers than there are places to be filled in the above-named office. My residence is correctly set forth after my signature hereto:

Name _____
Residence _____

(b) The affidavit of the circulator shall read as follows:

AFFIDAVIT OF THE CIRCULATOR

I, _____, solemnly swear (or affirm) that I have been appointed according to the provisions of Sections 6497 and 6498 of the Elections Code, as a circulator to secure signatures in the County of _____ to the nomination paper of _____ as a candidate for the nomination of the _____ Party for the office of _____; that the signatures on this section of the nomination paper were obtained between _____, 19__, and _____, 19__; that I circulated the petition and I saw the signatures on this section of the nomination paper being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My voting residence is _____.

(Signed) _____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____

(SEAL) Notary Public (or other official)

Examined and certified by me this _____ day of _____, 19__.

_____

Registrar of Voters—County Clerk

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any nomination paper in his or her possession which is entitled to be filed under the provisions of the Elections Code. (Elections Code Section 29302)"

SEC. 9. Section 22841 of the Elections Code is amended to read:

22841. The nomination papers and affidavits shall be substantially in the following form:

"NOMINATION PAPER

We, the undersigned voters of the _____ of _____ hereby nominate _____ for the office of _____ of said city:

Name	Residence

AFFIDAVIT OF THE CIRCULATOR

State of California
County of _____ } ss.

I, _____, solemnly swear (or affirm) that the signatures on this nomination paper were obtained between _____, 19__, and _____, 19__; that I circulated this petition and I saw the signatures on this section of the nomination papers being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My residence address is _____.

_____
(Signature)

Subscribed and sworn to before me the _____ day of _____, 19__.

_____
(SEAL) Notary Public in and for the County of _____, State of California

AFFIDAVIT OF THE NOMINEE

State of California
County of _____ } ss.

_____ being duly sworn, says that he or she is the above-named nominee for the office of _____, that he or she will accept the office in the event of his or her election, that he or she desires his or her name to appear on the ballot as follows:

_____
(Print name above),

and that he or she desires the following designation to appear on the ballot under his or her name:

_____
(Print desired designation above.)

Subscribed and sworn to before me the _____ day of _____, 19__.

_____
(SEAL) Notary Public in and for the County of _____, State of California"

CHAPTER 721

An act to amend Section 18214 of the Health and Safety Code, relating to mobilehomes.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 18214 of the Health and Safety Code is amended to read:

18214. "Mobilehome park" is any area or tract of land where two or more mobilehome lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes or mobilehomes used for human habitation. The rental paid for a manufactured home or mobilehome shall be deemed to include rental for the lot it occupies.

SEC. 2. It is the intent of the Legislature that enforcement agencies regulate mobilehome parks which were formerly held out for rent or lease and later converted to subdivisions, cooperatives, condominiums, or any other form of resident ownership, in the same manner as all other mobilehome parks are regulated pursuant to the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code). It is also the intent of the Legislature that enforcement agencies confer with homeowner associations or other designated governing bodies of resident-owned mobilehome parks whenever it is appropriate to do so.

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.

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

CHAPTER 722

An act to add Section 42408 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 42408 is added to the Health and Safety Code, to read:

42408. (a) Any person who tampers with any ambient air monitoring equipment, including related recording equipment, owned or operated by a county, unified or regional air pollution control district, air quality management district, or by the State of California, is guilty of a misdemeanor, and is liable in a civil action for damages caused by the tampering to the owner or operator of the equipment.

(b) For purposes of this section, "tampering" means any unauthorized, intentional touching or other conduct affecting the operational status of monitoring equipment which has the potential to invalidate data collected from the monitoring activity.

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

CHAPTER 723

An act to amend Section 4582.7 of the Public Resources Code, relating to forest practices.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 4582.7 of the Public Resources Code is amended to read:

4582.7. The director shall have 15 days from the date the initial inspection is completed or, in the event the director determines that

the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, to review the plan and take public comments. After the initial review and public comment period has ended, the director shall have up to 10 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and with this chapter. If the director determines that the plan is not in conformance with the rules and regulations of the board or with this chapter, the director shall return the plan, stating his or her reasons in writing, and advising the person submitting the plan of the person's right to a hearing before the board, and timber operations shall not commence. A person to whom a plan is returned may, within 10 days from the receipt of the plan, request of the board a public hearing before the board. The board shall schedule a public hearing to review the plan to determine if it is in conformance with the rules and regulations of the board and this chapter. Timber operations shall await board approval of the plan. Board action shall occur within 30 days from the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal. If the plan is not approved on appeal to the board, the plan may be found to be in conformance by the director within 10 days of board action, provided the plan is brought into full conformance with the rules and regulations of the board and this chapter. If the director does not act within 25 days, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, timber operations may commence pursuant to the plan, and all provisions of the plan shall be followed as provided in this chapter.

CHAPTER 724

An act to add Sections 1689.20, 1689.21, 1689.22, 1689.23, and 1689.24 to the Civil Code, relating to contracts.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 1689.20 is added to the Civil Code, to read:

1689.20. (a) In addition to any other right to revoke an offer, the buyer has the right to cancel a seminar sales solicitation contract or offer until midnight of the third "business day" after the day on which the buyer signs an agreement or offer to purchase which

complies with Section 1689.21.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the seminar sales solicitation contract or offer.

SEC. 2. Section 1689.21 is added to the Civil Code, to read:

1689.21. (a) In a seminar sales solicitation contract or offer, the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and shall contain in immediate proximity to the space reserved for his or her signature, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name and address of the seller to which the notice is to be mailed.

(2) The date the buyer signed the agreement or offer to purchase.

(c) The agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point, the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of

the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____ at _____

/name of seller/ /Address of sellers place of business/

not later than midnight of _____

(Date)

I hereby cancel this transaction _____

(Date)

_____

(Buyer's signature)

(d) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel at the time the seminar sales solicitation contract or offer is executed.

(e) Until the seller has complied with this section, the buyer may cancel the seminar sales solicitation contract or offer.

(f) "Contract or sale" as used in subdivision (c), means "seminar sales solicitation contract or offer" as defined by Section 1689.24.

SEC. 3. Section 1689.22 is added to the Civil Code, to read:

1689.22. (a) Except as provided in Sections 1689.20 and 1689.21, within 10 days after a seminar sales solicitation contract or offer has been cancelled, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(b) If the downpayment includes goods traded in, the goods must be tendered in substantially as good condition as when received.

(c) Until the seller has complied with the obligations imposed by Sections 1689.20 and 1689.21, the buyer may retain possession of goods delivered to him or her by the seller and has a lien on the goods for any recovery to which he or she is entitled.

SEC. 4. Section 1689.23 is added to the Civil Code, to read:

1689.23. (a) Except as provided in subdivision (c) of Section 1689.22, within 20 days after a seminar sales solicitation contract or offer has been canceled, the buyer, upon demand, must tender to the seller any goods delivered by the seller pursuant to the sale or offer, but he or she is not obligated to tender at any place other than his or her own address. If the seller fails to demand possession of goods within 20 days after cancellation, the goods become the property of the buyer without obligation to pay for them.

(b) The buyer has a duty to take reasonable care of the goods in his or her possession, both prior to cancellation and during the 20-day period following. During the 20-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.

(c) If the seller has performed any services pursuant to a seminar sales solicitation contract or offer prior to its cancellation, the seller is entitled to no compensation. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was at the time the services were rendered.

SEC. 5. Section 1689.24 is added to the Civil Code, to read:

1689.24. As used in Sections 1689.20 to 1689.23, inclusive:

(a) "Seminar sales solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made using selling techniques in a seminar setting in an amount of twenty-five dollars ($25) or more, including any interest or service charges. "Seminar sales solicitation contract" does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto or any contract which contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.

(b) "Seminar setting" means premises other than the residence of the buyer.

(c) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods which, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with a vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in Section 18008 of the Health and Safety Code, nor any goods sold with a mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) "Services" means work, labor and services, including, but not

limited to, services furnished in connection with the repair, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, which are not connected with the sale of goods or services, as defined herein, nor the sale of insurance which is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the State of California.

(e) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

SEC. 6. This act is declaratory of existing law with respect to contracts made at seminars held at locations other than appropriate trade premises, as defined in subdivision (b) of Section 1689.5 of the Civil Code.

CHAPTER 725

An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 790.035 is added to the Insurance Code, to read:

790.035. (a) Any person who engages in any unfair method of competition or any unfair or deceptive act or practice defined in Section 790.03 is liable to the state for a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars ($5,000) for each act, or, if the act or practice was willful, a civil penalty not to

exceed ten thousand dollars ($10,000) for each act. The commissioner shall have the discretion to establish what constitutes an act. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purpose of this section.

(b) The penalty imposed by this section shall be imposed by and determined by the commissioner as provided by Section 790.05. The penalty imposed by this section is appealable by means of any remedy provided by Section 12940 or by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 790.05 of the Insurance Code is amended to read:

790.05. Whenever the commissioner shall have reason to believe that such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in Section 790.03, and that a proceeding by the commissioner in respect thereto would be to the interest of the public, he or she shall issue and serve upon that person an order to show cause containing a statement of the charges in that respect, a statement of that person's potential liability under Section 790.035, and a notice of a hearing thereon to be held at a time and place fixed therein, which shall not be less than 30 days after the service thereof, for the purpose of determining whether the commissioner should issue an order to that person to, pay the penalty imposed by Section 790.035, and to cease and desist those methods, acts, or practices or any of them.

If the charges or any of them are found to be justified the commissioner shall issue and cause to be served upon that person an order requiring that person to pay the penalty imposed by Section 790.035 and to cease and desist from engaging in those methods, acts, or practices found to be unfair or deceptive.

The hearing shall be conducted in accordance with the Administrative Procedure Act, Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

The person shall be entitled to have the proceedings and the order reviewed by means of any remedy provided by Section 12940 of this code or by the Administrative Procedure Act.

SEC. 3. Section 790.07 of the Insurance Code is amended to read:

790.07. Whenever the commissioner shall have reason to believe that any person has violated a cease and desist order issued pursuant to Section 790.05 or a court order issued pursuant to Section 790.06, after the order has become final, and while the order is still in effect, the commissioner may, after a hearing at which it is determined that the violation was committed, order that person to forfeit and pay to the State of California a sum not to exceed five thousand dollars ($5,000) plus any penalty due under Section 790.05, which may be recovered in a civil action, except that, if the violation is found to be willful, the amount of the penalty may be a sum not to exceed

fifty-five thousand dollars ($55,000) plus the penalty due under Section 790.05.

For the purposes of this section, the failure to pay any penalty imposed pursuant to Section 790.035 which has become final shall constitute a violation of the cease and desist order.

For any subsequent violation of the cease and desist order or of the court order or the order to pay the penalty, while the order is still in effect, the commissioner may, after hearing, suspend or revoke the license or certificate of that person for a period not exceeding one year; provided, however, no such proceeding shall be based upon the subsequent violation unless the same was committed or continued after the date on which the order imposing the penalty pursuant to the preceding paragraph became final.

The hearings provided by this section shall be conducted in accordance with the Administrative Procedure Act, and the commissioner shall have all the powers granted therein.

The person shall be entitled to have the proceedings and the order of the commissioner therein reviewed by means of any remedy provided by Section 12940 or by the Administrative Procedure 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 effectively protect consumers from deceptive insurance practices and to ensure marketplace stability it is necessary for this act to take effect immediately.

CHAPTER 726

An act to amend Sections 1858.1, 1858.3, and 1859.1 of, and to add Section 1858.07 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 1858.07 is added to the Insurance Code, to read:

1858.07. (a) Any person who uses any rate, rating plan, or rating system in violation of this chapter is liable to the state for a civil penalty not to exceed five thousand dollars ($5,000) for each act, or, if the act or practice was willful, a civil penalty not to exceed ten thousand dollars ($10,000) for each act. The commissioner shall have the discretion to establish what constitutes an act. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purpose of

this section.

(b) The penalty imposed by this section shall be imposed by and determined by the commissioner as provided by Section 1858.3, except that no penalty shall be imposed by the commissioner if a person has used any rate, rating plan, or rating system that has been approved for use by the commissioner in accordance with the provisions of this chapter.

The penalty imposed by this section is appealable by means of any remedy provided by Section 12940 or by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 1858.1 of the Insurance Code is amended to read:

1858.1. If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in Section 1858, the commissioner has good cause to believe that the insurer, organization, group, or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he or she shall give notice in writing to that insurer, organization, group, or association stating therein in what manner and to what extent that noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which that noncompliance may be corrected, and specifying therein the amount of any penalty that may be due under Section 1858.07.

An insurer, organization, group, or association served with that notice of noncompliance may, within the time specified therein, (a) establish to the satisfaction of the commissioner that the noncompliance does not exist, or (b) request a public hearing, notice of which shall be given at least 30 days prior to the date set for hearing, or (c) enter into an informal conciliation with the commissioner and any complainant making a complaint pursuant to Section 1858 to resolve the matter complained of, or (d) enter into a consent order with the commissioner to correct the specified noncompliance within a period of time specified in the consent order, and to pay any penalty due under Section 1858.07. A consent order shall provide that in the event the noncompliance is not corrected within the time specified therein that, in addition to any penalty due under Section 1858.07, a money penalty of not to exceed ten thousand dollars ($10,000) shall attach and be collected by the commissioner for each day the violation of the consent order continues. This money penalty shall not exceed in the aggregate the sum of one hundred thousand dollars ($100,000) plus the penalty due under Section 1858.07. In addition to or in lieu of the procedure provided herein the commissioner may proceed with a public hearing as provided in Section 1858.2.

For the purposes of this section, the failure to pay any penalty

imposed pursuant to Section 1858.07 which has become final shall constitute a violation of a notice of noncompliance or of a consent order issued under this section.

SEC. 3. Section 1858.3 of the Insurance Code is amended to read:

1858.3. If after a hearing pursuant to Section 1858.2 the commissioner finds:

(a) That any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he or she shall issue an order to the insurer or rating organization which has been the subject of the hearing specifying in what respects that violation exists and stating when, within a reasonable period of time, the further use of that rate or rating system by that insurer or rating organization in contracts of insurance made thereafter shall be prohibited. The commissioner may, in addition to that order, direct the insurer or rating organization to take such other corrective action as he or she may deem necessary and proper.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it other than the provisions dealing with rates, rating plans, or rating systems, he or she may issue an order to that insurer, organization, group, or association which has been the subject of the hearing specifying in what respects that violation exists and requiring compliance within a reasonable time thereafter.

(c) Any order of the commissioner issued pursuant to subdivision (a) shall specify the amount of the penalty due under Section 1858.07, and any order issued pursuant to subdivision (a) or (b) shall provide that, in addition, a money penalty of not to exceed ten thousand dollars ($10,000) shall attach and be collected by the commissioner for each day such person fails to comply within the time specified therein with the provisions of that order in the same manner as that provided in Section 1858.1. This penalty shall not exceed in the aggregate the sum of one hundred thousand dollars ($100,000) plus any penalty due under Section 1858.07.

SEC. 4. Section 1859.1 of the Insurance Code is amended to read:

1859.1. (a) Any person, insurer, organization, group, or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty thousand dollars ($50,000) but if the failure is willful he or she or it shall be liable to the state in an amount not exceeding two hundred fifty thousand dollars ($250,000) for the failure. That penalty shall be in addition to any penalty arising under Section 1858.07. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the State of California to enforce collection. These penalties may be in addition to any other penalties provided by law.

(b) A willful violation of this chapter by any person is a misdemeanor.

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 effectively protect consumers from unfair rates and to ensure marketplace stability, it is necessary for this act to take effect immediately.

CHAPTER 727

An act to amend Section 674.6 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 674.6 of the Insurance Code is amended to read:

674.6. (a) No insurer issuing policies of insurance subject to Section 674.5 or 675 shall cease to offer any particular line of coverage without prior notification to the commissioner.

(b) An insurer shall notify the department at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of (1) commercial liability insurance, (2) any insurance defined in Section 660 or 675 when coverage is provided by a separate rider or endorsement for an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage, (3) any other insurance defined in Section 660, or (4) any insurance issued to an individual or individuals covering a risk not arising from a business or commercial activity. Upon receipt of the notice, the commissioner may request and review additional information, as deemed necessary, and investigate the market conditions to determine whether that insurance may become not readily available in the voluntary insurance market as a result of the withdrawal.

(c) For purposes of this section, "intent to substantially withdraw" means an insurer's intent to nonrenew in excess of 50 percent of its current policyholders in the line of coverage upon their next renewal.

(d) The commissioner shall adopt appropriate rules, regulations, and standards for purposes of implementing this section.

(e) Any insurer that has notified the commissioner pursuant to subdivision (b) shall (1) notify the commissioner within 10 days after the date given in the withdrawal notice if the insurer does not in fact withdraw that line of insurance from the market, or (2) notify the

commissioner within 10 days after reentry if the insurer reenters that line after the withdrawal.

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

In order to protect the insurance public from the possibility that insurance may be unavailable for personal lines of property and casualty insurance, and to ensure competition, it is necessary for this act to take effect immediately.

CHAPTER 728

An act to add and repeal Section 44257 of, and to add Section 44258.15 to, the Education Code, relating to teachers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. The Legislature hereby finds and declares that innovative organizational patterns for the delivery of instruction to pupils are widely utilized in the public elementary and middle schools. The Legislature further finds that although self-contained classrooms continue to be the predominant method of providing instruction in the elementary grades, the use of the departmentalized teaching of selected subjects has gained popularity as a method to provide regular planning periods for teachers and greater opportunities to utilize the expertise of the certificated staff. The Legislature also finds that team teaching and the regrouping of pupils across classrooms are additional popular instructional methods.

The Legislature finds that increased attention to the needs of pupils in the early years of adolescence, particularly for pupils in upper elementary and junior high school grade levels, has resulted in the expansion of middle schools and more focused attention on the qualifications of certificated employees in those schools. It is the intent of the Legislature in enacting this act to determine whether existing credentialing statutes and regulations, and the enforcement of these statutes and regulations, have the effect of deterring the use of important and innovative instructional innovations.

SEC. 2. Section 44257 is added to the Education Code, to read:

44257. The Commission on Teacher Credentialing shall undertake a study on the extent to which existing statutes and regulations governing the assignment of certificated personnel in the elementary and middle school grades affect existing staffing patterns

and serve to inhibit or discourage the use of innovative patterns for instruction. The study may include the participation of school districts and county offices of education. Any certificated employee employed by a school district or county office of education which participates in the study shall not be subject during that period to the sanctions for the misassignment of credential holders required under subdivision (g) of Section 44258.9. The commission shall submit a report to the Legislature on its findings and recommendations on or before January 1, 1991.

This section shall remain in effect only until January 1, 1991, 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. 3. Section 44258.15 is added to the Education Code, to read:

44258.15. (a) Notwithstanding Section 44258.1, the holder of a credential authorizing instruction in a self-contained classroom may provide instruction in a team teaching setting or may regroup pupils across classrooms in subjects authorized by the governing board of the school district.

(b) Any holder of any credential based upon a baccalaureate degree and a professional preparation program approved by the commission may be assigned, with his or her consent, to teach, in a departmentalized setting in grades 8 and below, in any subject in which he or she has successfully completed 12 semester units or six upper division or graduate units from an accredited college or university. The assignment may be for a full or partial day.

(c) Any holder of a credential based upon a baccalaureate degree and a professional preparation program approved by the commission who has successfully taught any subject in a departmentalized setting in grades 8 and below prior to September 1, 1989, for at least three years, may be assigned, with his or her consent, to teach the subject on a full or partial day assignment if either of the following requirements are met:

(1) He or she has successfully completed 12 semester units or six upper division or graduate units from an accredited college or university in the subject.

(2) He or she has completed a systematic program of staff development related to the subject, as verified by the employing district.

(d) The authorizations to provide instruction prescribed in subdivisions (b) and (c) shall remain operative only until June 30, 1992, unless a statute which is enacted on or before June 30, 1992, deletes or extends that date.

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 require the Commission on Teacher Credentialing to conduct the study required by Section 44257 of the Education Code, and in order to authorize the assignment of teachers in accordance

with the requirements of Section 44258.15 of the Education Code pending the completion of the study and the enactment or adoption of statutes and regulations based upon the findings of that study at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 729

An act to amend Sections 40225, 40303.5, 40522, and 40610 of, and to add Section 40153 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 40153 is added to the Vehicle Code, to read:

40153. Whenever a notice of a violation of subdivision (a) of Section 5204 is issued pursuant to subdivision (b) of Section 40225, the court shall not adjudicate the offense until satisfactory evidence is produced to the court that the appropriate registration fee has been paid or the vehicle has been dismantled.

SEC. 2. Section 40225 of the Vehicle Code is amended to read:

40225. (a) A registration or equipment violation which occurred and was entered on the notice of parking violation attached to the vehicle under Section 40203 shall be processed in accordance with this article. All of the equipment and registration violations entered on the notice of parking violation shall be noticed in the notice of delinquent parking violation served or mailed pursuant to Section 40206, together with the amount of bail prescribed by the court for that infraction.

(b) Whenever a vehicle is not in violation of any regulation governing the standing or parking of a vehicle under this code, under any federal statute or regulation, or under any ordinance enacted by local authorities, but is in violation of subdivision (a) of Section 5204, a person authorized to enforce parking laws and regulations shall issue a written notice of violation, setting forth the alleged violation. The violation shall be processed pursuant to this section.

(c) Any bail collected pursuant to this section for registration or equipment violations by a processing agency shall be paid to the court, accompanied with a copy of the notice of parking violation or notice of delinquent parking violation containing the notice of the registration or equipment violation, and the court shall process that bail and offense in the same manner as bail posted on a notice to appear issued pursuant to Section 40500.

SEC. 3. Section 40303.5 of the Vehicle Code is amended to read:

40303.5. Whenever any person is arrested for any of the following offenses, the arresting officer shall permit the arrested person to

execute a notice containing a promise to correct the violation in accordance with the provisions of Section 40610 unless the arresting officer finds that any of the disqualifying conditions specified in subdivision (b) of Section 40610 exist:

(a) Any registration infraction set forth in Division 3 (commencing with Section 4000), except subdivision (a) of Section 5204.

(b) Any driver's license infraction set forth in Division 6 (commencing with Section 12500), and subdivision (a) of Section 12951, relating to possession of driver's license.

(c) Section 21201, relating to bicycle equipment.

(d) Any infraction involving equipment set forth in Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), Division 14.8 (commencing with Section 34500), Division 16 (commencing with Section 36000), Division 16.5 (commencing with Section 38000), and Division 16.7 (commencing with Section 39000).

SEC. 4. Section 40522 of the Vehicle Code is amended to read:

40522. Whenever a person is arrested for violations specified in Section 40303.5, except a violation of subdivision (a) of Section 5204, and none of the disqualifying conditions set forth in subdivision (b) of Section 40610 exist, and the officer issues a notice to appear, the notice shall specify the offense charged and note in a form approved by the Judicial Council that the charge shall be dismissed on proof of correction. If the arrested person presents, by mail or in person, proof of correction, as prescribed in Section 40616, on or before the date on which the person promised to appear, the court shall dismiss the violation or violations charged pursuant to Section 40303.5.

The court shall not impose a fine or assess an administrative fee for a violation or processing a proof of correction with respect to a violation for which proof of correction has been timely and properly secured.

SEC. 5. Section 40610 of the Vehicle Code is amended to read:

40610. (a) (1) Except as provided in paragraph (2), if, after an arrest, accident investigation, or other law enforcement action, it appears that a violation, other than a violation of subdivision (a) of Section 5204, has occurred involving a registration, license, or mechanical requirement of this code, and none of the disqualifying conditions set forth in subdivision (b) exist and the investigating officer decides to take enforcement action, the officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency.

(2) If any person is arrested for a violation of Section 4454, and none of the disqualifying conditions set forth in subdivision (b) exist, the arresting officer shall prepare, in triplicate, and the violator shall sign, a written notice containing the violator's promise to correct the alleged violation and to deliver proof of correction of the violation to the issuing agency. In lieu of issuing a notice to correct violation

pursuant to this section, the officer may issue a notice to appear, as specified in Section 40522.

(b) Pursuant to subdivision (a), a notice to correct violation shall be issued as provided in this section or a notice to appear shall be issued as provided in Section 40522, unless the officer finds any of the following:

(1) Evidence of fraud or persistent neglect.

(2) The violation presents an immediate safety hazard.

(3) The violator does not agree to, or cannot, promptly correct the violation.

(c) If any of the conditions set forth in subdivision (b) exist, the procedures specified in this section or Section 40522 are inapplicable, and the officer may take other appropriate enforcement action.

(d) Except as otherwise provided in subdivision (a), the notice to correct violation shall be on a form approved by the Judicial Council and, in addition to the owner's or operator's address and identifying information, shall contain an estimate of the reasonable time required for correction and proof of correction of the particular defect, not to exceed 30 days.

(e) The court shall not impose a fine or assess an administrative fee for a violation or processing a proof of correction with respect to a violation for which proof of correction has been timely and properly secured.

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. Pursuant to Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the July 1 following the date on which the act takes effect pursuant to the California Constitution.

CHAPTER 730

An act to amend Section 556 of the Insurance Code, and to amend Section 548 of the Penal Code, relating to insurance.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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 do any of the following:

(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, and by a fine not exceeding fifty thousand dollars ($50,000).

(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.

(d) Any person who violates subdivision (a) and who has a prior conviction of the offense set forth in that subdivision or in Section 548 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b). The existence of any fact which would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 2. Section 548 of the Penal Code is amended to read:

548. (a) Every person who willfully injures, destroys, secretes, abandons, or disposes of any property which at the time is insured against loss or damage by theft, or embezzlement, or any casualty

with intent to defraud or prejudice the insurer, whether the property is the property or in the possession of such person or any other person, is punishable by imprisonment in the state prison for two, three, or five years and by a fine not exceeding fifty thousand dollars ($50,000).

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

(b) Any person who violates subdivision (a) and who has a prior conviction of the offense set forth in that subdivision or in Section 556 of the Insurance Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided under subdivision (a). The existence of any fact which would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

CHAPTER 731

An act to amend Sections 5721, 9390, 9390.1, 9390.5, 9391, 9395, 14005.16, 14006, 14006.2, 14006.3, 14019.4, 14022.1, 14022.4, 14052, 14107.2, 14108.1, 14110.1, 14110.4, 14110.6, 14110.8, 14110.9, 14115.2, 14115.6, 14132, 14133.4, 14136.3, 14170, and 14525 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Whereas, the federal Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, mandates nursing home reforms impacting the Medi-Cal long-term care program, it is the intent of the Legislature to provide state conformity with the provision which consolidates the skilled nursing facility and intermediate care facility levels of care into one category of care called "nursing facility."

SEC. 2. Section 5721 of the Welfare and Institutions Code is amended to read:

5721. The department shall establish and maintain a revolving loan fund to be allocated to county Short-Doyle programs for the purpose of paying the costs of care and treatment in nursing facilities and community care facilities, pending the determination of a person's eligibility for Supplemental Security Income and California Medical Assistance program benefits.

When a person is determined eligible for Supplemental Security Income and begins receiving those payments, the department may require the person to repay the amount of any loan made from the

revolving fund. Those payments shall be deposited in the revolving fund.

SEC. 2.5. Section 9390 of the Welfare and Institutions Code is amended to read:

9390. It is the intent of the Legislature to ensure that frail elderly and functionally impaired adults receive needed services which will enable them to remain in their own homes whenever possible. In order to achieve this goal, the department shall, commencing with the 1984–85 fiscal year, award contracts based upon proposals submitted by nonprofit organizations or governmental entities. The contracts shall be for the purpose of providing the following services to functionally impaired adults and the frail elderly to enable them to remain in their own homes. These organizations or entities shall have demonstrated programmatic and administrative experience in providing long-term care services in all of the following areas:

(a) Comprehensive and timely information, when necessary, to persons and their families about the availability of community resources to assist functionally impaired adults and the frail elderly to maintain the maximum independence permitted by their functional ability.

(b) One-time only assistance in securing community services when deemed necessary or desirable in order to assure timely receipt of the needed services to help maintain maximum independence of a frail older person or functionally impaired adult.

(c) Short-term specialized assistance including counseling and the arrangement of an action plan when there is a temporary probable threat to the functionally impaired adult's or frail elderly person's ability to remain in the most independent living arrangement permitted by his or her functional ability.

(d) Continuing assistance, including case management to older persons and functionally impaired adults who cannot manage their own affairs, but who are not disabled to the extent of needing nursing facility placement, in order to help prevent or delay placement in those institutions. For purposes of this provision, "case management" means all of the following:

(1) Client assessment in conjunction with the development of a service plan with the participant and other appropriate persons to provide for needs identified by the assessment.

(2) Authorization and arrangement for the purchase of services, or referral to volunteer, informal, or third-party payer services with followup.

(3) Service and participant monitoring to determine that services are obtained which are appropriate to need, adequate to meet the need for acceptable quality, and provided in a timely manner.

(4) Followup with clients, including periodic contact and initiation of an interim assessment, if deemed necessary prior to scheduled reassessment.

Organizations or entities eligible for contract awards to provide for the above-listed services must demonstrate that they have an

advisory group which includes representatives of older and functionally impaired groups served.

These organizations or entities shall have proven experience in community long-term care services and be able to demonstrate the ability to increase their service capability to provide their services to and to relate to adults of all ages.

Grantees who already provide direct services and apply to carry out the proposed services shall assure the separateness of the programs and demonstrate protective measures to avoid conflict of interest in care planning processes.

(e) For persons eligible under the home and community-based waiver under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) obtained pursuant to Section 2176 of the Omnibus Reconciliation Act of 1981 (P.L. 97-35), as described in Chapter 5 (commencing with Section 9400) who are disabled to the extent of needing nursing facility placement, services shall be provided by the Multipurpose Senior Services Program, pursuant to Chapter 5 (commencing with Section 9400). During the 1984–85 fiscal year, in accordance with the 1984–85 Budget Act, existing Multipurpose Senior Services Program sites may be increased in size and up to 10 additional sites may be established.

(f) Assistance to older persons entering or returning home from nursing facilities, who need help to make the transition and who reside in a Multipurpose Senior Services Program service area shall be provided by the Multipurpose Senior Services Program as described in subdivision (c).

SEC. 3. Section 9390.1 of the Welfare and Institutions Code is amended to read:

9390.1. As used in this chapter:

(a) "Department" means the Department of Aging.

(b) "Director" means the Director of the Department of Aging.

(c) "Long-term care" means a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social, and personal needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and psychological independence in the least restrictive environment, and emphasis shall be placed on seeking alternative services other than institutionalization. Services may be provided by formal or informal support systems and may be continuous or intermittent.

"Long-term care" includes licensed residential care in a community care facility or residential facility for the elderly.

(d) "Community based resources" include, but are not limited to, information and referral services, nutrition programs, home delivered meals, housing assistance, home modifications, special transportation services, senior companion programs, respite care, adult day health care, multipurpose senior services programs,

in-home supportive services, special circumstances, inpatient and outpatient medical rehabilitation programs, home health and independent living training programs, ombudsman services, case management services, and hospice services.

(e) "Preadmission screening" means personal assessment of an applicant for placement in a nursing facility, prior to admission, to determine the individual's ability to remain in the community with the support of community-based services and referral to those services.

(f) "Postadmission screening" means personal assessment of an individual placed in a nursing facility, to assist in determining the appropriate length of stay in the facility and the individual's ability to return to the community, based upon the level of community-based services available to the individual and referral to those services.

(g) "Respite care" means temporary or periodic services for frail elderly or functionally impaired persons to relieve persons who are providing care.

(h) "Provider" means the individual or agency that provides respite care service for the family.

SEC. 3.5. Section 9390.5 of the Welfare and Institutions Code is amended to read:

9390.5. (a) The State Department of Health Services shall conduct preadmission screening statewide.

(1) Preadmission screening shall be conducted by the Medi-Cal field offices which shall utilize the option of directly authorizing preadmission screening activities by Medi-Cal service providers, including, but not limited to, multipurpose senior services programs, adult day health care, home health agencies, or other comparable Medi-Cal service providers.

(2) The State Department of Health Services may delegate preadmission screening of general acute care hospital patients to discharge planning units of general acute care hospitals and to multilevel facilities, as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code, which agree to accept the delegation. The delegated preadmission screening shall be performed in accordance with criteria established by the State Department of Health Services, in consultation with representatives of general acute care hospitals and community-based services. The criteria shall include referrals to community-based resources as defined in Section 9390.1 and shall emphasize the importance of making the referrals in a timely manner. Prior to implementation of the delegated preadmission screening program, orientation sessions regarding preadmission screening program procedures shall be conducted.

The State Department of Health Services shall work with general acute care hospitals and general acute care hospital association representatives to develop an acute care hospital reporting mechanism which would allow an independent review of the success

of the delegated program. The review shall, at the minimum, include the number of home-and-community-based waiver services which were utilized to divert patients into the community. The State Department of Health Services shall report to the Legislature on the results of this review by March 31, 1989. The report shall include all of the following:

(A) The total number of preadmission screens performed.

(B) The total number of preadmission screens from the community.

(C) The total number of preadmission screens from acute care hospitals.

(D) The total number of patients screened that were determined to be prolonged-stay patients.

(E) The total number of patients screened that were determined to be short-stay patients.

(F) The total number of patients diverted from nursing homes.

(G) The total number of patients who could not be diverted.

It is further the intent of the Legislature that the discharge planning units of general acute care hospitals which agree to accept delegated preadmission screening, shall coordinate with the multipurpose senior services program to the extent possible.

(b) Every long-term health care facility which receives an application for admission of a Medi-Cal eligible or Medicare/Medi-Cal eligible person shall contact by telephone the appropriate State Department of Health Services Medi-Cal field office or the appropriate general acute care hospital discharge planner for the purpose of conducting preadmission screening.

(c) Except where the State Department of Health Services has delegated preadmission screening functions to a general acute care hospital discharge planner, every general acute care hospital which identifies a Medi-Cal eligible or Medicare/Medi-Cal eligible patient for referral to a long-term health care facility shall contact by telephone the appropriate State Department of Health Services Medi-Cal field office for the purpose of conducting preadmission screening. Where preadmission screening of acute care hospital patients has been delegated to discharge planning units, the Medi-Cal field office shall review and approve a determination to refer a patient to a nursing facility which is owned or operated by the referring hospital.

(d) For the purpose of conducting preadmission screening, and subject to applicable confidentiality requirements, including Section 14100.2, the State Department of Health Services, or its designated representatives, shall have access to all medical records of Medi-Cal or Medicare/Medi-Cal eligible persons who apply or are referred for admission to a long-term health care facility. It is further the intent of the Legislature that the State Department of Health Services shall coordinate with the Multipurpose Senior Services Program or similar case management agencies, to the extent possible.

(e) All persons who are admitted to nursing homes for a short stay

as a result of preadmission screening shall have a discharge plan, including projected length of stay and proposed discharge goal, which shall be reviewed at least monthly for up to four months until the medical status, the ability to perform activities of daily living, and the determination of service needs indicate referral to community-based services for care at home is appropriate.

All persons who are admitted to nursing homes for prolonged care as a result of preadmission screening shall be reviewed for their potential for community-based care during the process of reauthorization of prolonged care Treatment Authorization Request (TAR) and, if appropriate, be referred to community-based service.

(f) All Medi-Cal recipients residing in nursing homes who have not been preadmission screened shall be reviewed for their potential for postadmission screening. Those persons identified as having the potential for living in the community with the support of community-based services shall be postadmission screened and referral made to community-based services, if appropriate. Priority for postadmission screening shall be given to those persons who have been in nursing homes six months or less. All Medi-Cal recipients residing in nursing homes on a six month or less Treatment Authorization Request (TAR) shall be postadmission screened within six months of the effective date of this section. All other Medi-Cal recipients residing in nursing homes shall be postadmission screened within 12 months of the effective date of this section. The State Department of Health Services shall give priority to qualified Multipurpose Senior Services Providers (MSSP) to conduct postadmission screening.

(g) Contractors operating under Medi-Cal capitated, case management-based contracts entered into under the authority of this chapter or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 shall assess each covered Medi-Cal patient residing in a long-term care facility or for whom long-term institutional care is contemplated, is assessed for diversion by referral to community-based resources and ambulatory health care services and makes the diversion when feasible on a timely basis. Contractors with existing department-approved utilization review plans which include such an activity shall be deemed to be in compliance with this section.

(h) The State Department of Health Services may delegate the responsibility for carrying out the provisions of this section to Medi-Cal at risk, capitated contractors or projects which do not have a case management feature. The contracts or projects shall operate under one of the following arrangements:

(1) The contractor or project shall adhere to the procedures developed by the State Department of Health Services to carry out this section.

(2) The contractor or project may, subject to the approval of the State Department of Health Services, revise the department's procedures or adopt its own procedures, provided that the

alternative procedures satisfy the intent of this section.

(i) Contractors operating as Medi-Cal capitated case management based contractors pursuant to contracts entered into under the authority of Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 and Sections 1177 and 1177.1 of the Health and Safety Code shall ensure that for each covered Medi-Cal patient resident in a long-term care facility or for whom long-term institutional care is contemplated, the patient's potential is assessed for diversion by referral to community-based resources and ambulatory health care services and that the diversion occurs, when feasible, on a timely basis. Contractors with approved utilization review plans approved by the State Department of Health Services which included such an activity through delegation or other acceptable means, shall be deemed to be in compliance with this section.

(j) The State Department of Health Services shall review each capitated contractor's arrangements for and provision of preadmission and postadmission screening during the annual medical audit of the contractor.

SEC. 4. Section 9391 of the Welfare and Institutions Code is amended to read:

9391. The intent of this section is to ensure that no one shall be institutionalized without being given the option of a viable alternative when one exists. Preadmission screening of Medi-Cal eligibles applying for nursing facility placement, conducted under the auspices of the State Department of Health Services must consider community-based resources.

SEC. 4.5. Section 9395 of the Welfare and Institutions Code is amended to read:

9395. Commencing on March 1, 1986, and on each March 1, thereafter, the department, in conjunction with the State Department of Health Services, shall submit to the Legislature a report on the implementation of this chapter. The report shall include, but not be limited to, all of the following:

(a) (1) Number of clients served.

(2) Description of clients and how clients are selected.

(3) Description and quantity of services provided.

(4) Cost per client and cost per service.

(5) Cost comparison of acute care, nursing facility services, and services provided for under this chapter.

(6) A description of services needed to fulfill the intent of this chapter, but which are not available.

(7) Recommendations for changes in the delivery system to increase its effectiveness.

(b) (1) The number of clients screened pursuant to Section 9390.5.

(2) The living situation of clients at the time of screening.

(3) The number of clients diverted from long-term health care facilities to available community services.

(4) A comparison of the costs incurred and savings realized in utilizing community services alternatives.

SEC. 5. Section 14005.16 of the Welfare and Institutions Code is amended to read:

14005.16. (a) In determining the eligibility of a married individual, pursuant to Section 14005.4 or 14005.7, who resides in a nursing facility, and who is in a Medi-Cal family budget unit separate from that of his or her spouse, the community property interest of the noninstitutionalized spouse in the income of the married individual shall not be considered income available to that individual.

(b) For the purposes of this section, there shall be a presumption, rebuttable by either spouse, that each spouse has a community property interest in one-half of the total monthly income of both spouses.

SEC. 5.5. Section 14006 of the Welfare and Institutions Code is amended to read:

14006. (a) This section applies to medically needy persons, medically needy family persons, and state-only Medi-Cal persons.

(b) For the purposes of this section, the term "principal residence" means the home, including a multiple-dwelling unit, in which the individual resides or formerly resided. The home will continue to be considered the principal residence if any of the following is applicable:

(1) During any absence, the individual intends to return to the home.

(2) The individual lives in a nursing facility or a licensed community care facility and intends to return home.

(3) The individual's spouse or a dependent relative of the individual continues to reside in the home during the individual's absence.

(4) The individual does not have the right, authority, power, or legal capacity to liquidate the property, but a bona fide effort is being made to attain the right, authority, power, or legal capacity to liquidate the property.

(5) The property cannot readily be converted to cash but a bona fide effort is being made to sell the property, in which case the state shall, subject to notice and an opportunity for a hearing, have a lien against the property, to the extent permitted by federal law, for the cost of medical services.

The lien shall be recorded, and from the date of recording, shall have the force, effect, and priority of a judgment lien.

(6) If it is a multiple-dwelling unit, one unit of which is occupied by the applicant or recipient, any unit not occupied by the applicant or recipient is producing income for the individual or family reasonably consistent with its value.

(7) It is inhabited by any sibling or child of the recipient who has continuously resided in the property since at least one year prior to the date the owner entered a nursing facility, or in a licensed

community care facility.

For purposes of this subdivision, "bona fide effort" means that the property shall be listed with a licensed real estate broker at the value determined to be the fair market value by a qualified real estate appraiser and the applicant or recipient provides evidence that a continuous effort is being made to sell the property, offers at fair market value are accepted, and all offers are reported.

(c) For purposes of determining eligibility under this part, resources shall be defined, counted, and valued in accordance with the federal law governing resources under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.). Resources exempt under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) shall not be considered in determining eligibility. Medically needy individuals and families may retain nonexempt resources to the extent permitted under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.). In addition, the principal residence as defined in subdivision (b) shall be exempt.

(d) The director, to meet the requirements of the federal Social Security Act and to ensure the highest percentage of federal financial participation in the program provided by this chapter, may decrease or increase the amounts set forth herein.

(e) If the holdings are in the form of real property, the value shall be the assessed value, determined under the most recent county property tax assessment, less the unpaid amount of any encumbrance of record.

If the real property other than the home is not producing income reasonably consistent with its value, the applicant or recipient shall be allowed reasonable time to begin producing such income from the property. If the property cannot produce reasonable income or be sold based on the market value, the applicant or recipient shall be allowed to submit evidence from a qualified real estate appraiser which indicates the value for which the property can be adequately utilized or sold. If the applicant or recipient provides evidence that the only method of adequately utilizing the property is sale, and the property has not been sold at market value during a reasonable period of time, the property shall be considered to be adequately utilized provided it is listed with a licensed real estate broker at the value determined to be the fair market value by a qualified real estate appraiser and the applicant or recipient provides evidence that a bona fide and continuous effort is being made to sell the property.

(f) Any mortgage or note secured by a deed of trust shall be deemed real property if its value does not exceed six thousand dollars ($6,000) and it is obtained by the applicant or recipient, or in combination with his or her spouse, through the sale of the real property.

(g) If the holdings consist of money on deposit, the value shall be the actual amount thereof. If the holdings are in any other form of personal property or investment, except life insurance, the value

shall be the conversion value as of the date of application or the anniversary date of the application. If the holdings are in the form of life insurance, the value shall be the cash value as of the policy anniversary nearest the date of such application.

(h) The value of property holdings shall be determined as of the date of application and, if the person is found eligible, this determination shall establish the amount of the holdings to be considered during the ensuing 12 months except a new determination to govern during the succeeding 12 months shall be made on the first anniversary date of the application or an alternate date as may be established following the acquisition of additional holdings as provided in the following paragraph and on each succeeding anniversary date thereafter.

(i) If any person shall by gift, inheritance, or other manner, acquire additional holdings during any such interval, other than from his or her own earnings, he or she shall immediately report the acquisition, and the anniversary date shall become the date of the acquisition.

(j) If any provision of this section does not comply with federal requirements, the provision shall become inoperative to the extent that it is not in compliance with federal requirements pursuant to Section 11003.

SEC. 6. Section 14006.2 of the Welfare and Institutions Code is amended to read:

14006.2. (a) In determining the eligibility of a married individual, pursuant to Section 14005.4 or 14005.7, who, in accordance with Title XIX of the federal Social Security Act and regulations adopted pursuant thereto, is considered to be living separately from his or her spouse, the individual shall be considered to have made a transfer of resources for full and adequate consideration under Section 14006 or 14015 by reason of either of the following:

(1) Having entered into a written agreement with his or her spouse dividing their nonexempt community property into equal shares of separate property. Property so agreed to be separate property shall be considered by the department to be the separate property of the spouse who, pursuant to the agreement, is the owner of the property. Only in cases in which separate property owned by one spouse is actually made available to the other spouse, may the department count the separate property in the eligibility determination of the nonowner spouse.

(2) Having transferred to his or her spouse all of his or her interest in a home, whether the transfer was made before or after the individual became a resident in a nursing facility in accordance with and to the extent permitted by Title XIX of the federal Social Security Act and regulations promulgated pursuant thereto.

(b) The department shall furnish to all Medi-Cal applicants a clear and simple statement in writing advising them that (1) in the case of an individual who is an inpatient in a nursing facility or other medical institution, if the individual or the individual's conservator

transferred to the individual's spouse all of the interest in a home, the individual shall not be considered ineligible for Medi-Cal by reason of the transfer; and that (2) if the individual and the individual's spouse execute a written interspousal agreement which divides and transmutes nonexempt community property into equal shares of separate property, the separate property of the individual's spouse shall not be considered available to the individual and need not be spent by the spouse for the individual's care in a nursing facility or other medical institution. The statement provided for in this subdivision shall also be furnished to each individual admitted to a nursing facility, along with, but separately from, the statement required under Section 72527 of Title 22 of the California Code of Regulations.

(c) In order to qualify for Medi-Cal benefits pursuant to Section 14005.4 or 14005.7, a married individual who resides in a nursing facility, and who is in a Medi-Cal budget unit separate from that of his or her spouse, shall be required to expend his or her other resources for his or her own benefit, so that the amount which remains does not exceed the limit established pursuant to subdivision (c) of Section 14006.

In the event that the married individual expends his or her resources for expenses associated with or for improvements to property, those expenditures shall be considered to be for his or her own benefit only to the extent that the expenditures are proportionate to the ownership interest the individual has in the property. For purposes of this section, the term "his or her other resources" shall be limited to the following:

(1) All of his or her separate property that would not have been exempt under applicable Medi-Cal laws and regulations at the time when he or she entered a nursing facility, or at the date of execution of the agreement referred to in this section, whichever is earlier. For purposes of this paragraph, the mere change of residence from one facility to another shall not be deemed to be a new entry.

(2) One-half of all the community property, or the proceeds from the sale or exchange of that property, that would not have been exempt at the time described in paragraph (1).

(d) For purposes of subdivision (c), in the absence of an agreement such as that referred to in subdivision (a), there shall be a presumption, rebuttable by either spouse, that all property owned by either spouse was community property.

(e) The statement furnished pursuant to subdivision (b) shall advise all persons entering a long-term care facility, and all Medi-Cal applicants that only their half of the community property shall be taken into account in determining their eligibility for Medi-Cal, whether or not they execute the written interspousal agreement referred to in the statement.

SEC. 6.5. Section 14006.3 of the Welfare and Institutions Code is amended to read:

14006.3. Any nursing facility shall, prior to admitting any person,

provide a clear and simple statement, in writing, in a form and language specified by the department, to that person and that person's spouse and responsible relative which explains how Medi-Cal eligibility requirements affect their separate and community property.

SEC. 7. Section 14019.4 of the Welfare and Institutions Code is amended to read:

14019.4. (a) Any provider of health care services who obtains a label or copy from the Medi-Cal card or other proof of eligibility pursuant to this chapter shall not seek reimbursement nor attempt to obtain payment for the cost of those covered health care services from the eligible applicant or recipient, or any person other than the department, a third-party payor who provides a contractual or legal entitlement to health care services.

(b) Whenever a service or set of services rendered to a Medi-Cal beneficiary results in the submission of a claim in excess of five hundred dollars ($500), and the beneficiary has given the provider proof of eligibility to receive the service or services, the provider shall issue the beneficiary a receipt to document that appropriate proof of eligibility has been provided. The form and content of those receipts shall be determined by the provider but shall be sufficient to comply with the intent of this subdivision. Nursing facilities are exempt from the requirements of this subdivision.

SEC. 8. Section 14022.1 of the Welfare and Institutions Code is amended to read:

14022.1. Any nursing facility participating in the Medi-Cal program shall supply to the department full and complete information as to the identity (a) of each person having, directly or indirectly, an ownership interest of 10 percent or more in the nursing facility, or, who is owner, in whole or part, of any mortgage, deed of trust, note, or other obligation secured, in whole or part, by the nursing facility, or any of the property or assets of the nursing facility, (b) in case a nursing facility is organized as a corporation, of each officer and director of the corporation, and (c) in case a nursing facility is organized as a partnership, of each partner; and shall promptly report any changes which would affect the current accuracy of the information so required to be supplied.

SEC. 9. Section 14022.4 of the Welfare and Institutions Code is amended to read:

14022.4. (a) Any nursing facility currently certified to participate in the Medi-Cal program may not voluntarily withdraw from the program unless all of the following conditions are met:

(1) The facility shall file with the department a notice of intent to withdraw from the Medi-Cal program.

(2) Except for patients to be transferred or discharged only for medical reasons, or for patients' welfare or that of other patients, or for nonpayment for his or her stay, the facility shall not subsequently evict any Medi-Cal recipient or private pay patient residing in the facility at the time the notice of intent to withdraw from the

Medi-Cal program is filed.

(3) Patients admitted to the facility on or after the date of the notice of intent to withdraw from the Medi-Cal program shall be advised orally and in writing of both the following:

(A) That the facility intends to withdraw from the Medi-Cal program.

(B) That notwithstanding Section 14124.7, the facility is not required to keep a new resident who converts from private pay to Medi-Cal.

(b) Subdivision (a) shall not apply to facilities that have filed, prior to May 1, 1987, a notice of intent to withdraw from the Medi-Cal program.

(c) The department shall notify the appropriate substate ombudsmen monthly as to which facilities have filed a notice of intent to withdraw from the Medi-Cal program. This information shall also be made available to the public and noted in facility files available in each district office.

(d) The facility may formally withdraw from the Medi-Cal program when all patients residing in the facility at the time the facility filed the notice of intent to withdraw from the Medi-Cal program no longer reside in the facility.

(e) If a nursing facility that has withdrawn as a Medi-Cal provider pursuant to this section subsequently reapplies to the department to become a Medi-Cal provider, the department shall require as a condition of becoming a Medi-Cal provider that the facility enter into a five-year Medi-Cal provider contract with the department.

(f) (1) This section shall be inoperative in the event federal law or federal or state appellate judicial decisions prohibit implementation or invalidate any part of this section.

(2) In the event of any occurrence which renders this section inoperative pursuant to paragraph (1), the department shall within 30 days, report that information to the Legislature.

(g) (1) This section does not apply to any nursing facility which ceases operations entirely.

(2) For purposes of this subdivision, "ceases operations entirely" means not being in operation for a period of not less than 12 months.

SEC. 10. Section 14052 of the Welfare and Institutions Code is amended to read:

14052. "State-only Medi-Cal person" means a person who resides in a nursing facility, and who meets all of the following requirements:

(a) Could not meet the definition of a categorically needy person under Section 14050.1, a medically needy person under subdivision (a) of Section 14051 or a medically needy family person under subdivision (b) of Section 14051.

(b) Is over 21 years of age.

(c) Meets the eligibility requirements of Section 14005.4.

SEC. 11. Section 14107.2 of the Welfare and Institutions Code is amended to read:

14107.2. (a) Any person who solicits or receives any

remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind either:

(1) In return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service or merchandise for which payment may be made in whole or in part under this chapter or Chapter 8 (commencing with Section 14200); or

(2) In return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, facility, service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200) of this part,

is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both the imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(b) Any person who offers or pays any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind either:

(1) To refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200); or

(2) To purchase, lease, order, or arrange for or recommend the purchasing, leasing or ordering of any goods, facility, service or merchandise for which payment may be made in whole or in part under this chapter or Chapter 8 (commencing with Section 14200),

is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both the imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(c) Subdivisions (a) and (b) shall not apply to either of the following:

(1) Any amount paid by an employer to an employee, who has a bona fide employment relationship with that employer, for employment with provision of covered items or services.

(2) A discount or other reduction in price obtained by a provider of services or other entity under this chapter or Chapter 8 (commencing with Section 14200), if the reduction in price is properly disclosed and reflected in the costs claimed or charges made by the provider or entity under this chapter or Chapter 8 (commencing with Section 14200). This paragraph shall not apply to consultant pharmaceutical services rendered to nursing facilities.

(d) For purposes of this section "kickback" means a rebate or

anything of value or advantage, present or prospective, or any promise or undertaking to give any such rebate or thing of value or advantage, with a corrupt intent to unlawfully influence the person to whom it is given in actions undertaken by that person in his or her public, professional, or official capacity.

(e) The enforcement remedies provided under this section are not exclusive and shall not preclude the use of any other criminal or civil remedy.

SEC. 12. Section 14108.1 of the Welfare and Institutions Code is amended to read:

14108.1. Any recipient receiving care in a nursing facility under this chapter, as part of a certified special treatment program for mentally disordered persons, or as a part of a mental health therapeutic and rehabilitative program approved and certified by a local mental health director, is entitled to be temporarily absent from those facilities. The State Department of Health Services shall, with consultation from the State Department of Mental Health, develop regulations within 60 days of the effective date of this act establishing the periods of time and conditions under which temporary absences shall be permitted. These regulations shall require that absences be in accordance with an individual patient care plan and also provide for absences due to hospitalization for an acute condition. The limits on temporary leaves of absence established by the State Department of Health Services by regulation shall not be less than 30 days per year.

During these temporary absences, the State Department of Health Services shall reimburse the facility for the cost of maintaining the vacant accommodations at a rate to be determined by the department which shall be less than the normal reimbursement rate.

SEC. 13. Section 14110.1 of the Welfare and Institutions Code is amended to read:

14110.1. Medi-Cal reimbursements for long-term care in any hospital shall be at a rate not to exceed the maximum rate paid for long-term care in nursing facilities which are distinct parts of acute care hospitals, except for patients whose medical or nursing needs exceed the level of care provided in nursing facilities.

SEC. 14. Section 14110.4 of the Welfare and Institutions Code, as added by Chapter 1621 of the Statutes of 1984, is amended to read:

14110.4. (a) All laundry services for all apparel, linen, garments, towels, and hospital gowns shall be provided by a nursing facility at no cost to a recipient under this chapter. These laundry services shall be considered as part of the basic care provided by the facility under the daily rate provided for pursuant to this chapter. The director shall, if necessary, adjust the daily rate to provide for the costs of these services. A nursing facility may, however, charge the patient a fee to provide special drycleaning or treatment for a garment needing this care, when the garment is owned by the patient and when the regular laundry service is not appropriate.

(b) A nursing facility shall provide a periodic hair trim as part of

its care for all patients who are recipients under this chapter. This service shall be included as part of the daily rate provided for pursuant to this chapter. The director shall, if necessary, adjust the daily rate to provide for the costs of these services. A nursing facility may, however, charge a fee for beauty shop services for patients who request special treatments or styling of their hair.

(c) The director shall seek all federal funds available for implementation of this section.

SEC. 15. Section 14110.6 of the Welfare and Institutions Code is amended to read:

14110.6. (a) The director shall adopt regulations, establishing payment rates for nursing facilities, intermediate care facilities/developmentally disabled, and intermediate care facilities/developmentally disabled-habilitative as defined in Section 1250 of the Health and Safety Code, and, for the period prior to October 1, 1990, for skilled nursing facilities and intermediate care facilities, which are sufficient to provide an increase of one dollar and ninety-six cents ($1.96) per patient day for patients receiving skilled nursing services, one dollar and fifty-eight cents ($1.58) per patient day, for patients receiving intermediate care services, two dollars and twenty-nine cents ($2.29) per patient day for intermediate care facilities/developmentally disabled patients, to be used for wage increases and benefits to all employees, except a licensed nursing home administrator or an administrator-in-training and two dollars and thirty-five cents ($2.35) per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 4 to 6 beds, and one dollar and ninety-eight cents ($1.98) per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 7 to 15 beds, to be used for wage increases and benefits to all direct care staff. However, if either (1) the entry level wages of the lowest paid nonadministrative employee of a nursing facility, intermediate care facility/developmentally disabled, or intermediate care facility/developmentally disabled-habilitative, or, for the period prior to October 1, 1990, a skilled nursing facility or intermediate care facility, exceeds six dollars ($6) per hour as of August 1, 1984; or (2) upon the election of a county board of supervisors, for any nursing facility, intermediate care facility/developmentally disabled, or intermediate care facility/developmentally disabled-habilitative, or, for the period prior to October 1, 1990, any skilled nursing facility or intermediate care facility, which is operated by a county, the funds received pursuant to regulations adopted pursuant to this section shall be used solely for labor costs directly related to providing patient care services in order to meet patients' needs including the uses of funds provided for under subdivision (d) of Section 14110.7. Any increase in wages and benefits required by this section shall be in addition to any future mandatory increases required by federal or state law. The rate shall provide funding for the portion of additional costs necessary to implement the wage and benefit increase required

by this section attributable to Medi-Cal patients. The portion of those additional costs shall be the same as the ratio of Medi-Cal patients to the total number of patients in the facility. These regulations shall be adopted, effective March 15, 1985, for skilled nursing facilities and intermediate care facilities, and, commencing October 1, 1990, for nursing facilities, and intermediate care facilities/developmentally disabled, and by October 1, 1985, for intermediate care facilities/developmentally disabled-habilitative.

(b) Each nursing facility or intermediate care facility/developmentally disabled, or, for the period prior to October 1, 1990, each skilled nursing facility or intermediate care facility, shall certify all of the following:

(1) All employees, except a licensed nursing home administrator or an administrator-in-training of a licensed nursing home, shall receive at least the prevailing federal or state minimum wage rate plus the average hourly wage increase established pursuant to Chapter 19 of the Statutes of 1978, and this section.

(2) All employees of the facility, except a licensed administrator or administrator-in-training, shall be paid not less than the sum of the employee's actual rate of pay as of the effective date of the Medi-Cal rate increase provided for under Section 14110.7 plus the amount of the adjustment specified pursuant to this section, or not less than the applicable agreed to rate plus the amount of the adjustment, whichever is greater.

(3) Any wage increase required pursuant to Section 1268.5 of the Health and Safety Code, is in addition to any minimum wages provided in this section.

(4) For purposes of determining the amount of Medi-Cal funds to be distributed for employee wages and benefits, the total Medi-Cal patient days recorded by the facility in the month of December 1983 shall be multiplied by the amount per patient day specified in subdivision (a) plus the amount provided by Chapter 19 of the Statutes of 1978. The new wage levels shall be determined by dividing the Medi-Cal funds received by the nonovertime hours worked by covered employees in December 1983, plus any adjustments due to additional employees as specified in Section 14110.7 and adjustments to reflect employee benefit allowances.

(c) Each intermediate care facility/developmentally disabled-habilitative shall certify all of the following:

(1) All direct care staff, as defined in the department's regulations developed pursuant to Section 1267.7 of the Health and Safety Code, shall receive at least the prevailing federal or state minimum wage plus the average hourly wage increase pursuant to this section.

(2) For purposes of determining the amount of Medi-Cal funds to be distributed for intermediate care facilities/developmentally disabled-habilitative for employee wages and benefits, the total Medi-Cal patient days in the month of December 1984, shall be multiplied by the amount per patient day specified in subdivision (a). The new wage level shall be determined by dividing the

Medi-Cal funds received by the nonovertime hours by covered direct care employees in December 1984, and adjustments to reflect employee benefit allowances.

(d) The director shall order the inspection of relevant payroll and personnel records of nursing facilities, intermediate care facilities/developmentally disabled, and intermediate care facilities/developmentally disabled-habilitative and, for the period prior to October 1, 1990, skilled nursing facilities and intermediate care facilities, which are reimbursed for Medi-Cal patients under the rate of reimbursement established pursuant to subdivision (a) to ensure that the wage and benefit increases provided for have been implemented.

(e) Any facility which is paid under the rate provided for in subdivision (a) which the director finds has not made the wage and benefit increases provided for shall be liable for the amount of funds paid to the facility based upon the wage and benefit requirements provided for by this section but not distributed to employees for wages and benefits, plus a penalty equal to 10 percent of the funds not so distributed.

(f) The department shall implement the amended provisions of this section relating to facilities identified as nursing facilities commencing October 1, 1990, or a later date if the department determines that commencement by October 1, 1990, is not feasible and that a later commencement date will not result in the loss of federal financial participation.

SEC. 16. Section 14110.8 of the Welfare and Institutions Code is amended to read:

14110.8. (a) For the purposes of this section:

(1) "Facility" means a nursing facility.

(2) "Patient" means a person who is a facility resident and a Medi-Cal beneficiary and whose facility care is being paid for in whole or in part by Medi-Cal.

(3) "Agent" means a person who manages, uses, or controls those funds or assets that legally may be used to pay the patient's share of cost and other charges not paid for by the Medi-Cal program.

(4) "Responsible party" means a person other than the patient or potential patient, who, by virtue of signing or cosigning an admissions agreement of a nursing facility, either together with, or on behalf of, a potential patient, becomes personally responsible or liable for payment of any portion of the charges incurred by the patient while in the facility. A person who signs or cosigns a facility's admissions agreement by virtue of being an Attorney-in-Fact under a valid Durable Power of Attorney executed by the potential patient or a conservator of the person or of the estate of the potential patient, or a representative payee, is not a responsible party under this section, and does not thereby assume personal responsibility or liability for payment of any charges incurred by the patient, except to the extent that the person, or the patient's conservator or representative payee is an agent.

(b) No facility may require or solicit, as a condition of admission into the facility, that a Medi-Cal beneficiary have a responsible party sign or cosign the admissions agreement. No facility may accept or receive, as a condition of admission into the facility, the signature or cosignature of a responsible party for a Medi-Cal beneficiary.

(c) A facility may require, as a condition of admission, where a patient has an agent, that the patient's agent sign or cosign the admissions agreement and agree to distribute to the facility promptly when due, the share of cost and any other charges not paid for by the Medi-Cal program which the patient or his or her agent has agreed to pay. The financial obligation of the agent shall be limited to the amount of the patient's funds received but not distributed to the facility. A new agent who did not sign or cosign the admissions agreement shall be held responsible to distribute funds in accordance with this section.

(d) When a patient on non-Medi-Cal status converts to Medi-Cal coverage, any security deposit paid to the facility by the patient or on the patient's behalf as a condition of admission to the facility shall be returned and the obligations and responsibilities of the patient or responsible party shall be null and void.

(e) Any agent who willfully violates the requirements of this section is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not to exceed 180 days, or both.

SEC. 17. Section 14110.9 of the Welfare and Institutions Code is amended to read:

14110.9. No nursing facility may require a security deposit from a Medi-Cal beneficiary who applies for admission to the facility.

SEC. 18. Section 14115.2 of the Welfare and Institutions Code is amended to read:

14115.2. (a) The department shall not require nursing facilities as defined in Section 1250 of the Health and Safety Code to originate monthly bills for beneficiaries if the following conditions are met:

(1) A claim on which in-patient per diem days have been billed by the provider is received by the fiscal intermediary by the fifth working day of the month following the month being billed; and

(2) The claim received by the fiscal intermediary does not show a patient status code that indicates discharge or death on the last day billed for the recipient for that month.

(b) When the conditions listed above are met, the fiscal intermediary shall, by the 20th of the month, mail to the provider a preimprinted claim to cover the current month's services to those beneficiaries.

(c) The provider shall be required to check the preimprinted claim for accuracy, to make corrections, and to certify that the beneficiaries who are listed on the claim received the services listed.

(d) The preimprinted claim shall be returned in the manner required by Section 14115; provided, the preimprinted claim shall be

deemed a late submission no earlier than two months following the end of the month of service being billed.

(e) Except as otherwise provided in this section, the rights and duties of providers and the department with respect to the billing procedures hereby established shall be governed by the provisions of this chapter.

SEC. 19. Section 14115.6 of the Welfare and Institutions Code is amended to read:

14115.6. The department shall establish a pilot project under which a nurse practitioner may bill independently for services provided in a nursing facility, as defined in Section 1250 of the Health and Safety Code. Nurse practitioners shall be compensated by the department for those services which would be compensable had the services been provided by a physician. If a nurse practitioner chooses to bill independently for these services, the department shall make the payment for the services directly to the nurse practitioner. The department shall ensure that payments made to providers who employ nurse practitioners who bill separately are adjusted to reflect this separation so as not to increase the financial obligation incurred by the Medi-Cal program. The department shall establish a reimbursement rate for nurse practitioners who choose to bill independently pursuant to this section.

The pilot project shall be in operation for one year and the department shall submit a report to the Legislature no later than three months after the completion of the project.

Nurse practitioners shall, however, continue to bill through physicians for Medicare patients until such time as relevant federal regulations are changed or until waivers of relevant federal regulations are obtained.

The department shall seek any federal waivers necessary to avoid conflict with federal law. If a waiver is necessary, the department may, until the waiver is obtained, limit the implementation of this section to the extent that federal matching funds are available.

SEC. 20. 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) 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 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 a 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) Family planning services are covered, subject to utilization controls.

(o) 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.

(p) Adult day health care is covered in accordance with the provisions of Chapter 8.7 (commencing with Section 14520) of this part.

(q) 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.

(r) 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.

(s) 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 those persons. These services may be provided to patients placed in nursing 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.

(t) 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 those 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 those 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.

(u) 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.

(v) 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.

(w) 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.

(x) 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.

(y) 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 a nursing 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. 20.1. 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, respiratory care, 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) Nursing facility services, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in 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 a 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) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation 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.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) 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.

(r) 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.

(s) 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 those persons. These services may be provided to patients placed in nursing 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.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

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.

(t) 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 those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those 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.

(u) 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 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 Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) 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.

(x) 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.

(y) 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 a nursing 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.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code and as an in-home medical care service as outlined in subdivision (s).

SEC. 20.2. 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) 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 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 a 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) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services in a general acute care hospital are covered, subject to utilization controls, when either of 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.

(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.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520) of this part.

(q) 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.

(r) 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.

(s) 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 those persons. These services may be provided to patients placed in nursing 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.

(t) 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 those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those 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.

The department shall provide home- and community-based services under all home- and community-based waiver programs to otherwise eligible individuals who, in the absence of those services, would be institutionalized, whether or not those individuals will be discharged directly from an institution into the home- and community-based waiver program.

(u) 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 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 Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the

requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) 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.

(x) 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.

(y) 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. 20.3. 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, respiratory care, 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) Nursing facility services, including respiratory care, podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy,

speech therapy, and audiology services for patients in 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 a 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) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitative services, in a general acute care hospital are covered, subject to utilization controls, when either of 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.

(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.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) 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.

(r) 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.

(s) 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 those persons. These services may be provided to patients placed in nursing 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.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

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.

(t) 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 those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers, except to the extent provided in this subdivision.

The department shall provide home- and community-based services under all home- and community-based waiver programs to otherwise eligible individuals who, in the absence of those services, would be institutionalized, whether or not those individuals will be discharged directly from an institution into the home- and community-based waiver program.

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.

(u) 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 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 Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) 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.

(x) 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.

(y) 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 a nursing 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.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code and as an in-home medical care service as outlined in subdivision (s).

SEC. 21. Section 14133.4 of the Welfare and Institutions Code is amended to read:

14133.4. Notwithstanding any other provision of law, utilization controls adopted by the State Department of Health Services shall not include prior authorization for portable X-ray services provided in nursing facilities, as defined in Section 1250 of the Health and Safety Code.

SEC. 22. Section 14136.3 of the Welfare and Institutions Code is amended to read:

14136.3. No prior authorization shall be necessary for the provision of nonemergency medical transportation services to Medi-Cal beneficiaries when the beneficiary is being transported from an acute care hospital following a stay as an inpatient to a nursing facility licensed pursuant to Section 1250 of the Health and Safety Code.

SEC. 23. Section 14170 of the Welfare and Institutions Code is amended to read:

14170. Amounts paid for services provided to Medi-Cal beneficiaries shall be audited by the department in the manner and form prescribed by the department. The department shall maintain adequate controls to ensure responsibility and accountability for the expenditure of federal and state funds. Cost reports and other data submitted by providers to a state agency for the purpose of determining reasonable costs for services or establishing rates of payment shall be considered true and correct unless audited or reviewed by the department within 18 months after July 1, 1969, the close of the period covered by the report, or after the date of

submission of the original or amended report by the provider, whichever is later; provided, however, that cost reports and other data for cost reporting periods beginning on January 1, 1972, and thereafter shall be considered true and correct unless audited or reviewed within three years after the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later.

Nothing in this section shall be construed to limit the correction of cost reports or rates of payment when inaccuracies are determined to be the result of intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the provider or inability to reach agreement on the terms of final settlement.

Notwithstanding any other provision of law, nursing facilities which have received and are receiving funds for salary increases pursuant to Sections 14110.6 and 14110.7 shall maintain payroll and personnel records for examination by auditors from the department and the Labor Commissioner beginning March 1985 until the records have been audited, or until December 31, 1992, whichever occurs first.

SEC. 24. Section 14525 of the Welfare and Institutions Code is amended to read:

14525. Any older person eligible for benefits under Chapter 7 (commencing with Section 14000) of this part shall be eligible for adult day health care services if that person meets any one of the following criteria:

(a) The person is at the point of discharge from a general acute care hospital or other acute care facility and, except for the availability of an adult day health care program, would be placed in a long-term care institution.

(b) The person is residing in the community, but is in danger of institutionalization, and his or her disabilities and level of functioning are such that without intervention that placement would likely occur.

(c) The person is a resident of a nursing facility or other long-term care facility, but the department determines that institutional placement is unnecessary and the person is an appropriate candidate for adult day health care.

SEC. 25. The State Director of Health Services shall promulgate emergency regulations to implement the provisions of this act. These regulations are necessary for the preservation of the public health, safety, peace, and general welfare.

SEC. 26. All facilities which meet federal certification standards and are licensed by the State Department of Health Services as intermediate care facilities shall continue to be certified and reimbursed as intermediate care facilities until October 1, 1990, or a later date if the State Department of Health Services determines that the later date will not result in the loss of federal financial participation.

SEC. 27. The State Department of Health Services shall amend

its State Medicaid Plan to comply with the requirements of the federal Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), including, but not limited to, adjusting payment amounts to nursing facilities to take into account the costs of that compliance.

SEC. 28. (a) Section 20.1 of this bill incorporates amendments to Section 14132 of the Welfare and Institutions Code proposed by both this bill and AB 224. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 14132 of the Welfare and Institutions Code, and (3) AB 1726 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 224, in which case Sections 20, 20.2, and 20.3 of this bill shall not become operative.

(b) Section 20.2 of this bill incorporates amendments to Section 14132 of the Welfare and Institutions Code proposed by both this bill and AB 1726. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 14132 of the Welfare and Institutions Code, (3) AB 224 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1726 in which case Sections 20, 20.1, and 20.3 of this bill shall not become operative.

(c) Section 20.3 of this bill incorporates amendments to Section 14132 of the Welfare and Institutions Code proposed by this bill, AB 224, and AB 1726. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 14132 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 224 and AB 1726, in which case Sections 20, 20.1, and 20.2 of this bill shall not become operative.

CHAPTER 732

An act to amend Section 6254.10 of the Government Code, and to amend Section 6309 of, to add Section 6314 to, and to repeal and add Section 6313 of, the Public Resources Code, relating to resources.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) California has a rich and varied maritime history extending back thousands of years before its discovery by Spanish explorers. Prehistoric inhabitants developed coastal trade based on an elaborate maritime technology. Later colonization by peoples from all over the world was accomplished by sea. This history has left California with a rich maritime legacy in underwater antiquities. The Legislature finds an urgent need to identify and protect the historic, scientific, and cultural values inherent in submerged antiquities and

to preserve and maintain objects of state or national significance for the benefit and inspiration of all of the people of the state.

(b) Technological innovation is making the submerged lands of the state more accessible each year and providing unprecedented opportunities to learn more about the people of past societies and civilizations who lived and traveled along the coast of our state. California has over one-half million certified divers and that number is increasing daily. The large number of divers, and the advancement in marine technology, without adequate diver education and resource protection, will jeopardize California's underwater cultural heritage. It is the intent of the Legislature that the State Lands Commission, in its role as trustee of the submerged lands of the state, administer the Shipwreck and Historic Maritime Resources Program established by this act to preserve and protect the underwater cultural resources of the state.

SEC. 2. Section 6254.10 of the Government Code is amended to read:

6254.10. Nothing in this chapter requires disclosure of records that relate to archeological site information maintained by the Department of Parks and Recreation, the State Historical Resources Commission, or the State Lands Commission.

SEC. 3. Section 6309 of the Public Resources Code is amended to read:

6309. (a) The commission shall administer the Shipwreck and Historic Maritime Resources Program, which consists of the activities of the commission pursuant to this section and Sections 6313 and 6314.

(b) The commission has exclusive jurisdiction with respect to salvage operations over and upon all tide and submerged lands of the state. The commission may grant the privilege of conducting salvage operations upon or over any of those lands by the issuance of permits. The commission may adopt any rules and regulations in connection with applications for those permits, and the operations to be conducted thereunder, that the commission determines to be necessary to protect those lands and the uses and purposes reserved to the people of the state.

(c) The commission may issue permits for salvage on granted tide and submerged lands only after consultation with the grantee and a determination by the commission that the proposed salvage operation is not inconsistent with the purposes of the grant.

(d) A salvage permit shall be required of any person or entity to conduct any salvage operation. As used in this section and Section 6313, "salvage operation" means any activity, including search by electronic means, or exploration or excavation using tools or mechanical devices, with the objective of locating and removing objects from the surface or subsurface of state submerged lands.

(e) Salvage permits shall be issued for one year, with the option to renew the permit for additional one-year periods at the discretion of the commission upon a showing that the permitholder has

diligently and lawfully pursued the permitted activity.

(f) The commission may require that a person designated by the commission and paid by the permitholder be present during all salvage operations to observe and monitor compliance with the terms of the permit.

(g) The commission may issue recreational recovery permits, which would allow exploration or excavation with small hand tools, but without mechanical devices, for the limited recovery of small objects. Those permits are not salvage permits and the activities do not constitute a salvage operation. The commission shall not require a permit for any recreational diving activity which does not disturb the subsurface or remove objects or materials from a submerged archaeological site or submerged historic resource as defined in Section 6313. Recreational recovery permits shall not be issued for archaeological or historical resources.

(h) Permits may be revoked by the commission, after notice to the permitholder, at any time the commission finds that the permitholder has failed to comply with the terms of the permit or any law or regulation governing the permitted activity. An application for a permit may be denied by the commission when it finds that the applicant has failed to provide, for a period of 60 days, information specifically requested by the commission which is necessary to complete the application.

(i) When title to the objects, including a vessel, to be recovered is vested in the state, the commission shall provide for fair compensation to the permitholder in terms of a percentage of the reasonable cash value, or a fair share, of the objects recovered. The reasonable cash value of the objects shall be determined by appraisal by qualified experts selected by the commission. The commission shall determine the amount constituting fair compensation, taking into consideration the circumstances of each case. Title to all objects recovered is retained by the state until it is released by the commission.

(j) The commission may fix and collect reasonable fees and costs for the processing and issuance of permits under this section. The applicant may be required to deposit funds with the commission sufficient to cover costs and expenses chargeable to the applicant by law or by an agreement for reimbursement.

SEC. 4. Section 6313 of the Public Resources Code is repealed.

SEC. 5. Section 6313 is added to the Public Resources Code, to read:

6313. (a) The title to all abandoned shipwrecks and all archaeological sites and historic resources on or in the tide and submerged lands of California is vested in the state. All abandoned shipwrecks and all submerged archaeological sites and submerged historic resources of the state shall be in the custody and subject to the control of the commission for the benefit of the people of the state of California. The commission may transfer title, custody, or control to other state agencies or recognized scientific or educational

organizations, institutions, or individuals by appropriate legal conveyance.

(b) As used in this section, "submerged archaeological site" and "submerged historic resource," shall be given the broadest possible meaning, to include any submerged object, structure, building, watercraft, or vessel and any associated cargo, armament, tackle, fixture, human remains, or remnant thereof, or any site, area, person, or place, which is historically or archaeologically significant, or significant in the prehistory or history or exploration, settlement, engineering, commerce, militarism, recreation, or culture of California and which is partially or wholly embedded in or resting on state submerged or tidal lands.

(c) Sites with archaeological or historic significance shall be determined by reference to their eligibility for inclusion in the National Register of Historic Places. Any submerged archaeological site or submerged historic resource remaining in state waters for more than 50 years shall be presumed to be archaeologically or historically significant. The commission, with the assistance of the State Office of Historic Preservation, shall identify, compile, and maintain an inventory of shipwreck sites of archaeological or historical significance and shall make the listing available to the public.

(d) Permits for salvage operations involving submerged archaeological sites or submerged historic resources may be issued by the commission to individuals or organizations representing museums, universities, colleges, or other recognized scientific or educational institutions and individuals and organizations which demonstrate the capability to conduct those activities, as determined by the commission. The commission may deny an application for a permit to any applicant who the commission determines cannot demonstrate an ability to properly conduct salvage activities. The commission may consider the applicant's past conduct with regard to salvage operations when making this determination.

(e) Prior to the commencement of an activity permitted under subdivision (d), the applicant shall provide to the commission a detailed plan which provides for the protection and preservation of the site or objects or materials removed from the site consistent with contemporary professional standards of archaeological data recovery. All activities permitted under subdivision (d) or required by this subdivision shall be accomplished under the supervision of a person who meets the professional qualifications required of a marine archaeologist.

(f) The commission shall forward applications for permits for excavation of a submerged archaeological site or submerged historic resource in state waters, including the information required by subdivision (e), to the State Historic Preservation Officer for technical review of the archaeological plan and recommendation concerning the preservation and protection of the site or resource.

(g) The commission shall provide for the disposition of all objects

or other materials recovered, which may include provisions for display in museums, educational institutions, and other appropriate locations available to the public.

(h) The commission may contract with persons, firms, corporations, or institutions who, for the privilege of having temporary possession of recovered archaeological resources, will advance to the commission the money necessary to conduct salvage operations or to purchase from a permitholder, from his or her fair share, archaeological resources which the commission determines should remain the property of the state. A contract may be made only on the condition that the commission may, at any time, repay the money advanced, without interest or additional charges of any kind, and recover possession of the resources. During the time the resources are in the possession of the entity advancing the money, the resources shall be available for viewing by the general public at a nominal fee or without charge.

(i) The commission may also contract with other state agencies, qualified public or private institutions, local governments, or individuals for public display of the archaeological resources recovered. The commission shall require assurances that appropriate security, qualified personnel, insurance, and facilities for preservation, restoration, and display of the resources loaned are provided under the contract.

SEC. 6. Section 6314 is added to the Public Resources Code, to read:

6314. (a) Any person who removes, without authorization from the commission, or any person who destroys or damages an archaeological site or any historic resource, which is located on or in the submerged lands of, and which is the property of, the state, is guilty of a misdemeanor and is punishable by imprisonment in the county jail not to exceed six months or a fine not to exceed five thousand dollars ($5,000), or by both.

(b) In addition, the commission, or, at its request, the Attorney General or a district attorney in whose jurisdiction the violation occurred, may seek civil damages for the damage, loss, or destruction of abandoned shipwrecks, their gear or cargo, or any archaeological site or historic resource located on or in submerged lands of the state. Any vessel used to damage, destroy, or cause the loss of, any such shipwreck or archaeological site or historic resource is subject to a proceeding in rem by the state for the costs and damages resulting from that damage, destruction, or loss. Enforcement may include, where appropriate, a restraining order or injunctive relief to restrain and enjoin violations or threatened violations of Section 6309, Section 6313, or this section and for the return of items taken in violation of these sections.

(c) Any artifact, object, or material which has been removed from a state submerged archaeological site or submerged historic resource, as specified in subdivision (a), and which is found in any watercraft occupied by persons who do not hold a permit as required

by Section 6309 or Section 6313 or other reasonable evidence of legal possession is prima facia evidence of violation of that section and the artifact, object, or material may be confiscated by any state, federal, or local law enforcement officer. Artifacts, objects, or materials confiscated under this section shall be returned to the person claiming ownership, within 30 days of their confiscation, unless a prosecuting attorney determines that they are required as evidence in the prosecution of a criminal violation.

(d) In any case in which a district attorney, at the request of the commission, or with its concurrence, enforces subdivision (a), the commission shall, notwithstanding Section 1463 of the Penal Code, be entitled to an equal division of the fine imposed.

(e) All state and local law enforcement agencies and officers are directed to assist in enforcing this section, and are requested to work with and seek the cooperation of federal law enforcement agencies, including deputizing federal officers when appropriate.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 733

An act to amend Section 22002 of the Public Contract Code, and to amend Section 125223 of the Public Utilities Code, relating to transit.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 22002 of the Public Contract Code is amended to read:

22002. (a) "Public agency," for purposes of this chapter, means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Public agency" also includes a nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) "Representatives of the construction industry" for purposes of

this chapter, means a general contractor, subcontractor, or labor representative with experience in the field of public works construction.

(c) "Public project" means any of the following:

(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

(2) Painting or repainting of any publicly owned, leased, or operated facility.

(3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(d) "Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:

(1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.

(2) Minor repainting.

(3) Resurfacing of streets and highways at less than one inch.

(4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

(5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(e) For purposes of this chapter, "facility" means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c), real property, streets and highways, or other public work improvement.

SEC. 2. Section 125223 of the Public Utilities Code is amended to read:

125223. Contracts for the purchase of supplies, equipment, and materials in excess of twenty thousand dollars ($20,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in an emergency declared by the vote of two-thirds of the membership of the board.

CHAPTER 734

An act to add Section 1374.55 to the Health and Safety Code, and to add Sections 10119.6 and 11512.28 to the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. The Legislature finds and declares the following:

(1) Infertility is a significant health problem that affects millions of Californians.

(2) Infertility is a medical illness or condition similar to other illnesses or conditions that is created by the malfunction of other bodily organs, and thus is no different than other illnesses of conditions and should be treated for purposes of insurance the same as any other body disfunction.

(3) If properly treated, successful pregnancies can result in 70 percent of the cases.

(4) Insurance coverage for infertility is uneven, inconsistent, and frequently subject to arbitrary decisions which are not based on legitimate medical considerations.

SEC. 2. Section 1374.55 is added to the Health and Safety Code, to read:

1374.55. (a) On and after January 1, 1990, every health care service plan contract which is issued, amended, or renewed that covers hospital, medical, or surgical expenses on a group basis, where the plan is not a health maintenance organization as defined in Section 1373.10, shall offer coverage for the treatment of infertility, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group subscriber and the plan. Every plan shall communicate the availability of that coverage to all group contractholders and to all prospective group contractholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed medical physician as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians including, but not limited to, diagnosis, diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) On and after January 1, 1990, every health care service plan which is a health maintenance organization, as defined in Section

1373.10, and which issues, renews, or amends a health care service plan contract that provides group coverage for hospital, medical, or surgical expenses shall offer the coverage specified in subdivision (a), according to the terms and conditions that may be agreed upon between the group subscriber and the plan to group contractholders with at least 20 employees to whom the plan is offered. The plan shall communicate the availability of the coverage to those group contractholders and prospective group contractholders with whom the plan is negotiating.

(d) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(e) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(f) Nothing in this section shall be construed to require any plan, which is a subsidiary of an entity whose owner or corporate member is a religious organization, to offer coverage for treatment of infertility in a manner inconsistent with that religious organization's religious and ethical principles.

SEC. 3. Section 10119.6 is added to the Insurance Code, to read:

10119.6. (a) On and after January 1, 1990, every insurer issuing, renewing, or amending a policy of disability insurance which covers hospital, medical, or surgical expenses on a group basis shall offer coverage of infertility treatment, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group policyholder and the insurer. Every insurer shall communicate the availability of that coverage to all group policyholders and to all prospective group policyholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed medical physician as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians including, but not limited to, diagnosis, diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(d) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(e) Nothing in this section shall be construed to require any insurer, which is a subsidiary of an entity whose owner or corporate member is a religious organization, to offer coverage for treatment of infertility in a manner inconsistent with that religious organization's religious and ethical principles.

SEC. 4. Section 11512.28 is added to the Insurance Code, to read:

11512.28. (a) On and after January 1, 1990, every nonprofit hospital service plan contract which is issued, amended, or renewed that covers hospital, medical, or surgical expenses on a group basis, where the plan is not a health maintenance organization as defined in Section 1373.10 of the Health and Safety Code, shall offer coverage for the treatment of infertility, except in vitro fertilization, under those terms and conditions as may be agreed upon between the group subscriber and the plan. Every plan shall communicate the availability of that coverage to all group contractholders and to all prospective group contractholders with whom they are negotiating.

(b) For purposes of this section, "infertility" means either (1) the presence of a demonstrated condition recognized by a licensed medical physician as a cause of infertility, or (2) the inability to conceive a pregnancy or to carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception. "Treatment for infertility" means procedures consistent with established medical practices in the treatment of infertility by licensed physicians including, but not limited to, diagnosis, diagnostic tests, medication, surgery, and gamete intrafallopian transfer. "In vitro fertilization" means the laboratory medical procedures involving the actual in vitro fertilization process.

(c) On and after January 1, 1990, every nonprofit hospital service plan which is a health maintenance organization, as defined in Section 1373.10 of the Health and Safety Code, and which issues, renews, or amends a health care service plan contract that provides group coverage for hospital, medical, or surgical expenses shall offer the coverage specified in subdivision (a) to group contractholders with at least 20 employees to whom the plan is offered. The plan shall communicate the availability of the coverage to those group contractholders and prospective group contract holders with whom the plan is negotiating.

(d) Nothing in this section shall be construed to deny or restrict in any way any existing right or benefit to coverage and treatment of infertility under an existing law, plan or policy.

(e) Nothing in this section shall be construed to require any hospital service plan which is a subsidiary of an entity whose owner or corporate member is a religious organization to offer coverage for treatment of infertility in a manner inconsistent with the religious organization's religious and ethical principles.

(f) Nothing in this section shall be construed to require any employer that is a religious organization to offer coverage for forms of treatment of infertility in a manner inconsistent with the religious organization's religious and ethnical principles

CHAPTER 735

An act to add Article 8 (commencing with Section 52905) to Chapter 12 of Part 28 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. Article 8 (commencing with Section 52905) is added to Chapter 12 of Part 28 of the Education Code, to read:

Article 8. The Bill Bradley Human Relations Pilot Project

52905. The Legislature finds and declares all of the following:

(a) California's schoolage population is changing dramatically, becoming increasingly diverse both racially and ethnically. These changing patterns of our social fabric have presented society with serious opportunities and concerns in the area of human relations.

(b) School districts are an effective vehicle for teaching children human relations and prejudice reduction.

(c) Through the use of a pilot project, human relations materials that foster cooperation and group work can increase academic achievement and self-esteem, and promote positive interaction among pupils from different racial, religious, and ethnic groups.

(d) It is the intent of the Legislature that the development of human relations materials and staff training modules provide models for the implementation of California's most recent History/Social Studies Framework.

52906. (a) The Superintendent of Public Instruction shall authorize the development of the Bill Bradley Human Relations Pilot Project for teaching a course on human relations, and shall do the following:

(1) Consult with teachers, administrators, school board members, a representative of the California Congress of Parents, Teachers, and Students, and at least four statewide human relations agencies, including the Anti-Defamation League of B'nai B'rith, the National Association for the Advancement of Colored People, the Asian Pacific American Legal Center, and the Mexican American Legal Defense Educational Fund, in the development of the human relations course.

(2) Recommend the course curriculum to the State Board of Education.

(3) Select three school districts, from among interested school districts, to participate in the pilot project. The selected districts shall reflect the geographic and ethnic diversity of communities in California.

(4) Oversee the training of appropriate staff in the three school districts pursuant to this article.

(5) Designate whether the course shall be for 5 or 10 weeks in duration.

(b) Either the superintendent or the participating school districts shall designate whether the course will be taught in grade 8, 9, or 10.

(c) The course shall be designed to allow the selected school districts to tailor the materials to the needs of their specific communities.

52907. The human relations course developed pursuant to this article shall encompass the following goals:

(a) Fostering cooperation and promoting positive interaction among pupils of different racial and ethnic groups.

(b) Developing an understanding of ethnic diversity within California, throughout the nation, and in the world.

(c) Understanding the dangers of stereotyping and discrimination that have existed throughout history and recognizing the protections offered to all by a democratic society.

(d) Appreciating the contributions of minority groups to the development of the United States.

52908. The human relations course developed pursuant to this article shall be designed and be ready for implementation by the 1990-91 school year.

52909. (a) The Superintendent of Public Instruction shall evaluate the effectiveness of the pilot project and, no later than December 31, 1992, report the results of that evaluation to the Legislature, together with his or her recommendations, if any, for improvement of the pilot project.

(b) The evaluation conducted pursuant to subdivision (a) shall include cognitive testing of pupils and in-depth field interviews of teachers and pupils as a qualitative measure of the pilot project, and shall assess the following results in project schools, as compared with control schools:

(1) Increases in pupil understanding of ethnic diversity and the contributions of minority groups to the development of the United States.

(2) Increases in positive intergroup contact, interaction, and cooperation.

(c) Pursuant to that evaluation, the pilot project shall be deemed successful to the extent that it significantly reduces intergroup tension, and increases or promotes positive intergroup interaction, pupil self-esteem, pupil understanding of ethnic diversity, and pupil appreciation of the contributions of minority groups to the development of the United States.

(d) It is the intent of the Legislature, if the pilot project is proven effective, that information and materials be disseminated to school districts statewide which will encourage and enable those districts to establish the Bill Bradley Human Relations Pilot Project.

SEC. 2. The sum of seventy-five thousand dollars ($75,000) is

hereby appropriated from the General Fund for expenditure without regard to fiscal year to the Superintendent of Public Instruction for the development of a human relations pilot project, and the training of appropriate staff in the three districts pursuant to Article 8 (commencing with Section 52905) of Chapter 12 of Part 28 of the Education Code.

No less than 50 percent of the amount allocated in this section shall be designated for the purpose of training staff and purchasing materials to be used for the human relations course in selected school districts.

No more than 5 percent of the amount allocated in this section to develop the Bill Bradley Human Relations Pilot Project shall be used for administrative costs.

CHAPTER 736

An act to amend Section 66758 of the Government Code, and to add Section 13263.2 to the Water Code, relating to solid waste.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. The Legislature finds and declares that there are urgent problems of groundwater contamination within the Main San Gabriel Groundwater Basin, the principal source of drinking water for approximately one million people. Four large areas of groundwater contamination in the Main San Gabriel Groundwater Basin have been placed on the federal Environmental Protection Agency's National Priorities List of toxic waste sites, making them eligible for funding under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510, as amended). The existence of landfills within the boundaries of the Main San Gabriel Groundwater Basin are believed to have contributed significantly to this groundwater contamination. To facilitate the cleanup of the contaminated areas and to ensure that further contamination does not occur, no new or expanded landfills of the type described in subdivision (a) of Section 66758 of the Government Code should be permitted. Investigation has shown conditions in the Main San Gabriel Groundwater Basin to be unique to it, and it is declared that a general law cannot be made applicable to the Main San Gabriel Groundwater Basin, and that the enactment of this special statute is necessary for the public good and welfare.

SEC. 2. Section 66758 of the Government Code is amended to read:

66758. (a) Notwithstanding any other provision of law, a regional water 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 water board, in a public meeting, may grant a variance from subdivision (a) if the applicant demonstrates and the regional water 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 water 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 usable 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) The following definitions govern the construction of this section:

(1) "Landfill used for the disposal of nonhazardous solid waste" means a disposal site regulated by a regional water board as a class III landfill pursuant to Sections 2533 and 2541 of Title 23 of the California Code of Regulations.

(2) "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 this title. For purposes of subdivision (f), "lateral expansion" does not include a new or expanded waste management unit for which waste discharge requirements were issued by a regional water board before January 1, 1989, but were subject to review after that date pursuant to Section 13320 of the Water Code.

(e) The regional water board may hold a single hearing for purposes of granting a variance pursuant to subdivision (b) and establishing waste discharge requirements.

(f) Notwithstanding subdivision (b), a regional water board shall not grant a variance from subdivision (a) if the variance is for a new landfill, or a lateral expansion of an existing landfill, located within the boundaries of the Main San Gabriel Groundwater Basin. For purposes of this subdivision, the boundaries of the Main San Gabriel Groundwater Basin are the boundaries described in Exhibit A of the judgment in Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al., Case Number 924128 of the Superior Court for the County of Los Angeles.

SEC. 3. Section 13263.2 is added to the Water Code, to read:

13263.2. (a) Notwithstanding any other provision of law, a regional water quality control 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 water quality control board, in a public meeting, may grant a variance from subdivision (a) if the applicant demonstrates and the regional water quality control 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 water 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 usable 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) The following definitions govern the construction of this section:

(1) "Landfill used for the disposal of nonhazardous solid waste" means a disposal site regulated by a regional water board as a class III landfill pursuant to Sections 2533 and 2541 of Title 23 of the California Code of Regulations.

(2) "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 this title. For purposes of subdivision (f), "lateral expansion" does not include a new or expanded waste management unit for which waste discharge requirements were issued by a regional water board before January 1, 1989, but were subject to review after that date pursuant to Section 13320 of the Water Code.

(e) The regional water board may hold a single hearing for purposes of granting a variance pursuant to subdivision (b) and establishing waste discharge requirements.

(f) Notwithstanding subdivision (b), a regional water board shall not grant a variance from subdivision (a) if the variance is for a new landfill, or a lateral expansion of an existing landfill, located within the boundaries of the Main San Gabriel Groundwater Basin. For purposes of this subdivision, the boundaries of the Main San Gabriel Groundwater Basin are the boundaries described in Exhibit A of the judgment in Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al., Case Number 924128 of the Superior Court for the County of Los Angeles.

SEC. 4. Section 3 of this act shall become operative only if Assembly Bill 939 of the 1989–90 Regular Session is enacted and becomes operative on or before January 1, 1990, and is enacted after this act.

CHAPTER 737

An act to add Sections 61601.165 and 61601.166 to the Government Code, relating to community services districts.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. The Legislature finds that there are subdivisions other than common interest developments that have been created with covenants, conditions, and restrictions which do not provide a means for property owners to extend the term of the declaration. The Legislature further finds that covenants, conditions, and restrictions contained in the declarations are an appropriate method for equally protecting all owners of real property within the subdivision as to the type, kind, and placement of improvements on the parcels which are subject to those declarations.

SEC. 2. Section 61601.165 is added to the Government Code, to read:

61601.165. (a) As used in this section "local legislative body" means the Board of Directors of the Brooktrails Community Services District.

(b) A declaration of covenants, conditions, and restrictions which specifies a termination date, but contains no provision to extend the termination date may be extended under the following circumstances:

(1) The subdivision is not a common interest development as defined in subdivision (c) of Section 1351 of the Civil Code.

(2) The existing covenants, conditions, and restrictions will not terminate prior to the confirmation of their extension by a local legislative body.

(3) Property owners, representing the lesser of either 10 percent of the lots or parcels in the affected subdivision or 50 individual lot or parcel owners, petition their local legislative body in writing to adopt a resolution of intention to commence proceedings to extend the covenants, conditions, and restrictions. The petition shall include the names and addresses of the three chief petitioners and the nature of the request.

(4) The extension of the termination date will not be for a period of time in excess of four years.

(c) When a petition with the required number of signatures has been presented, the local legislative body shall adopt a resolution of intention. The resolution may do all of the following:

(1) Briefly describe the subdivision as it is commonly known.

(2) Recite the period of time for which the covenants, conditions, and restrictions are to be extended.

(3) Appoint a time and place for hearing protests, which shall take place not less than 15 days, nor longer than 65 days, after adoption of the resolution of intention.

(d) The local legislative body shall cause to be mailed to each property owner within the subject subdivision all of the following:

(1) A copy of the resolution of intention.

(2) A copy of the existing covenants, conditions, and restrictions for which an extension is requested.

(3) A statement to the recipient indicating the procedure to file a protest and that in the absence of a protest the extension may be deemed approved.

(e) At a time not later than the hour set for hearing protests, any owner of any lot or parcel subject to the covenants, conditions, and restrictions, may make a written or oral protest against the proposed extension of the termination date.

(f) The local legislative body shall hear and consider all protests at the time appointed therefor, or at any time to which it may adjourn the hearing upon giving at least 15 days' notice of the rescheduled hearing to affected parties, and, in the absence of a 25 percent protest, may confirm the extension of the termination date. Upon adoption of the resolution, the local legislative body shall record the document and notify all affected property owners of the extension. The extension of the covenants, conditions, and restrictions shall be effective upon recording of the resolution and shall be deemed to relate back to the recording of the original covenants, conditions, and restrictions.

(g) If there is a protest by 25 percent or more of the owners of lots or parcels of the subject subdivision, the local legislative body shall deny the extension of the termination date of the covenants, conditions, and restrictions.

(h) The local legislative body may impose fees necessary to implement this section. Any fees shall not exceed the cost of processing the petition, noticing and conducting the hearing, and the cost of recording any resolution and to notify affected property owners of the extension of the term of the covenants, conditions, and restrictions.

SEC. 3. Section 61601.166 is added to the Government Code, to read:

61601.166. (a) The Legislature finds and declares that it is in the public interest to permit the extension of the term of covenants, conditions, and restrictions contained in a declaration of covenants, conditions, and restrictions applicable to a tract within the boundaries of the Brooktrails Community Services District if owners of more than 50 percent of the lots or parcels in the tract choose to do so.

(b) A declaration which specifies a termination date, but which contains no provision for extension of the termination date, may be

extended by the approval of owners of more than 50 percent of the lots or parcels in the tract or any greater percentage specified in the declaration for an amendment thereto.

(c) Any amendment to a declaration made in accordance with subdivision (b) shall become effective upon recordation and shall relate back to the recording of the original declaration.

(d) No single extension of the terms of the declaration made pursuant to this section shall exceed the initial term of the declaration or 20 years, whichever is less. However, more than one extension may occur pursuant to this section.

SEC. 4. The Legislature finds and declares that the Brooktrails 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 Brooktrails Community Services District.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 738

An act to amend Section 5900 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 5900 of the Vehicle Code is amended to read:

5900. (a) Whenever the owner of a vehicle registered under this code sells or transfers his or her title or interest in, and delivers the possession of, the vehicle to another, the owner shall, within five calendar days, notify the department of the sale or transfer giving the date thereof, the name and address of the owner and of the transferee, and the description of the vehicle which is required in the appropriate form provided for that purpose by the department.

(b) Except as otherwise provided in subdivision (c), in the case

of a vehicle under 6,001 pounds, manufacturer's maximum gross vehicle weight rating, the owner shall also notify the department of the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of sale or transfer. However, if the vehicle owner has knowledge that the mileage displayed on the odometer is incorrect, the owner shall indicate on the appropriate form the true mileage, if known, of the vehicle at the time of sale or transfer.

Providing false or inaccurate mileage is not a violation of this subdivision unless it is done with the intent to defraud.

(c) If the registered owner is not in possession of the vehicle that is sold or transferred, the person in physical possession of that vehicle shall give the notice required by subdivisions (a) and (b).

SEC. 2. The Legislature finds that there exists a deficiency in public knowledge about liabilities when motor vehicles are sold and about how to relinquish these liabilities. The Department of Motor Vehicles, to educate the public, should include information about liability in the text of the driver's handbook and in questions on driving tests.

CHAPTER 739

An act to amend Section 15036 of the Unemployment Insurance Code, relating to job training, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 15036 of the Unemployment Insurance Code is amended to read:

15036. The state council shall consist of 30 members, appointed by the Governor from nominations as provided in this section, and as required by federal law, and be representative of the population of the state with regard to sex, race, ethnic background, and geographical distribution. The Governor shall appoint one nongovernmental member to be the chairperson of the council, who shall serve in this capacity at the pleasure of the Governor. The appointment of the chairperson and the appointments of members designated under subdivisions (d) and (e) shall be subject to confirmation by the Senate.

(a) Nine members shall be representatives of large and small business, industry, and agriculture. Eight of these members shall be owners of business concerns, chief executives, or chief operating officers of business concerns or other private sector executives who have or have had substantial management or policy responsibilities for an autonomous part of a business. Of these, at least four shall be

current or past members of a private industry council. One shall be a representative from a general purpose organization representing business interests. One of the members shall also have a record of employing a significant number of disabled persons.

(b) Seven members shall be representatives of state government. These representatives shall be a Member of the Senate nominated by the Senate Committee on Rules, a Member of the Assembly nominated by the Speaker of the Assembly, the Lieutenant Governor, the Superintendent of Public Instruction, the Secretary of Health and Welfare, the Secretary of Business, Transportation and Housing, and the Chancellor of the California Community Colleges, or their designees.

(c) Two members shall be representatives of local government. One shall be a member of a county board of supervisors, and shall be nominated by the County Supervisors' Association of California. One shall be a member of a city council, and shall be nominated by the League of California Cities.

(d) Nine members shall be representatives of organized labor and community-based organizations. Of these, at least four shall represent organized labor.

(e) Three members shall be from the general public.

(f) The members appointed pursuant to subdivisions (d) and (e) shall include those who have substantial experience in local vocational organizations serving youth, providing services or advocacy for the population eligible for services, private proprietary schools, veterans' organizations, and organizations serving older Californians.

In the event that the Governor finds an insufficient number of acceptable nominees in a given category, he or she shall return the nomination lists to the respective nominating bodies within 10 days of receipt. The bodies shall then have 10 days to submit new lists of nominees. If nominations are not received within 10 days, members shall be appointed at the discretion of the Governor.

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

In order to ensure that California complies with the requirements of the federal Economic Dislocation and Worker Adjustment Assistance Act (P.L. 100-418) as soon as possible by making required changes in the membership of the State Job Training Coordinating Council, and to ensure that California continues to receive funds authorized by the federal Job Training Partnership Act, it is necessary that this act take effect immediately.

CHAPTER 740

An act to amend Sections 14035 and 14037 of, and to add Sections 14007.1, 14036.2, 14038.1, and 14039 to, the Government Code, to amend Sections 99317.10 and 99318 of the Public Utilities Code, and to add Section 199.8 to the Streets and Highways Code, relating to rail transportation.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 14007.1 is added to the Government Code, to read:

14007.1. (a) There is within the Division of Mass Transportation in the Department of Transportation the Office of Rail Services. The office shall be responsible for the development of a comprehensive rail passenger system and the preparation of the rail passenger development plan required pursuant to Section 14036.

(b) An undersecretary of the agency shall be assigned to give attention to rail matters to ensure that the rail passenger system and plan are carried out.

(c) It is the intent of the Legislature that the commission give high priority to the implementation of the rail passenger system and plan.

SEC. 2. Section 14035 of the Government Code is amended to read:

14035. (a) The department may enter into contracts with the National Railroad Passenger Corporation under Section 403(b) of the Rail Passenger Service Act of 1970 (45 U.S.C. Sec. 563(b)) to provide commuter and intercity passenger rail services. The contracts may include, but are not limited to, the extension of intercity passenger rail services or the upgrading of commuter rail services.

(b) The department may contract with railroad corporations for the use of tracks and other facilities and the provision of passenger services on terms and conditions as the parties may agree.

(c) The department is the only public agency eligible to receive funds pursuant to Section 1614 of Title 49 of the United States Code.

(d) The department may construct, acquire, or lease and improve and operate rail passenger terminals and related facilities which provide intermodal passenger services along the following corridors: the San Diego-Los Angeles-Santa Barbara corridor, the San Francisco-San Jose-Monterey corridor, the Los Angeles-Riverside-San Bernardino-Calexico corridor, the San Jose-Oakland-Sacramento-Reno corridor, the Los Angeles-Bakersfield-Fresno-Stockton-Sacramento-Oakland corridor, and the Los Angeles-Santa

Barbara-Oakland-Sacramento-Redding corridor.

(e) The department may enter into a contract with the National Railroad Passenger Corporation to provide an additional third train over the San Joaquin route running between Bakersfield and Oakland and to extend the existing route to Sacramento.

SEC. 3. Section 14036.2 is added to the Government Code, to read:

14036.2. The department shall identify in the rail passenger development plan prepared pursuant to Section 14036, the three most decrepit intercity rail passenger stations in the state used by trains operated by the National Railroad Passenger Corporation (Amtrak). The department shall also identify those rail passenger stations which require upgraded parking facilities to encourage automobile drivers to utilize available rail passenger service.

SEC. 4. Section 14037 of the Government Code is amended to read:

14037. Funds which are available to the department for rail and bus operations may be used by the department for maintenance of capital facilities related to rail or bus services provided, or for minor capital improvement projects related to rail and bus services provided, if the department determines that this use of funds would improve the operation of a service. For the purposes of this section, a project shall be determined to be a "minor capital improvement project" on the same basis that a project is determined to be a "minor highway project" by the commission.

SEC. 5. Section 14038.1 is added to the Government Code, to read:

14038.1. Rail passenger equipment owned by the department and operated by the National Railroad Passenger Corporation (Amtrak) in a state-supported rail service shall prominently display the department's logo and the words "California Department of Transportation," or other appropriate identification, as determined by the department.

SEC. 6. Section 14039 is added to the Government Code, to read:

14039. The department shall report in the rail passenger development plan prepared pursuant to Section 14036 on the amount of funds available to the state under the federal rail-highway crossings program (23 U.S.C. Sec. 130), including the cash balance, funds encumbered during the last year, and amounts anticipated to be received during the subsequent year. The plan shall also discuss any issues relating to the department's ability to spend these federal funds on a timely basis.

SEC. 7. Section 99317.10 of the Public Utilities Code is amended to read:

99317.10. (a) A public entity which has received an allocation for funding of an intermodal transfer station pursuant to paragraph (5) of subdivision (a) of Section 99317 shall, upon request of the department, authorize state-funded bus service to use the station without any charge to the department or its contractors, and shall

assist the department in the placement of signs and informational material designed to alert the public to the availability of the state-funded bus service.

(b) A public entity shall not be eligible to receive an allocation for funding of an intermodal transfer station pursuant to paragraph (5) of subdivision (a) of Section 99317 unless it first agrees that, upon any future request of the department, it will authorize a state-funded bus service to use the station without any charge to the department or its contractors and it will assist the department in the placement of signs and informational material designed to alert the public to the availability of the state-funded bus service.

(c) For the purpose of this section, "state-funded bus service" means any bus service funded pursuant to Section 99316.

SEC. 8. Section 99318 of the Public Utilities Code is amended to read:

99318. (a) The department and other public entities may submit applications to the department for allocations for transit capital improvement projects specified in Section 99317 from funds made available pursuant to subdivision (c) of Section 99312 or for allocations for exclusive public mass transit guideways from funds available pursuant to Section 199 and 199.1 of the Streets and Highways Code.

(b) The department shall evaluate the applications in accordance with criteria and procedures adopted by the commission and shall submit the applications and its recommendations thereon to the commission not later than February 1.

(c) The commission shall adopt criteria and procedures to be followed by the department in evaluating the applications.

(d) An application shall be considered timely if submitted by January 1 for a guideway project in a county that became eligible for those funds at an election held pursuant to Section 4 of Article XIX of the California Constitution during or prior to the immediately preceding November.

SEC. 9. Section 199.8 is added to the Streets and Highways Code, to read:

199.8. The provisions relating to funding of transit capital improvements from the Transportation Planning and Development Account in Sections 99318, 99318.2, and 99318.6 of the Public Utilities Code shall also be applicable to applications for projects to be funded pursuant to Section 199 and 199.1.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 741

An act to amend Section 14670.35 of the Government Code, and to amend Section 7501.5 of the Welfare and Institutions Code, relating to state hospitals.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 14670.35 of the Government Code is amended to read:

14670.35. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Developmental Services, may let in the best interests of the state and at a price which will permit the development of affordable housing for persons eligible under this section, to any person, including but not limited to any corporation or partnership, real property not exceeding 60 acres located within the grounds of Fairview State Hospital, for the purpose of developing affordable housing, which may include manufactured housing, for the employees of Fairview State Hospital, and for a period not to exceed 55 years. The lease authorized by this section shall be nonassignable, except it may be assignable, subject to approval by the Department of General Services and the State Department of Developmental Services, to a partnership in which the lessee has an interest of not less than 50 percent or to an individual, corporation or partnership which has a net worth of at least three million dollars ($3,000,000) and has experience substantially equal to that of the lessee in building, marketing, managing and leasing residences of the type to be built under the lease, and shall be subject to review every five years by the Director of General Services, to assure the state that the original purposes of the lease are being carried out.

In the event of default by the lessee under the terms of the lease, the state shall take all necessary steps to cure the default but in no event shall state general funds, except funds collected pursuant to Section 15863, be expended to operate the property.

The housing developed pursuant to this section shall be available for the employees of Fairview State Hospital and to provide transitional housing for patient-clients of Fairview State Hospital returning to the community; provided that the housing available for transitional housing for patient-clients shall not be in excess of 10 percent of the units developed. In the event that vacancies occur in the units which cannot be filled by either employees of Fairview State Hospital or transitional patient-clients, then the units may be made available to persons who are in need of affordable housing and whose incomes do not exceed 80 percent of the median income for Orange County as that income may be defined from time to time by

the United States Department of Housing and Urban Development. Should any vacancies exist in excess of 60 days after lessee has conducted a marketing program in cooperation with the Orange County Housing Authority and approved by the State Department of Developmental Services, and during the 60 days the vacancies were made available to employees, transitional patient-clients and persons whose incomes do not exceed 80 percent of the median income for Orange County, then, upon approval by the State Department of Developmental Services, the vacant units may be made available to any persons employed in the City of Costa Mesa.

The Legislature finds and declares that the provision of decent and affordable housing for state employees and transitional patients, i.e. clients of state mental hospitals, is a public purpose of great statewide importance.

SEC. 2. Section 7501.5 of the Welfare and Institutions Code is amended 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 one or more responsible organizations selected by Ventura County for the purposes of constructing housing or operating residential care services, or both, designed to meet the identified treatment and rehabilitation needs of mentally disordered persons from Ventura County. The lease between the state and Ventura County shall contain a provision which requires that the lease shall terminate and that full title, possession, and control of the property shall return to the state if permits have not been issued for construction of the housing prior to January 1, 1993. The sublease between Ventura County and the responsible bidder shall contain a provision which requires that permits for construction of the housing be issued prior to January 1, 1993, and shall contain a provision which requires that the sublease shall terminate and full title, possession, and control of the property shall return to the state if permits have not been issued for construction of the housing prior to January 1, 1993.

(b) In selecting a service provider pursuant to subdivision (a), Ventura County shall only consider a sublease with 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.

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

CHAPTER 742

An act to amend Sections 12510 and 12515 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 12510 of the Business and Professions Code is amended to read:

12510 (a) Any person, who by himself or herself, or through or for another, does any of the following is guilty of a misdemeanor:

(1) Uses, in the buying or selling of any commodity, or retains in his or her possession an incorrect weight or measure or weighing or measuring instrument.

(2) Sells any weight or measure or weighing or measuring instrument which has not been sealed within one year, except weighing or measuring instruments required to be assembled prior to use.

(3) Uses any condemned weight or measure or weighing or measuring instrument contrary to law.

(4) Uses in the buying or selling of any commodity, or for determining the charge for a service, any weight or measure or weighing or measuring instrument which is not kept at a fixed

location, which does not bear a current or previous year's seal, and which, upon test by the sealer, is found to be incorrect, unless a written request for an inspection of the weighing or measuring instrument has been made to the county sealer, except that the use of any weight or measure or weighing or measuring instrument used by a public utility in connection with measuring gas, electricity, water, steam, or communication service subject to the jurisdiction of the Public Utilities Commission is exempt from this chapter.

(5) Sells or uses any device or instrument to be used or calculated to falsify any weight or measure.

(6) So locates or positions a weighing or measuring device used in retail trade, except as used exclusively in preparation of packages put up in advance of sale, that its indications cannot be accurately read by the purchaser under ordinary circumstances.

(7) Uses, in the buying or selling of any commodity, a weighing or measuring device designed to automatically compute price unless the computed price is a true mathematical computation of the amount times the price per unit.

(8) Willfully and knowingly uses, in the buying or selling of any commodity, a measuring device designed to automatically compute price unless the indicators of quantity and the total computed price on the device has been returned to zero prior to the beginning of each delivery of that commodity.

(9) Fails to deliver for test to a designated location after receipt of a written notice from a weights and measure official, any device that is ordinarily tested at a central location.

(10) Sells, rents, leases, loans, or knowingly installs an incorrect weighing or measuring instrument for commercial purposes.

(b) The possession of an incorrect weight or measure or weighing or measuring instrument or records thereof is prima facie evidence of intention to violate the law.

SEC. 2. Section 12515 of the Business and Professions Code is amended to read:

12515. (a) Any person having made repairs or adjustments to any weighing instrument or to any measuring instrument, or any person having sold, rented, leased, loaned, or installed any such instrument, who within 24 hours after the instrument has been sold, rented, leased, loaned, installed, repaired, or adjusted, fails to notify the sealer of the county in which the instrument has been sold, rented, leased, loaned, installed, repaired, or adjusted, that the sale, rent, lease, loan, installation, repair, or adjustment has been made, is guilty of a misdemeanor.

(b) This section does not require notification to the sealer for an adjustment to a weighing or measuring instrument only for the purpose of maintaining it in a zero or balance condition.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 743

An act to add Section 10123.15 to the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 10123.15 is added to the Insurance Code, to read:

10123.15. On and after January 1, 1990, every group policy of disability insurance which covers hospital, medical, and surgical expenses on a group basis, and which offers coverage for disorders of the brain shall also offer coverage in the same manner for the following biologically based severe mental disorders: schizophrenia, schizo-affective disorder, bipolar and delusional depressions, and pervasive developmental disorder. Coverage for these mental disorders shall be subject to the same terms and conditions applied to other mental disorder coverage; however, an insurer may reserve the right to confirm diagnoses and to review the appropriateness of specific treatment plans as necessary to ensure the intent of this section.

Nothing in this section shall be construed to affect the scope of licensure of any health care professional.

CHAPTER 744

An act to add Section 103.65 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 103.65 is added to the Streets and Highways Code, to read:

103.65. (a) It is the intent of the Legislature that the department

should have a reasonable opportunity to acquire properties needed for transportation projects.

(b) Whenever the department determines that a specific parcel of private property will or may be required for the right-of-way of a state highway transportation corridor within seven years, or is located within a corridor which is the subject of a special study, the department shall so notify the planning department of the city or county in which the parcel is located. When reviewing proposals for the development of a parcel so identified, the city or county shall review with the department the status of the proposed transportation project involving that parcel.

(c) As used in this section, "special study" means a highway study approved by the commission or the department on or before July 1, 1989, or a study approved after that date conducted pursuant to Section 14530.5 of the Government Code.

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

CHAPTER 745

An act to amend Sections 798.70, 798.71, 798.72, 798.78, and 798.81 of the Civil Code, relating to mobilehomes.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 798.70 of the Civil Code is amended to read:

798.70. A homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person, may advertise the sale or exchange of his or her mobilehome, or, if not prohibited by the terms of an agreement with the management, may advertise the rental of his or her mobilehome, by displaying a sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome

facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent and shall not exceed 24 inches in width and 18 inches in height.

SEC. 2. Section 798.71 of the Civil Code is amended to read:

798.71. (a) The management shall not show or list for sale a manufactured home or mobilehome without first obtaining the owner's written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

(b) The management shall prohibit neither the listing nor the sale of a manufactured home or mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person other than the management, nor require the selling homeowner, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, to authorize the management to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park.

Nothing in this section shall be construed as affecting the provisions of the Health and Safety Code governing the licensing of manufactured home or mobilehome salespersons or dealers.

SEC. 3. Section 798.72 of the Civil Code is amended to read:

798.72. (a) The management shall not charge a homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person a transfer or selling fee as a condition of a sale of his mobilehome within a park unless the management performs a service in the sale. The management shall not perform any such service in connection with the sale unless so requested, in writing, by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person.

(b) The management shall not charge a prospective homeowner or his or her agent, upon purchase of a mobilehome, a fee as a condition of approval for residency in a park unless the management performs a specific service in the sale. The management shall not impose a fee, other than for a credit check in accordance with subdivision (b) of Section 798.74, for an interview of a prospective homeowner.

SEC. 4. Section 798.78 of the Civil Code is amended to read:

798.78. (a) An heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death shall have the right to sell the mobilehome to a third party in accordance with the provisions of this article, but only if all the homeowner's responsibilities and liabilities to the management regarding rent, utilities, and reasonable maintenance of the mobilehome and its premises which have arisen since the death of the homeowner have been satisfied as they have accrued pursuant to the rental agreement in effect at the time of the death of the homeowner up until the date the mobilehome is resold.

(b) In the event that the heir, joint tenant, or personal representative of the estate does not satisfy the requirements of subdivision (a) with respect to the satisfaction of the homeowner's responsibilities and liabilities to the management which accrue pursuant to the rental agreement in effect at the time of the death of the homeowner, the management shall have the right to require the removal of the mobilehome from the park.

(c) Prior to the sale of a mobilehome by an heir, joint tenant, or personal representative of the estate, that individual may replace the existing mobilehome with another mobilehome, either new or used, or repair the existing mobilehome so that the mobilehome to be sold complies with health and safety standards provided in Sections 18550, 18552, and 18605 of the Health and Safety Code, and the regulations established thereunder. In the event the mobilehome is to be replaced, the replacement mobilehome shall also meet current standards of the park as contained in the park's most recent written requirements issued to prospective homeowners.

(d) In the event the heir, joint tenant, or personal representative of the estate desires to establish a tenancy in the park, that individual shall comply with those provisions of this article which identify the requirements for a prospective purchaser of a mobilehome that remains in the park.

SEC. 5. Section 798.81 of the Civil Code is amended to read:

798.81. The management (1) shall not prohibit the listing or sale of a used mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person other than the management, (2) nor require the selling homeowner to authorize the management to act as the agent in the sale of a mobilehome as a condition of approval of the buyer or prospective homeowner for residency in the park.

CHAPTER 746

An act to add Section 5311 to, and to add and repeal Chapter 6 (commencing with Section 53601) of Division 18 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 5311 is added to the Food and Agricultural Code, to read:

5311. (a) In lieu of any civil action pursuant to Section 5310, except as provided in Article 5 (commencing with Section 5781) of Chapter 8, the director or the commissioner may levy a civil penalty against a person violating this division or any regulation adopted pursuant to this division of not to exceed five hundred dollars ($500) for each violation.

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

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the director and the person appealing the penalty.

(5) The director shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the penalty levied, or reverse the decision. A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner who levied the penalty, if this is the case.

(8) Review of the decision of the director may be sought by the

appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the director pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

SEC. 2. Chapter 6 (commencing with Section 53601) is added to Division 18 of the Food and Agricultural Code, to read:

CHAPTER 6. CIVIL PENALTIES AND REMEDIES

53601. (a) In addition to any other penalties prescribed in this division or any regulation adopted pursuant to this division, any person who violates this division or any regulation adopted pursuant to this division is civilly liable in an amount not to exceed ten thousand dollars ($10,000) for each violation

(b) Upon a complaint by the director, the Attorney General may bring an action for civil penalties in any court of competent jurisdiction in this state against any person violating this division or any regulation adopted pursuant to this division.

(c) Upon the failure of any person to comply with this division, the Attorney General, upon the request of the director, or the county counsel, upon request of the commissioner, shall petition the superior court for the issuance of a preliminary or permanent injunction, as may be appropriate, restraining the person from continuing any activities in violation of this division. The court shall issue an order directing the person to appear before the court at a time and place certain and show cause why the injunction should not be issued. The court may grant the prohibitory or mandatory relief that may be necessary to preserve the status of the parties until a hearing can be held.

(d) Any funds recovered by the director pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

53602. In lieu of seeking prosecution of any violation of this division as a misdemeanor, the director may prosecute civilly pursuant to Section 53601 or the director or commissioner may levy civil penalties pursuant to Section 53603.

53603. (a) In lieu of any civil action by the director, the director or the commissioner may levy a civil penalty against a person violating Article 4.5 (commencing with Section 52351) or Article 6 (commencing with Section 52391) of Chapter 2, Article 4 (commencing with Section 52741) of Chapter 3, Article 5 (commencing with Section 53421) of Chapter 5, or subdivisions (b) and (c) of Section 53511 or Section 53512, or any regulation adopted pursuant to any of these provisions, of not to exceed five hundred dollars ($500) for each violation.

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

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the penalty, as follows:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are made.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor. This time requirement may be altered by an agreement between the director and the person appealing the penalty.

(5) The director shall decide the appeal on any oral or written arguments, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the penalty levied, or reverse the decision. A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner who levied the penalty, if this is the case.

(8) Review of the decision of the director may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any funds recovered by the commissioner pursuant to this section shall be deposited in the county general fund in the county in which the action is brought and shall be allocated to the commissioner to cover costs related to the enforcement of this division. Any funds recovered by the director pursuant to this section shall be deposited in the Department of Food and Agriculture Fund to cover costs related to the enforcement of this division.

53604. This chapter 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.

CHAPTER 747

An act to amend Section 14105.42 of, and to add Section 14105.65 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 14105.42 of the Welfare and Institutions Code is amended to read:

14105.42. The provisions of Sections 14105.4 to 14105.41, inclusive, and Section 14105.65 shall not preclude the department from taking emergency regulatory action as it deems appropriate.

SEC. 2. Section 14105.65 is added to the Welfare and Institutions Code, to read:

14105.65. Notwithstanding Section 14105.41, Section 11346.4 of the Government Code, notice of proposed adoption or amendment of a regulation by the department regarding the addition of a drug product to the Medi-Cal drug formulary shall be effective until June 30 of the second fiscal year following the fiscal year in which the notice of proposed adoption or amendment was issued, provided all of the following criteria are met:

(a) The drug product was the subject of a petition for addition to the Medi-Cal drug formulary pursuant to Section 14105.4 or 14105.91.

(b) The department, after public hearing, made a decision to add the drug product to the Medi-Cal drug formulary, and submitted the final regulation to the Department of Finance for review pursuant to Section 13075 of the Government Code.

(c) The Department of Finance disapproved the regulation pursuant to Section 13075 of the Government Code, after November 1, 1988, and after making a determination that sufficient funds were not available to fund the added expenditures which would be incurred if the regulation were adopted.

CHAPTER 748

An act to amend Section 15306 of the Probate Code, and to amend Section 7289 of, and to add Section 7289.1 to, the Welfare and Institutions Code, relating to trusts.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

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

(1) It is the policy of the state to qualify state hospital and developmental center clients for federally assisted public benefits whenever possible.

(2) Outdated and inappropriate provisions of law have resulted in certain state hospital and developmental center clients being denied Supplemental Security Income and Medi-Cal benefits.

(3) These provisions of law also impede the state's ability to recover payment for care and treatment provided to state hospital and developmental center clients, and may deny these clients access to funds that could be used to provide for their personal needs.

(b) It is the intent of the Legislature, through enactment of this act, to remove barriers which prevent state hospital and developmental center clients from qualifying for federally assisted public benefits and assist the state to recover amounts owing for the services provided in these facilities.

SEC. 2. Section 15306 of the Probate Code is amended to read:

15306. (a) Notwithstanding any provision in the trust instrument, if a statute of this state makes the beneficiary liable for reimbursement of this state or a local public entity in this state for public support furnished to the beneficiary or to the beneficiary's spouse or minor child, upon petition to the court under Section 709.010 of the Code of Civil Procedure by the appropriate state or local public entity or public official, to the extent the court determines it is equitable and reasonable under the circumstances of the particular case, the court may do the following:

(1) If the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the payments as they become due, presently or in the future.

(2) Whether or not the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of the future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the benefit of the beneficiary.

(3) If the beneficiary is a settlor or the spouse or minor child of the settlor and the beneficiary does not have the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, to the extent that the trustee has the right to make payments of income or principal or both to or for the beneficiary pursuant to the exercise of the trustee's discretion, order the trustee to satisfy all or part of the liability without regard to whether the trustee has then exercised or may thereafter exercise the discretion in favor of the beneficiary.

(b) Subdivision (a) does not apply to any trust that is established for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap. If, however, the trust results in the individual being ineligible for needed public social services under Division 9 (commencing with Section 1000) of the Welfare and Institutions Code, this subdivision is not applicable and the provisions of subdivision (a) are to be applied.

SEC. 3. Section 7289 of the Welfare and Institutions Code is amended to read:

7289. When a person who is a client of a state hospital or developmental center in the State Department of Mental Health or the State Department of Developmental Services has no guardian or conservator of the estate and has money due or owing to him or her, the executive director of the institution of which the person is a client may, during the client's residence at the institution, collect an amount not to exceed three thousand dollars ($3,000) of any money so due or owing upon furnishing to the person, representative, officer, body or corporation in possession of or owing any sums, an affidavit executed by the executive director or acting executive director. The affidavit shall contain the name of the institution of which the person is a client, and the statement that the total amount requested pursuant to the affidavit does not exceed the sum of three thousand dollars ($3,000). Payments from retirement systems and annuity plans which are due or owing to the clients may also be collected by the executive director of the institution of which the person is a client, upon the furnishing of an affidavit executed by the executive director or acting executive director, containing the name of the institution of which the person is a client and the statement that the person is entitled to receive the payments. These sums shall be delivered to the executive director and shall be deposited by him or her in the clients' personal deposit fund as provided in Section 7281.

The receipt of the executive director shall constitute sufficient acquittance for any payment of money made pursuant to this section and shall fully discharge the person, representative, officer, body or corporation from any further liability with reference to the amount of money so paid.

The executive director of each institution shall render reports and accounts annually or more often as may be required by the department having jurisdiction over the hospital or the Department of Finance of all moneys of clients deposited in the clients' personal deposit accounts of the institution.

SEC. 4. Section 7289.1 is added to the Welfare and Institutions Code, to read:

7289.1. (a) The amount of three thousand dollars ($3,000) as set forth in Section 7289, shall be adjusted annually, on January 1 by the State Department of Developmental Services as it applies to state hospitals or developmental centers under its jurisdiction, and by the

State Department of Mental Health as it applies to state hospitals under its jurisdiction, to reflect any increases or decreases in the cost of living occurring after December 31, 1967, so that the first adjustment becomes effective January 1, 1990. The indices of the California Consumer Price Index—All Urban as prepared by the Department of Industrial Relations, shall be used as the basis for determining the changes in the cost of living.

(b) In implementing the cost-of-living provisions of this section, the State Department of Developmental Services and the State Department of Mental Health shall use the most recent December for computation of the percentage change in the cost of living after December 31, 1967. The amount of this adjustment shall be made by comparing the average index for the most recent December with the average index for December 1967. The product of any percentage increase or decrease in the average index and the amount set forth in Section 7289 shall be the adjusted amount subject to affidavit pursuant to the provisions of Section 7289.

CHAPTER 749

An act to add Section 853 to the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 853 is added to the Fish and Game Code, to read:

853. (a) The director may deputize any employee of the department to check persons for licenses required under Section 7145 and to enforce violation of that section. Before a person is deputized pursuant to this section for the first time, the person shall have satisfactorily completed a training course meeting the minimum standards of, and comparable to, the training for "level III reserve" as set forth in the regulations of the Commission on Peace Officer Standards and Training. Any person, who is deputized for this limited purpose pursuant to this section, may not enforce any other provision of this code, and is not a peace officer subject to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(b) On or before March 31, 1993, the department shall prepare a report on the effectiveness of the program authorized by this section and shall submit the report to the Joint Committee on Fisheries and Aquaculture. Copies of the report shall be made available to the commission, personnel of the department, and interested members of the public.

CHAPTER 750

An act to amend Sections 4760, 40207, 40209, 40211, and 40215 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 4760 of the Vehicle Code is amended to read.

4760. (a) Except as provided in subdivision (b), the department shall refuse to renew the registration of any vehicle if the registered owner or lessee has been mailed a notice of delinquent parking violation relating to standing or parking, the processing agency has filed or electronically transmitted to the department an itemization of unpaid parking penalties, including administrative fees pursuant to Section 40220, and the owner or lessee has not paid the parking penalty and administrative fee pursuant to Section 40211, unless he or she pays to the department, at the time of application for renewal, the full amount of all outstanding parking penalties and administrative fees, as shown by records of the department.

(b) The department shall not refuse to renew the registration of any vehicle owned by a renter or lessor if the applicant provides the department with the abstract or notice of disposition of parking violation issued pursuant to subdivision (c) for clearing all outstanding parking penalties and administrative fees as shown by the records of the department.

(c) The court or designated processing agency shall issue an abstract or notice of disposition of parking violation to the renter or lessor of a vehicle issued a notice of delinquent parking violation relating to standing or parking, if the renter or lessor provides the court or processing agency with the name, address, and driver's license number of the rentee or lessee at the time of occurrence of the parking violation.

SEC. 2 Section 40207 of the Vehicle Code is amended to read:

40207. The notice of delinquent parking violation shall contain the information specified in Section 40202 and subdivision (a) of Section 40203, and, additionally shall contain a notice to the registered owner that, unless the registered owner makes payment of the parking penalty through the mail within 10 days after mailing of the notice of delinquent parking violation, appears before the person authorized to receive a deposit of the parking penalty within 10 days after mailing of the notice of delinquent parking violation, or completes and files an affidavit of nonliability which complies with Section 40209, the renewal of the vehicle registration may be contingent upon compliance with the notice of delinquent parking violation or that a warrant for the arrest of the registered owner may

be issued. If the registered owner, by appearance or by mail, makes payment to the person authorized to receive a deposit of the parking penalty within 10 court days of the mailing of the notice of delinquent parking violation, the penalty shall consist of the amount of the original penalty.

SEC. 3. Section 40209 of the Vehicle Code is amended to read:

40209. If the affidavit of nonliability is returned together with proof of a written lease or rental agreement for a particular vehicle which identifies the rentee or lessee and provides the driver's license number and address of the rentee or lessee, the processing agency shall do one of the following:

(a) Cancel the notice of delinquent parking violation.

(b) Serve or mail to the rentee or lessee identified in the affidavit of nonliability a notice of delinquent parking violation.

(c) File a complaint with the court, together with the proof and affidavit, pursuant to Section 40230, against the registered owner or against the rentee or lessee.

SEC. 4. Section 40211 of the Vehicle Code is amended to read:

40211. (a) If the registered owner, or an agent of the registered owner, or a rentee or lessee who was served with the notice of delinquent parking violation pursuant to Section 40206 or subdivision (b) of Section 40209, or any other person who presents the notice of parking violation or notice of delinquent parking violation after the notice of delinquent parking violation has been issued for delivery under Section 40206, appears before the person authorized to receive a deposit of the parking penalty, the processing agency shall do both of the following:

(1) Deliver a copy of the notice of delinquent parking violation issued under Section 40206 to the person and record the name, address, and driver's license number of the person actually given the copy in the records of the issuing agency.

For the purposes of this paragraph, a copy of the notice of delinquent parking violation may be a photostatic copy.

(2) Determine whether the notice of delinquent parking violation has been filed with the department pursuant to subdivision (b) of Section 40220 or a complaint has been filed in court pursuant to Section 40230.

(b) If the notice of delinquent parking violation has not been filed in court or with the department and payment of the parking penalty and any applicable assessments is received, the proceedings under this article shall terminate.

(c) If the notice of delinquent parking violation has been filed with the department, has been returned under subdivision (b) or (c) of Section 4760 or Section 4764, and payment of the parking penalty together with the administrative service fee of the processing agency for costs of service and any applicable assessments is received, the proceedings under this article shall terminate.

(d) If the notice of delinquent parking violation has been filed with the department and has not been returned under Section 4760,

4762, 4764, or 40215, and payment of the parking penalty together with the administrative fee of the department established under Section 4763, the administrative service fee of the issuing agency for costs of service, and any applicable assessments is received by the processing agency, the processing agency shall do all of the following:

(1) Sign a certificate of payment.

(2) Deliver a copy of the certificate to the registered owner, the agent, the lessee, or the rentee or other person making the payment.

(3) Immediately transmit a copy of the certificate to the department.

(4) Terminate proceedings on the notice of delinquent parking violation.

(5) Transmit for deposit all parking penalties and assessments in accordance with law.

(e) If a complaint has been filed in court, the registered owner, the registered owner's agent, the rentee or lessee, or the other person appearing pursuant to subdivision (a) shall be referred to the court, and the processing agency shall take no further action on the notice of delinquent parking violation.

(f) If the person refuses to pay the parking penalty under subdivision (b), refuses to pay the parking penalty and administrative service fees or assessment under subdivision (c) or (d), or otherwise contests the notice of delinquent parking violation, the processing agency shall proceed in accordance with Section 40215.

SEC. 5. Section 40215 of the Vehicle Code is amended to read:

40215. (a) If the person served with a notice of parking violation or a notice of delinquent parking violation appears before the person authorized to receive a deposit of the parking penalty and contests the violation, the processing agency shall do either of the following:

(1) If the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of parking violation or notice of delinquent parking violation and make an adequate record of the reasons for canceling the notice.

(2) The processing agency shall set an arraignment date, or, if the person requests it, a trial date, and provide documentation to the court as specified by local court rule. Except as the rules provide otherwise, the processing agency shall record the person's name, address, and driver's license number, obtain the person's signed, written promise to appear, and verify whether the person appearing has received a notice of parking violation conforming to Section 40202 or a notice of delinquent parking violation conforming to Sections 40207 and 40208. If the person appearing has not received the notice of delinquent parking violation, the processing agency shall serve the person with a notice of delinquent parking violation conforming to Sections 40207 and 40208. The processing agency shall assign a specific date and time as approved by the court for appearance by the person contesting the violation and shall then file

a complaint or a copy of the notice of delinquent parking violation, together with the signed promise to appear, with the court pursuant to Section 40230 within 15 days. The processing agency shall notify the registered owner or other person contesting the violation of the filing and the date and time for appearance in the same manner as provided in Section 40206. Thereafter, all proceedings shall be had by the court in the same manner as infraction violations of this code.

(b) If the processing agency has filed the notice of delinquent parking violation with the department for collection pursuant to Section 40220, the processing agency shall recall the notice by notifying the department that the notice of delinquent parking violation has been either canceled pursuant to this section or filed with the court and informing the department of the court file or docket number of the matter.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because counties will receive funding under the Brown-Presley Trial Court Funding Act (Chapter 13 (commencing with Section 77000) of Title 8 of the Government Code) in lieu of that reimbursement. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 751

An act relating to the mitigation of environmental impacts of ports.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. (a) The Legislature finds that some ports in California have been required by the California Coastal Commission and other environmental agencies to mitigate impacts to fish and wildlife from port development at sites outside of the jurisdiction of the ports.

(b) The Legislature further finds that future development of ports and harbors in southern California may be constrained by insufficient opportunities to mitigate environmental impacts.

(c) The Legislature further finds that a study of potential port development and available mitigation sites is necessary in order to determine if additional legislation is needed to address this issue.

SEC. 2. The State Coastal Conservancy, in consultation with the State Lands Commission, the California Coastal Commission, the Department of Fish and Game, the California Association of Port Authorities, and other interested public and private entities, shall

conduct a study of the mitigation of impacts to fish and wildlife from future port development projects in California. The conservancy shall conduct this study based on information contained in written materials or otherwise available from the entities with which it is required to consult. The conservancy shall complete and submit a report based on the portion of the study relating to the ports south of the Ventura-Los Angeles County line to the Governor and the Legislature by July 1, 1991. The study shall accomplish the following:

(a) Assess potential mitigation requirements of port projects through the year 2020.

(b) Inventory potential mitigation sites which could be used for offsetting impacts to fish and wildlife from port projects.

(c) Make recommendations on methods, including any legislation, which will facilitate port development with appropriate mitigation for impacts to fish and wildlife.

SEC. 3. The State Coastal Conservancy shall complete the report specified in Section 2 of this act when funds or staff are authorized in the Budget Act or through a revision of its budget by the Department of Finance pursuant to its authority under the Budget Act.

CHAPTER 752

An act to amend Sections 19996.32, 20953, 21153, and 21158 of, and to add Section 20147 to, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 19996.32 of the Government Code is amended to read:

19996.32. Any state employee, or legislative employee, who is a state miscellaneous or industrial member working standard hours on a full-time basis, other than a university member, of the Public Employees' Retirement System and who is eligible to retire pursuant to Section 20953 may elect to participate in reduced worktime for partial service retirement pursuant to this article, provided that the participation may be modified only pursuant to Section 19996.37.

SEC. 2. Section 20147 is added to the Government Code, to read:

20147. (a) Notwithstanding any other provisions of law, the board shall provide by rule for conducting structured preretirement information seminars. The seminars shall be for the benefit of all members who have attained age 45.

(b) The board shall devise plans for, and in cooperation with appointing powers, design structured seminars to enhance

awareness of the features, benefits, and services of the retirement system. Seminars shall include information to assist members to understand the importance of financial and estate planning and how choices and options offered by the system may impact retirement security.

SEC. 3. Section 20953 of the Government Code is amended to read:

20953. A state miscellaneous member or industrial member, other than a university member, shall be partially retired for service upon his or her written application to the board if he or she has elected to participate in partial service retirement pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6 of this division, provided, he or she is credited with (a) 20 years of state service and is either in (1) the First Tier plan with an attained age of 50 years or (2) the Second Tier plan with an attained age of 55 years or (b) the necessary years of service with the necessary attained age for retirement under the First Tier or the Second Tier and the sum of his or her age, when added to his or her service, equals or exceeds 65 years.

SEC. 4. Section 21153 of the Government Code is amended to read:

21153. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or any other employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 120 working days or 960 hours in any calendar year, and the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

SEC. 5. Section 21158 of the Government Code is amended to read:

21158. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by a school employer or by the Trustees of the California State University either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing specialized work of limited duration, if that service does not exceed, in any fiscal year, a total of 120 working days or 960 hours for all employers. The retired person's rate of pay for this employment shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

CHAPTER 753

An act to add and repeal Section 14105.92 of the Welfare and Institutions Code, relating to Medi-Cal.

[Became law without Governor's signature. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 14105.92 is added to the Welfare and Institutions Code, to read:

14105.92. Notwithstanding any other provision of law, pentoxifylline tablets shall, no later than July 1, 1990, be added to the Medi-Cal drug formulary for treatment of persons diagnosed as having both diabetes and intermittent claudication.

For indications other than intermittent claudication, pentoxifylline may only be available upon approval of a prior authorization request submitted by a qualified provider, unless other indications are authorized pursuant to regulations adopted by the department.

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. 2. The repeal of Section 14105.92 of the Welfare and Institutions Code pursuant to this act shall not be construed as a barrier to the retention of the drug pentoxifylline on the Medi-Cal drug formulary by the State Department of Health Services through administrative action.

SEC. 3. (a) Subject to the funding requirements of subdivision (e), the State Department of Health Services shall contract for a two-year cost-benefit study of the impact of the addition of pentoxifylline to the Medi-Cal drug formulary.

(b) The study required by subdivision (a) shall commence July 1, 1990, and shall be completed by July 1, 1992.

(c) The State Department of Health Services shall, in contracting pursuant to subdivision (a), specify that the study shall be funded from private sources, and shall consult with the providers of those funds in the selection of a contractor for the performance of the study and for the design and the analysis of the study.

(d) The State Department of Health Services shall report to the Assembly Committee on Health and the Senate Committee on Health and Human Services on the results of the study required by subdivision (a) upon completion of the study.

(e) The study required by this section shall be funded only by private contributions, and shall not be conducted unless sufficient funding is received from that source.

CHAPTER 754

An act to add and repeal Part 6.3 (commencing with Section 15210) of Division 3 of Title 2 of the Government Code, relating to state government, and making an appropriation therefor.

[Became law without Governor's signature Filed with Secretary of State September 25, 1989]

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

SECTION 1. Part 6.3 (commencing with Section 15210) is added to Division 3 of Title 2 of the Government Code, to read:

PART 6.3. CALIFORNIA CENTER FOR THE STUDY OF ASIA TASK FORCE

15210. (a) There is hereby established the California Center for the Study of Asia Task Force to be comprised of leading representatives from California government, private industry, and universities.

(b) The primary goal of the task force is to help California's private sector, university, and government officials identify and assess the feasibility of establishing cooperative programs designed to improve our understanding of Asian business practices, language, and culture, to monitor new developments in Asian science and technology, and to promote improvements in California-Asia relations.

15211. The California Center for the Study of Asia Task Force shall consist of 11 members as follows:

(a) The President of the University of California, or his or her designee.

(b) The Chancellor of the California State University, or his or her designee.

(c) The Chairperson of the California State World Trade Commission.

(d) The Director of Commerce.

(e) Three appointees of the Governor from the private sector who are knowledgeable about California-Asia economic relations.

(f) Two appointees of the Speaker of the Assembly.

(g) Two apppointees of the Senate Rules Committee.

15212. The members of the task force shall be appointed by March 1, 1990, to serve two-year terms commencing on April 1, 1990.

15213. The task force shall convene its first meeting by April 1, 1990, at the call of the Director of Commerce who shall serve as interim chairperson for the task force. The task force shall elect a permanent chair at its first regular meeting.

15214. (a) The task force shall oversee a study on the feasibility of establishing a permanent California Center for the Study of Asia.

The study shall identify and assess the following:

(1) Functions that the center could and should provide for the State of California and California's private sector.

(2) The feasibility of establishing a facility in Asia to serve as a physical center for the study programs that would be coordinated or directed by the center.

(3) Options for raising seed capital and permanent revenue sources, with or without tax-based funding, to support the establishment of the center and operation of its programs.

(b) The task force shall submit a report of its findings and recommendations to the Governor and the Legislature on or before January 1, 1991.

(c) The Department of Commerce shall provide the staff support necessary for the preparation and publication of the report and reimbursement for necessary and reasonable expenses of task force members who are not employed by a public agency. The department may seek a budget augmentation for that purpose should the department deem additional funds necessary.

15215. This part 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. The sum of twenty thousand dollars ($20,000) is hereby appropriated from the General Fund to the California Center for the Study of Asia Task Force for the purposes of this act.

CHAPTER 755

An act to amend Section 25570.2 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 25570.2 of the Health and Safety Code is amended to read:

25570.2. For purposes of this chapter the following definitions apply:

(a) "Air board" means the State Air Resources Board.

(b) "Cal-OSHA" means the Division of Occupational Safety and Health in the Department of Industrial Relations.

(c) "Department" means the State Department of Health Services.

(d) "Environmental quality assessment" or "assessment" means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated under Chapter

6.5 (commencing with Section 25100) or Chapter 6.95 (commencing with Section 25500), to achieve, monitor, maintain, and where feasible exceed, compliance with state environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:

(1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water quality, emergency preparedness and response, hazard communications, and occupational safety and health.

(2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.

(3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.

(e) "Environmental assessor" or "assessor" means an individual who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. Environmental assessors may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, epidemiologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, registered environmental health specialists, and environmental program managers.

(f) "Hazardous substance" shall have the same meaning as found in Chapter 6.8 (commencing with Section 25300) and "hazardous waste" shall have the same meaning as found in Chapter 6.5 (commencing with Section 25100).

(g) "Secretary" means the Secretary of Environmental Affairs.

(h) "Water board" means the State Water Resources Control Board.

CHAPTER 756

An act to amend Sections 19161, 50099.5, 55001, and 55002 of the Health and Safety Code, and to repeal Section 14050 of the Penal Code, relating to buildings, and making an appropriation therefor.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 19161 of the Health and Safety Code is amended to read:

19161. (a) Each city, city and county, or county, may assess the earthquake hazard in its jurisdiction and identify buildings subject to its jurisdiction as being hazardous to life in the event of an earthquake if those buildings were constructed prior to the adoption of local building codes requiring earthquake resistant design of buildings, are constructed of unreinforced masonry wall construction, and exhibit any of the following characteristics:

(1) Exterior parapets or ornamentation that may fall.

(2) Exterior walls that are not anchored to the floors or roof.

(3) Lacks an effective system to resist seismic forces.

(b) Structural evaluations made pursuant to this section shall be made by an architect as defined in Section 5500 of the Business and Professions Code, or a civil or structural engineer registered pursuant to the provisions of Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or a building inspector of the enforcing agency, as described in Section 17960, supervised by an architect or civil or structural engineer authorized by this subdivision to make the structural evaluations.

SEC. 2. Section 50099.5 of the Health and Safety Code is amended to read:

50099.5. "Residential structure," for the purpose of the California Housing Finance Agency, means any existing structure of one to four units or any work or undertaking of one to four dwelling units of new construction or rehabilitation for the provision of housing financed pursuant to the provisions of this division for the primary purpose of providing decent, safe, and sanitary housing for persons and families of low or moderate income. "Residential structure" may include any buildings, land, equipment, facilities, or other real or personal property which the agency determines to be necessary or convenient in connection with the provision of housing pursuant to this division, and including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities including, but not limited to, administrative, community, health, recreational, educational, commercial, and child care facilities which the agency determines are an integral part of a residential neighborhood.

SEC. 3. Section 55001 of the Health and Safety Code is amended to read:

55001. As used in this division:

(a) "Bonds" means bonds, notes, or other evidence of indebtedness issued by a local agency pursuant to Part 2 (commencing with Section 55100) of this division, including bonds issued to refund previously issued bonds or other indebtedness.

(b) "Eligible building" means a building existing on the effective date of this section which is identified as hazardous pursuant to Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13, with the exception of the following:

(1) Industrial buildings for assembling, fabricating, manufacturing and processing activities.

(2) Structures subject to the provisions of Part 1.5 (commencing with Section 17910) of Division 13, other than a residential hotel or apartment building containing six or more units or a commercial building containing six or more residential units which is identified as hazardous pursuant to this section.

(c) "Eligible costs" means all costs, including costs of design, preparation, and inspection incurred in making structural or other modifications to an eligible building, which are required in order to meet reconstruction standards established by a local ordinance pursuant to Sections 19162, 19163, and 19163.5, or to mitigate potentially hazardous buildings, as defined by subdivision (a) of Section 8875 of the Government Code including costs of payments required by Section 7265.3 of the Government Code, and including costs necessary to provide for the reasonable safety of the exterior and interior of the eligible building and of interior fixtures and appurtenances. Other eligible costs include nonseismic and nonstructural costs, including, but not limited to, plaster, wallboard, paint, and carpeting, and any other finishes deemed necessary by the local building official to restore an eligible building to its original conditions and suitable for occupancy.

(d) "Financing" means a loan made by the local agency pursuant to this division to the owner of an eligible building for eligible costs and which is secured by a deed of trust or mortgage upon the real property improved thereby.

(e) "Local agency" means a city, county, or city and county.

(f) "Residential hotel" means any building containing six or more guestrooms intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, but does not mean any hotel which is primarily used by transient guests who do not occupy the hotel as their primary residence.

SEC. 4. Section 55002 of the Health and Safety Code is amended to read:

55002. Pursuant to this division, the local agency may provide financing to pay for eligible costs to an owner of an eligible building

only if the legislative body of the local agency makes one of the following findings:

(a) The owner to whom financing would be made available pursuant to this division is unable to qualify for or could not afford financing for eligible costs from private lending institutions.

(b) Absent the availability of financing pursuant to this division, the eligible building would be demolished.

(c) Absent the availability of financing pursuant to the division, the costs of modifying the eligible building to meet reconstruction standards, pursuant to Sections 19162, 19163, and 19163.5, or to mitigate potentially hazardous buildings, as defined by subdivision (a) of Section 8875 of the Government Code, would cause severe economic hardship to the businesses in the building.

SEC. 5. Section 14050 of the Penal Code is repealed.

CHAPTER 757

An act to amend Sections 18611, 18622, 18623, 18625, 18640, 18641, 18642, 18700, 18702, 18703, 18714, 18804, 18809, 18812, 18824, 18840, 18842, 18848, 18849, 18850, and 18852 of, to repeal Sections 18626 and 18808 of, and to repeal Article 10 (commencing with Section 18770) of Chapter 2 of Division 8 of, the Business and Professions Code, relating to wrestling.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 18611 of the Business and Professions Code is amended to read:

18611. The commission shall adopt, amend, or repeal, in accordance with the Administrative Procedure Act, rules and regulations as may be necessary to enable it to carry out the laws relating to boxing and the martial arts.

SEC. 2. Section 18622 of the Business and Professions Code is amended to read:

18622. The words "club" and "promoter" are synonomous, may be used interchangeably, and mean a corporation, partnership, association, individual, or other organization which conducts, holds, or gives a boxing or martial arts contest, match, or exhibition.

SEC. 3. Section 18623 of the Business and Professions Code is amended to read:

18623. A professional or amateur boxer or martial arts fighter is one who engages in a boxing or martial arts contest and who possesses fundamental skills in his or her respective sport.

SEC. 4. Section 18625 of the Business and Professions Code is amended to read:

18625. "Contest" and "match" are synonymous, may be used interchangeably, and include boxing, kickboxing, martial arts exhibitions, and mean a fight, prizefight, boxing contest, pugilistic contest, kickboxing contest, martial arts contest, sparring match, between two or more persons, where full or partial contact is used or intended which may result or intended, to result in physical harm to the opponent. In any exhibition or sparring match, the opponents are not required to use their best efforts.

SEC. 5. Section 18626 of the Business and Professions Code is repealed.

SEC. 6. Section 18640 of the Business and Professions Code is amended to read:

18640. The commission has the sole direction, management, control of, and jurisdiction over all professional and amateur boxing, professional and amateur kickboxing, full contact martial arts contests, and matches or exhibitions which are conducted, held, or given within this state. No such event shall take place without the prior approval of the commission. No person shall engage in the promotion of, or participate in a boxing or martial arts contest, match, or exhibition without a license, and except in accordance with this chapter and the rules adopted hereunder.

SEC. 7. Section 18641 of the Business and Professions Code is amended to read:

18641. The commission may license clubs to conduct, hold, or give, and shall license referees, judges, matchmakers, announcers, and timekeepers, and designated representatives of the promoter or facility responsible for ticket sellers and box office employees and contracted ticket agencies, who are not employed by a city-or county-owned and operated facility, and may license assistant matchmakers, doormen, ushers, and corporation treasurers, to participate in, or be employed in connection with, professional or amateur boxing contests, sparring matches, or exhibitions.

No club may conduct, hold, or give, and no person performing tasks for which licensure is required by the commission may participate in, or be employed in connection with, any such boxing contest, sparring matches, or exhibitions unless the club or person has been licensed for that purpose by the commission.

SEC. 8. Section 18642 of the Business and Professions Code is amended to read:

18642. The commission may license professional and amateur boxers, professional and amateur martial arts fighters, and booking agents, managers of professional boxers and professional martial arts fighters, trainers, chief seconds, and seconds of each. Only a natural person may be licensed as a boxer and martial arts fighter.

No person shall participate in any contest or serve in the capacity of a booking agent, manager, trainer, or second, unless he or she has been licensed for that purpose by the commission.

SEC. 9. Section 18700 of the Business and Professions Code is amended to read:

18700. All buildings or structures used or intended to be used to conduct, hold, give a contest or match, or exhibition shall be safe and shall conform to the laws, ordinances, and regulations pertaining to the buildings in the jurisdiction where the building or structure is situated.

SEC. 10. Section 18702 of the Business and Professions Code is amended to read:

18702. No person under the age of 18 years shall participate as a contestant in any contest or match or exhibition, except that any person 16 years or over may be licensed as an amateur and may participate in an amateur contest or match.

SEC. 11. Section 18703 of the Business and Professions Code is amended to read:

18703. All admission tickets to any contest or exhibition shall have printed clearly upon the face thereof the purchase price of the ticket, and no ticket shall be sold for more than that price. The tickets shall have the number of the ticket printed clearly on both ends of the ticket.

SEC. 12. Section 18714 of the Business and Professions Code is amended to read:

18714. For the purpose of studying and recommending medical and safety standards for the conduct of boxing and martial arts, the commission may call meetings of those licensed physicians and surgeons as it deems necessary at such times and places it deems appropriate. The commission is authorized to pay the necessary traveling expenses and per diem, as provided in Section 103, to the committee members in attendance at these meetings.

SEC. 13. Article 10 (commencing with Section 18770) of Chapter 2 of Division 8 of the Business and Professions Code is repealed.

SEC. 14. Section 18804 of the Business and Professions Code is amended to read:

18804. The application and renewal fee for a license to promote or conduct a professional contest or exhibition shall be two hundred dollars ($200).

SEC. 15. Section 18808 of the Business and Professions Code is repealed.

SEC. 16. Section 18809 of the Business and Professions Code is amended to read:

18809. The application and renewal fee for a professional boxer, kickboxer, or martial arts fighter license shall be twenty-five dollars ($25).

SEC. 17. Section 18812 of the Business and Professions Code is amended to read:

18812. The application and renewal fee for a professional boxing, kickboxing, and martial arts referee's or judge's license shall be sixty dollars ($60).

SEC. 17.5. Section 18824 of the Business and Professions Code is amended to read:

18824. Except as provided in Section 18646 and Section 18832,

every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which an admission fee is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the number of tickets issued or sold for the contest or wrestling exhibition, the amount of the gross receipts or value thereof, and the gross price charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time, pay to the commission a 5 percent tax, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, and of the gross price as described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the tax be less than fifty dollars ($50). The amount of the gross receipts upon which the tax provided for in this section is calculated shall not include any assessments levied by the commission for deposit into the Boxer's Neurological Examination Account under Section 18711.

The tax on admission shall apply to the amount actually paid for admission and not to the regular established price.

No tax is due in the case of a person admitted free of charge.

As used in this section, "person" includes a promoter, club, individual, corporation, partnership, association or other organization, and "wrestling exhibition" means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

SEC. 18. Section 18840 of the Business and Professions Code is amended to read:

18840. Notwithstanding any other provision of this code, if in the judgment of the commission the financial responsibility, experience, character and general fitness of an applicant for a license or renewal thereof, or any person connected with the applicant, are such that the participation of the applicant will be consistent with the public interest, convenience or necessity, and with the best interests of boxing and martial arts generally, and in conformity with the purposes of this chapter, and the rules or regulations adopted pursuant thereto, the commission may grant an unrestricted license or issue a license subject to terms and conditions.

SEC. 19. Section 18842 of the Business and Professions Code is amended to read:

18842. The commission, the executive officer and other

employees duly authorized by the executive officer, shall have the power to suspend temporarily, any license until final determination by the commission when, in his or her opinion, the action is necessary to protect the public welfare or is in the best interest of boxing or martial arts.

The suspension may be without advance hearing, but the suspended licensee may apply to the commission for a hearing on the matter to determine if the suspension should be modified or set aside. The application for a hearing shall be in writing and shall be received by the commission within 30 days after the date of suspension. Upon receipt of such written request, the commission shall set the matter for hearing within 30 days.

SEC. 20. Section 18848 of the Business and Professions Code is amended to read:

18848. The license of any promoter or matchmaker found guilty of managing a boxer or martial arts fighter, either directly or indirectly, without written approval from the commission shall be subject to disciplinary action

SEC. 21. Section 18849 of the Business and Professions Code is amended to read:

18849. No promoter, nor any person having a proprietary interest in the promoter, shall have, either directly or indirectly, any proprietary interest in a boxer or martial arts fighter competing on the premises owned, leased, or rented by the promoter without written approval from the commission.

SEC. 22. Section 18850 of the Business and Professions Code is amended to read:

18850. (a) Any boxer or martial arts fighter who participates in a contest or match while under suspension by the commission, or any other recognized commission, shall have his or her license revoked.

(b) Any licensee who, directly or indirectly, aids or abets a boxer or martial arts fighter in violation of this section shall be subject to disciplinary action.

SEC. 23. Section 18852 of the Business and Professions Code is amended to read:

18852. A manager of a boxer or martial arts fighter shall maintain an accurate annual record showing all of the following with respect to each contest in which the boxer or martial arts fighter has participated.

(a) Training expenses.

(b) Amount of money actually paid to the contestant.

(c) Amount of money which the manager received from the purse.

(d) Amount of money owed to the manager by the contestant.

The manager's record shall be supported by documentation, shall be made available to both the fighter under contract and the commission upon request, and shall be kept in the manager's possession for a period of five years from the transaction.

CHAPTER 758

An act to amend Sections 36631, 36632, 36633, 36634, and 36637 of, and to add Section 36638 to, the Food and Agricultural Code, relating to milk.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 36631 of the Food and Agricultural Code is amended to read:

36631. (a) The Legislature intends that the director administer this article to accommodate, in a timely fashion, safe and wholesome milk products.

(b) This article applies to products resembling milk products that are processed and sold pursuant to Chapter 6 (commencing with Section 38901) and all milk and dairy products processed and sold pursuant to this division. This article does not apply to any of the following:

(1) Combination milk and food products processed and sold pursuant to regulations adopted pursuant to Article 3 (commencing with Section 36661).

(2) Special varieties of cheese processed and sold pursuant to regulations adopted pursuant to Section 37402.

(c) For purposes of this article, "new milk product" or "new product resembling a milk product" means a product for which no state statutory or administrative regulation standard of identity exists, and may include a product that is classified by the United States Food and Drug Administration as nonstandard.

SEC. 2. Section 36632 of the Food and Agricultural Code is amended to read:

36632. (a) Upon the request of any interested person, the director may, following a properly noticed hearing, pursuant to subdivision (c) of Section 36634, grant a temporary standard for an initial period of one year. A temporary standard may be granted for a new milk product or a new product resembling a milk product. However, in no case shall a temporary standard be granted for a product for which a definition and standard was contained in a bill which was not enacted during the immediately preceding session of the Legislature. A hearing called pursuant to this section shall be by written brief, unless an oral hearing is specifically requested by an interested person.

(b) The petition shall include a proposed definition, standard, nomenclature, and label for the new product. The petition shall also address the relation between the proposed product and existing definitions and standards established for comparable products.

SEC. 3. Section 36633 of the Food and Agricultural Code is

amended to read:

36633. (a) A hearing called pursuant to this article shall be for the following purposes:

(1) Establishing if the product proposed for a temporary standard qualifies for that standard.

(2) Evaluating whether a temporary standard has been properly sought for the proposed product definition, standard, nomenclature, and label offered by the petitioner.

(b) Following the hearing, the director shall evaluate the temporary standard request on the basis of all of the following:

(1) Testimony submitted by all interested persons.

(2) The health and safety conditions under which the proposed product will be processed and distributed.

(3) Existing definitions and standards which are established for comparable products.

(c) In granting a temporary standard, the director shall establish an appropriate definition and nomenclature as well as quality and labeling requirements applicable to the permitted product.

SEC. 4. Section 36634 of the Food and Agricultural Code is amended to read:

36634. The processing of a petition for a temporary standard shall conform to the following schedule:

(a) Notice of the requested hearing or denial thereof shall be announced by the director within 15 days after receipt of a temporary standard petition.

(b) A hearing called pursuant to this section shall be held not later than 65 days following receipt of a temporary standard petition.

(c) The hearing shall be conducted in procedural compliance with applicable provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The petitioner for a temporary standard shall be notified of the director's decision on the request not later than 30 days following the closing of the hearing. A temporary standard approved by the director shall be effective immediately upon issuance of the director's decision, subject to Section 36637.

SEC. 5. Section 36637 of the Food and Agricultural Code is amended to read:

36637. Upon granting a petition under this article, the director shall adopt the standard as an emergency regulation pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of this chapter, any regulations adopted under this article shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 6. Section 36638 is added to the Food and Agricultural Code, to read:

36638. If the director fails to respond to a petition for a temporary standard within 65 days following receipt of the petition, the petitioner may thereafter utilize the standard. However, the right of

petitioner to utilize the standard shall expire at the end of the calendar year of the Regular Session of the Legislature immediately following the year in which the use of that standard by petitioner commenced, unless that standard is enacted into law during that calendar year of the regular session of the Legislature.

CHAPTER 759

An act to amend Section 436.2 of the Health and Safety Code, relating to health facilities and making an appropriation therefor.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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, except as otherwise provided in this section.

"Health facility" also means accredited nonprofit work activity programs as defined in subdivision (e) of Section 19352 and Section 19355 of the Welfare and Institutions Code, and nonprofit community care facilities as defined in Section 1502, excluding foster family homes, foster family agencies, adoption agencies, and residential care facilities for the elderly.

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 436.2 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, facilities for the treatment of chemical dependency, including a community care facility, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, a clinic, as defined pursuant to Chapter 1 (commencing with Section 1200) of Division 2, and alcoholism recovery facility, defined pursuant to Section 11834.11, and a structure located adjacent or attached to another type of health facility and which is used for storage of materials used in the treatment of chemical dependency, 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, facilities for the treatment of chemical dependency, or a multilevel facility, "health facility" does not include any institution furnishing primarily domiciliary care, except as otherwise provided in this section.

"Health facility" also means accredited nonprofit work activity programs as defined in subdivision (e) of Section 19352 and Section 19355 of the Welfare and Institutions Code, and nonprofit

community care facilities as defined in Section 1502, excluding foster family homes, foster family agencies, adoption agencies, and residential care facilities for the elderly.

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. 3. Section 2 of this bill incorporates amendments to Section 436.2 of the Health and Safety Code proposed by both this bill and SB 485. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 436.2 of the Health and Safety Code, and (3) this bill is enacted after SB 485, in which case Section 1 of this bill shall not become operative.

CHAPTER 760

An act to amend Sections 10203, 10225, and 10250 of the Health and Safety Code, and to amend Sections 12804 and 12804.9 of the Vehicle Code, relating to physicians' assistants.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 10203 of the Health and Safety Code is amended to read:

10203. The medical and health section data and the time of death shall be completed and attested to by the physician and surgeon last in attendance, or in the case of a patient in a skilled nursing or intermediate care facility at the time of death, by the physician and surgeon last in attendance or by a licensed physician's assistant under the supervision of the physician and surgeon last in attendance if the physician and surgeon or licensed physician's assistant is legally authorized to certify and attest to these facts, and if the physician's assistant has visited the patient within 72 hours of the patient's death. In the event the licensed physician's assistant certifies the medical and health section data and the time of death, then the physician's assistant shall also provide on the document the name of the last attending physician and surgeon and provide the coroner with a copy of the certificate of death. However, the medical health section data and the time of death shall be completed and attested to by the coroner in those cases in which he or she is required to complete the medical and health section data and certify and attest to these facts.

SEC. 2. Section 10225 of the Health and Safety Code is amended to read:

10225. The physician and surgeon last in attendance, or in the case of a patient in a skilled nursing or intermediate care facility at the time of death, the physician and surgeon last in attendance or a licensed physician's assistant under the supervision of the physician and surgeon last in attendance, on a deceased person shall state on the certificate of death the disease or condition directly leading to death, antecedent causes, other significant conditions contributing to

death and such other medical and health section data as may be required on the certificate; he or she shall also specify the time in attendance, the time he or she last saw the deceased person alive, and the hour and day on which death occurred, except in deaths required to be investigated by the coroner. The physician and surgeon or physician's assistant shall specifically indicate the existence of any cancer as defined in subdivision (e) of Section 211.3, of which the physician and surgeon or physician's assistant has actual knowledge.

A physician and surgeon may designate, one or more other physicians and surgeons who have access to the physician and surgeon's records, to act as agent for the physician and surgeon for purposes of the performance of his or her duties under this section, provided that any person so designated acts in consultation with the physician and surgeon.

SEC. 3. Section 10250 of the Health and Safety Code is amended to read:

10250. A physician and surgeon, physician's assistant, funeral director, or other person shall immediately notify the coroner when he or she has knowledge of a death which occurred or has charge of a body in which death occurred under any of the following circumstances:

(a) Without medical attendance.

(b) During the continued absence of the attending physician and surgeon.

(c) Where the attending physician and surgeon or the physician's assistant is unable to state the cause of death.

(d) Where suicide is suspected.

(e) Following an injury or an accident.

(f) Under such circumstances as to afford a reasonble ground to suspect that the death was caused by the criminal act of another.

Any person who does not notify the coroner as required by this section is guilty of a misdemeanor.

SEC. 4. 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 and surgeon licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon 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) The amendments made to this section in the 1989–90 Regular Session shall take effect only after federal regulations are in place permitting physician's assistants and nurse practitioners to complete the physicals described in this section.

(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 on or before January 1, 1993, deletes or extends that date.

SEC. 5. Section 12804.9 of the Vehicle Code is amended 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 or by a licensed physician's assistant or nurse practitioner under the

supervision of a physician and surgeon 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.

(j) The amendments made to this section in the 1989–90 Regular Session shall take effect only after federal regulations are in place permitting physician's assistants and nurse practitioners to complete the physicals described in 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 only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 761

An act to add Chapter 9 (commencing with Section 31601) to Division 14 of, the Food and Agricultural Code, relating to dogs.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Chapter 9 (commencing with Section 31601) is added to Division 14 of the Food and Agricultural Code, to read:

CHAPTER 9. POTENTIALLY DANGEROUS AND VICIOUS DOGS

Article 1. Findings, Definitions, and General Provisions

31601. The Legislature finds and declares all of the following:

(a) Potentially dangerous and vicious dogs have become a serious and widespread threat to the safety and welfare of citizens of this state. In recent years, they have assaulted without provocation and seriously injured numerous individuals, particularly children, and have killed numerous dogs. Many of these attacks have occurred in public places.

(b) The number and severity of these attacks are attributable to the failure of owners to register, confine, and properly control vicious and potentially dangerous dogs.

(c) The necessity for the regulation and control of vicious and potentially dangerous dogs is a statewide problem, requiring statewide regulation, and existing laws are inadequate to deal with the threat to public health and safety posed by vicious and potentially dangerous dogs.

31602. "Potentially dangerous dog" means any of the following:

(a) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog.

(b) Any dog which, when unprovoked, bites a person causing a less severe injury than as defined in Section 31604.

(c) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the dog.

31603. "Vicious dog" means any of the following:

(a) Any dog seized under Section 599aa of the Penal Code and upon the sustaining of a conviction of the owner or keeper under subdivision (a) of Section 597.5 of the Penal Code.

(b) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being.

(c) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 31602 or is maintained in violation of Section 31641, 31642, or 31643.

31604. "Severe injury" means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

31605. "Enclosure" means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper of the dog. The enclosure shall be designed in order to prevent the animal from escaping. The animal shall be housed pursuant to Section 597t of the Penal Code.

31606. "Animal control department" means the county or city animal control department. If the city or county does not have an animal control department, it means whatever entity performs animal control functions.

31607. "Impounded" means taken into the custody of the public pound or animal control department or provider of animal control services to the city or county where the potentially dangerous or vicious dog is found.

31608. "County" includes any city and county.

31609. (a) This chapter does not apply to licensed kennels, humane society shelters, animal control facilities, or veterinarians.

(b) This chapter does not apply to dogs while utilized by any police department or any law enforcement officer in the performance of police work.

Article 2. Judicial Process

31621. If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the municipal court within the judicial district wherein the dog is owned or kept for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. A city or county may establish an administrative hearing procedure to hear and dispose of petitions filed pursuant to this chapter. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The chief officer of the public pound or animal control department or head of the local law enforcement agency shall notify the owner or keeper of the dog that a hearing will be held by the municipal court or the hearing entity, as the case may be, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. The hearing shall be held promptly within no less than five working days nor more than 10 working days after service of notice upon the owner or keeper of the dog. The hearing shall be open to the public. The court may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. A jury shall not be available. The court may find, upon a preponderance of the evidence, that the dog is potentially dangerous or vicious and make other orders authorized by this chapter.

31622. (a) After the hearing conducted pursuant to Section 31621, the owner or keeper of the dog shall be notified in writing of the determination and orders issued, either personally or by first-class mail postage prepaid by the court or hearing entity. If a determination is made that the dog is potentially dangerous or vicious, the owner or keeper shall comply with Article 3 (commencing with Section 31641) in accordance with a time schedule established by the chief officer of the public pound or animal control department or the head of the local law enforcement

agency, but in no case more than 30 days after the date of the determination or 35 days if notice of the determination is mailed to the owner or keeper of the dog. If the petitioner or the owner or keeper of the dog contests the determination, he or she may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of original jurisdiction to a court authorized to hear the appeal. The fee for filing an appeal shall be twenty dollars ($20), payable to the county clerk. If the original hearing held pursuant to Section 31621 was before a hearing entity other than the municipal court of the jurisdiction, appeal shall be to the municipal court. If the original hearing was held in the municipal court, appeal shall be to the superior court within the judicial district wherein the dog is owned or kept. The petitioner or the owner or keeper of the dog shall serve personally or by first-class mail, postage prepaid, notice of the appeal upon the other party.

(b) The court hearing the appeal shall conduct a hearing de novo, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The hearing shall be conducted in the same manner and within the time periods set forth in Section 31621 and subdivision (a). The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence. If the court rules the dog to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with this chapter, but in no case more than 30 days subsequent to the date of the court's determination or 35 days if the service of the judgment is by first-class mail.

31623 The court or hearing entity of original jurisdiction or the court hearing the appeal may decide all issues for or against the owner or keeper of the dog even if the owner or keeper fails to appear at the hearing.

31624. The determination of the court hearing the appeal shall be final and conclusive upon all parties.

31625. (a) If upon investigation it is determined by the animal control officer or law enforcement officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the animal control officer or law enforcement officer may seize and impound the dog pending the hearings to be held pursuant to this article. The owner or keeper of the dog shall be liable to the city or county where the dog is impounded for the costs and expenses of keeping the dog, if the dog is later adjudicated potentially dangerous or vicious.

(b) When a dog has been impounded pursuant to subdivision (a) and it is not contrary to public safety, the chief animal control officer shall permit the animal to be confined at the owner's expense in a department approved kennel or veterinary facility.

31626. (a) No dog may be declared potentially dangerous or

vicious if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime. No dog may be declared potentially dangerous or vicious if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault. No dog may be declared potentially dangerous or vicious if an injury or damage was sustained by a domestic animal which at the time the injury or damage was sustained was teasing, tormenting, abusing, or assaulting the dog.

(b) No dog may be declared potentially dangerous or vicious if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.

Article 3. Disposition of Potentially Dangerous or Vicious Dogs

31641. All potentially dangerous dogs shall be properly licensed and vaccinated. The licensing authority shall include the potentially dangerous designation in the registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the court or hearing entity has determined the designation applies to the dog. The city or county may charge a potentially dangerous dog fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of the dog.

31642. A potentially dangerous dog, while on the owner's property, shall, at all times, be kept indoors, or in a securely fenced yard from which the dog cannot escape, and into which children cannot trespass. A potentially dangerous animal may be off the owner's premises only if it is restrained by a substantial leash, of appropriate length, and if it is under the control of a responsible adult.

31643. If the dog in question dies, or is sold, transferred, or permanently removed from the city or county where the owner or keeper resides, the owner of a potentially dangerous dog shall notify the animal control department of the changed condition and new location of the dog in writing within two working days.

31644. If there are no additional instances of the behavior described in Section 31602 within a 36-month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the list of potentially dangerous dogs. The dog may, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the 36-month period if the owner or keeper of the dog demonstrates to the animal control department that changes in circumstances or measures taken by the owner or keeper, such as training of the dog, have mitigated the risk

to the public safety.

31645. (a) A dog determined to be a vicious dog may be destroyed by the animal control department when it is found, after proceedings conducted under Article 2 (commencing with Section 31621), that the release of the dog would create a significant threat to the public health, safety, and welfare.

(b) If it is determined that a dog found to be vicious shall not be destroyed, the judicial authority shall impose conditions upon the ownership of the dog that protect the public health, safety, and welfare.

(c) Any enclosure that is required pursuant to subdivision (b) shall meet the requirements of Section 31605.

31646. The owner of a dog determined to be a vicious dog may be prohibited by the city or county from owning, possessing, controlling, or having custody of any dog for a period of up to three years, when it is found, after proceedings conducted under Article 2 (commencing with Section 31621), that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare.

Article 4. Penalties

31662. Any violation of this chapter involving a potentially dangerous dog shall be punished by a fine not to exceed five hundred dollars ($500). Any violation of this chapter involving a vicious dog shall be punished by a fine not to exceed one thousand dollars ($1,000).

31663. All fines paid pursuant to this article shall be paid to the city or county in which the violation occurred for the purpose of defraying the cost of the implementation of this chapter.

Article 5. Miscellaneous

31681. 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.

31682. The Judicial Council shall prepare all forms necessary to give effect to this chapter, including a summons or citation to be used by law enforcement agencies in the enforcement of this chapter. This chapter does not affect or change the existing civil liability or criminal laws regarding dogs.

31683. Nothing in this chapter shall be construed to prevent a city or county from adopting or enforcing its own program for the control of potentially dangerous or vicious dogs that may incorporate all, part, or none of this chapter, or that may punish a violation of this chapter as a misdemeanor or may impose a more restrictive program to control potentially dangerous or vicious dogs, provided that no

program shall regulate these dogs in a manner that is specific as to breed.

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.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 762

An act to add Section 6366.2 to the Revenue and Taxation Code, and to add Section 6700.1 to the Vehicle Code, relating to vehicles, to take effect immediately, tax levy.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. It is the intent of the Legislature to encourage the California Office of Tourism to engage in appropriate advertising campaigns and promotions to attract foreign tourists to California. It is the further intent of the Legislature to promote and facilitate sales of American made motor vehicles to foreign tourists in California to better compete with manufacturers from foreign countries who, for many years, have encouraged and created incentives for American tourists to buy motor vehicles abroad.

SEC. 2. Section 6366.2 is added to the Revenue and Taxation Code, to read:

6366.2. (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 in this state of any new motor vehicle sold to a purchaser who is a resident of a foreign country and who arranges for the purchase through an authorized vehicle dealer in the foreign country prior to arriving in the United States, if the following conditions are met:

(1) The purchaser is issued an in-transit permit pursuant to Section 6700.1 of the Vehicle Code.

(2) Prior to the expiration of the in-transit permit issued to the purchaser, the retailer ships or drives the motor vehicle to a point outside the United States by means of facilities operated by the retailer, or by delivery to a carrier, customs broker or forwarding agent for shipment to that point.

(b) For purposes of this section, "carrier" means a person or firm engaged in the business of transporting for compensation tangible personal property owned by other persons, and includes both common and contract carriers. "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

SEC. 3. Section 6700.1 is added to the Vehicle Code, to read:

6700.1. (a) Notwithstanding any other provision of law, the department may issue an in-transit permit to a resident of a foreign country not more than 30 days before or after the foreign resident purchases a new motor vehicle in California which was manufactured in the United States. The permit authorizes the operation of the vehicle for which it is purchased for up to 30 consecutive days after the first date of operation, and is in lieu of any other registration requirements, including, but not limited to, fees or taxes required by this code or the Revenue and Taxation Code. The seller shall ship or drive the vehicle out of this country before or at the end of 30 consecutive days from the first date of operation, or thereafter shall be subject to, and shall be required to pay, all charges and registration requirements for vehicles subject to registration in this state. In addition, if the vehicle is not so removed from this country, the department shall assess, and the seller shall be required to pay, a penalty of 20 percent of the vehicle registration and license fees and sales tax due upon the vehicle becoming subject to registration.

(b) Subdivision (a) does not apply to commercial vehicles.

(c) Proof of residency in a foreign country for purposes of this section shall be established through the presentation of a valid visa, passport, or other suitable documentation, as determined by the department.

(d) A fee of sixty dollars ($60) shall be paid to the department for each in-transit permit issued.

(e) A permit issued under this section shall be displayed in the manner permitted by paragraph (3) of subdivision (b) of Section 26708.

(f) The permit issued by the department shall clearly and prominently indicate the date of expiration of the authorized in-transit driving privilege.

(g) No California certificate of ownership shall be issued.

(h) A manufacturer's certificate of origin shall prominently indicate that the certificate is valid for transfer of ownership to the purchaser only outside of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(i) Notwithstanding Part 1 (commencing with Section 6001) of

Division 2 of the Revenue and Taxation Code, the manufacturer of a new motor vehicle sold to a foreign purchaser under the conditions specified in Section 6366.2 of the Revenue and Taxation Code shall reimburse the retailer for an amount equal to the sales tax and all registration charges and fees, and a penalty of 20 percent of those taxes, charges, and fees if the conditions of the in-transit permit are not met, as specified in this section.

SEC. 4. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act to reimburse, and the state shall not reimburse, any local agency for any sales and use tax revenues lost by it under this act.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for 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 provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect. However, notwithstanding Section 17580 of the Government Code, 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.

CHAPTER 763

An act to amend Section 92.3 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 92.3 of the Streets and Highways Code is amended to read:

92.3. (a) The department shall do both of the following:

(1) Discontinue further water intensive freeway landscaping and use drought resistant landscaping whenever feasible, taking into consideration such factors as erosion control and fire retardant needs, in counties where over 80 percent of the county water supply is imported.

(2) Eliminate any dependency on imported water for landscaping as soon as practicable.

(b) The department shall require the use of reclaimed water for the irrigation of freeway landscaping when it finds and determines that all of the following conditions exist:

(1) The reclaimed water is of adequate quality and is available in

adequate quantity for the proposed use.

(2) The proposed use of the reclaimed water is approved by the California regional water quality control board having jurisdiction.

(3) There is a direct benefit to the state highway program for the proposed use of reclaimed water.

(4) The reclaimed water is supplied by a local public agency or water public utility able to contract for delivery of water and the installation, maintenance, and repair of facilities to deliver the water.

(5) The installation of the water delivery facilities does not unreasonably increase any hazard to vehicles on the freeway or create unreasonable problems of highway maintenance and repair.

(c) The department shall report to the Legislature on or before January 1, 1988, and every three years thereafter, on the progress of the department in complying with this section. For each landscaping project subject to this section which is listed in the most recently adopted state transportation improvement program, the department shall identify the closest potable water supply and the closest reclaimed water supply, together with a statement explaining which water source was selected for irrigation purposes, and the reasons why that source was selected.

(d) In cooperation with a local public agency selected by the department, the department shall conduct a demonstration project to test and evaluate the use of reclaimed water for freeway landscape irrigation and the transmission of reclaimed water to others, when to do so will promote a beneficial use of reclaimed water and that transmission does not unreasonably interfere with use of the highway or unreasonably increase any hazard to vehicles on the highway. The demonstration project shall be subject to paragraphs (1) to (5), inclusive, of subdivision (b) and the following additional requirements:

(1) The local public agency holds the department harmless for any liability caused by a disruption of service to other users and will defend the department in any resulting legal action and pay any damages awarded as a result of that disruption.

(2) The department, in cooperation with the local public agency, may temporarily interrupt service in order to add to or modify its facilities without liability, as specified in paragraph (1).

(3) The local public agency obtains and furnishes the department an agreement by all other users of reclaimed water from the transmission system holding the department harmless for any disruption in service.

(4) The local public agency has furnished the department a list of other reclaimed water users and information on any backup system or other source of water available for use in case of a service disruption.

(5) The local public agency is responsible for the initial cost or any relocation cost of the reclaimed water transmission lines in the freeway right-of-way and waives its rights to require the department to pay the relocation costs pursuant to Sections 702 and 704.

(6) The local public agency maintains the water transmission system subject to reasonable access for maintenance purposes to be negotiated between the department and the local public agency.

(7) The department has first priority with respect to the reclaimed water supply contracted for.

(8) The local public agency installs an automatic control system which will allow the water transmission system to be shut down in case of an emergency. The department shall have access to all parts of the transmission system for purposes of the agreement.

(9) All transmission lines are placed underground and as close as possible to the freeway right-of-way boundary or at other locations authorized by the department.

(10) The plans and specifications for the reclaimed water transmission facilities have been approved by the department prior to construction.

CHAPTER 764

An act to amend Sections 84305 and 84308 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 84305 of the Government Code is amended to read:

84305. (a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

(c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).

SEC. 2. Section 84308 of the Government Code is amended to read:

84308. (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the

subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars ($250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars ($250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use

pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars ($250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars ($250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars ($250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

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

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 765

An act to amend Sections 647f and 1202.6 of the Penal Code, and to repeal and add Section 1768.9 of the Welfare and Institutions Code, relating to AIDS.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 647f of the Penal Code is amended 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 or 1202.6 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 1202.6 of the Penal Code is amended 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 court shall order 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, written copies of the report on the test shall be furnished to both of the following:

(1) The court in which the defendant is to be sentenced.

(2) 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. 3. Section 1768.9 of the Welfare and Institutions Code is repealed.

SEC. 4. Section 1768.9 is added to the Welfare and Institutions Code, to read:

1768.9. (a) Notwithstanding any other provision of law, a person under the jurisdiction or control of the Department of the Youth Authority is obligated to submit to a test for the probable causative agent of AIDS upon a determination of the chief medical officer of the facility that clinical symptoms of AIDS or AIDS-related complex, as recognized by the Centers for Disease Control, is present in the person. In the event that the subject of the test refuses to submit to such a test, the department may seek a court order to require him

or her to submit to the test.

(b) Prior to ordering a test pursuant to subdivision (a), the chief medical officer shall ensure that the subject of the test receives pretest counseling. The counseling shall include:

(1) Testing procedures, effectiveness, reliability, and confidentiality.

(2) The mode of transmission of HIV.

(3) Symptoms of AIDS and AIDS-related complex.

(4) Precautions to avoid exposure and transmission.

The chief medical officer shall also encourage the subject of the test to undergo voluntary testing prior to ordering a test. The chief medical officer shall also ensure that the subject of the test receives posttest counseling.

(c) The following procedures shall apply to testing conducted under this section:

(1) 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 section.

(2) The chief medical officer shall order that the blood specimens be transmitted to a licensed medical laboratory which has been approved by the State Departmment of Health Services for the conducting of AIDS testing, and that tests, including all readily available confirmatory tests, be conducted thereon for medically accepted indications of exposure to or infection with HIV.

(3) The subject of the test shall be notified face-to-face as to the results of the test.

(d) All counseling and notification of test results shall be conducted by one of the following:

(1) A physician and surgeon who has received training in the subjects described in subdivision (b).

(2) A registered nurse who has received training in the subjects described in subdivision (b).

(3) A psychologist who has received training in the subjects described in subdivision (b) and who is under the purview of either a registered nurse or physician and surgeon who has received training in the subjects described in subdivision (b).

(4) A licensed social worker who has received training in the subjects described in subdivision (b) and who is under the purview of either a registered nurse or physician and surgeon who has received training in the subjects described in subdivision (b).

(5) A trained volunteer counselor who has received training in the subjects described in subdivision (b) and who is under the supervision of either a registered nurse or physician and surgeon who has received training in the subjects described in subdivision (b).

(e) The Department of the Youth Authority shall provide medical services appropriate for the diagnosis and treatment of those infected with HIV.

(f) The Department of the Youth Authority may operate separate housing facilities for wards and inmates who have tested positive for HIV infection and who continue to engage in activities which transmit HIV. These facilities shall be comparable to those of other wards and inmates with access to recreational and educational facilities, commensurate with the facilities available in the institution.

(g) Notwithstanding any other provision of law, the chief medical officer of a facility of the Department of the Youth Authority may do all of the following:

(1) Disclose results of a test for the probable causative agent of AIDS to the superintendent or administrator of the facility where the test subject is confined.

(2) When test results are positive, inform the test subject's known sexual partners or needle contacts in a Department of the Youth Authority facility of the positive results, provided that the test subject's identity is kept confidential. All wards and inmates who are provided with this information shall be provided with the counseling described in subdivision (b).

(3) Include the test results in the subject's confidential medical record which is to be maintained separate from other case files and records.

(h) Actions taken pursuant to this section 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 section.

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

CHAPTER 766

An act to add Section 97.36 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989.]

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

SECTION 1. Section 97.36 is added to the Revenue and Taxation Code, to read:

97.36. (a) An independent qualifying city shall receive a distribution of the following percentages of the TEA formula, as computed in subdivision (c) of Section 97.35, if the amount of that distribution, less the applicable reductions provided for in subdivisions (e), (f), and (g) of Section 97.35, would be greater than the amount the city would have been allocated without the application of the TEA formula:

(1) Thirty-three and one-third percent of the amount determined in subparagraph (G) of paragraph (6) of subdivision (c) of Section 97.35, less any applicable reductions provided for in subdivisions (e), (f), and (g) of Section 97.35, for the first fiscal year in which the independent qualifying city receives an allocation pursuant to this section.

(2) Sixty-six and two-thirds percent of the amount determined in subparagraph (G) of paragraph (6) of subdivision (c) of Section 97.35, less any applicable reductions provided for in subdivisions (e), (f), and (g) of Section 97.35, for the second fiscal year in which the independent qualifying city receives an allocation pursuant to this section.

(3) One hundred percent of the amount determined in subparagraph (G) of paragraph (6) of subdivision (c) of Section 97.35, less any applicable reductions provided for in subdivisions (e), (f), and (g) of Section 97.35, for the third fiscal year in which the independent qualifying city receives an allocation pursuant to this section.

The amount not distributed as a result of this subdivision to the tax rate areas in each independent qualifying city, shall be allocated by the auditor to the county. The auditor may assess each independent qualifying city its proportional share of the actual costs of making the calculations required by this subdivision, and may deduct that assessment from the amount allocated pursuant to this subdivision. For purposes of this subdivision, an independent qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a) of Section 97.35.

(b) "Independent qualifying city" means a qualifying city, as

defined in Section 97.35, in the County of Los Angeles which met the following criteria on January 1, 1988:

(1) Was not served by a special district which received a portion of the 1 percent property tax revenue, and provided any of the following services to the qualified city:

(A) Emergency medical services.

(B) Fire prevention services.

(C) Fire suppression.

(D) Libraries.

(E) Parks.

(F) Recreation services.

(G) Street lighting.

(2) Did not have redevelopment project areas which receive property tax revenues.

(3) The county general fund received greater than 65 percent of the 1 percent property tax revenues collected from tax rate areas within the qualifying city's boundaries.

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:

In the County of Los Angeles, certain qualifying cities receive a very small portion of the property tax revenue attributable to the levy of the 1 percent property tax rate within their jurisdictions even though these qualifying cities directly finance their municipal services without being served by special districts or other public entities which receive a portion of the property tax revenue allocated within other qualifying cities for the provision of certain municipal services. Accordingly, the distribution of property tax revenue under the system devised for all qualifying cities in Section 97.35 of the Revenue and Taxation Code, which involves a seven-year phasein for the receipt of that revenue, will not meet the fiscal needs of these particular qualifying cities and a shorter phasein for the receipt of additional property tax revenue by those cities is essential if they are to continue to provide a broad range of vital municipal services.

SEC. 3. Section 1 of this act shall become operative on July 1, 1989, and shall apply to distributions of property tax revenues for the 1989–90 fiscal year and fiscal years thereafter.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the programs specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date the act takes effect pursuant to the California Constitution.

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 financial relief to cities contemplated by this act may be made available to them for the provision of vital municipal services for the entire 1989–90 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 767

An act to add Article 4 (commencing with Section 10235) to Chapter 2.6 of Part 2 of Division 2 of, and to repeal Sections 10232.1, 10236.5, and 10237 of, the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 10232.1 of the Insurance Code is repealed.

SEC. 2. Article 4 (commencing with Section 10235) is added to Chapter 2.6 of Part 2 of Division 2 of the Insurance Code, to read:

Article 4. Implementation

10235. This article applies to all long-term care insurance policies delivered or issued for delivery in this state on or after January 1, 1990.

10235.2. No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

(a) "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or "Title I, Part I of Public Law 89-97, as enacted by the 89th Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(b) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(c) "Skilled nursing care," "intermediate care," "home health care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care is required to be delivered.

(d) All providers of services, including, but not limited to, skilled nursing facilities, intermediate care facilities, and home health agencies shall be defined in relation to the services and facilities

required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

10235.6. (a) The terms "guaranteed renewable" and "noncancelable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 10235.14 and subject to the following:

(1) The term "guaranteed renewable" may be used only if the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and if the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew. However, the fact that rates may be revised by the insurer, in accordance with the provisions of the policy, as to all insureds who were placed in the same class for purposes of rate determination in the process of issuance of the policy, shall not preclude a policy from being "guaranteed renewable."

(2) The term "noncancelable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(b) No long-term care insurance policy issued to an individual shall contain renewal provisions less favorable to the insured than guaranteed renewable for life, or for life or until exhaustion of benefits. However, the commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the commissioner, to best protect the interests of the insureds, if the insurer demonstrates either of the following:

(1) That renewal will jeopardize the insurer's solvency.

(2) That (A) the actual paid claims and expenses have substantially exceeded the premium and investment income associated with the policies, (B) the policies will continue to experience substantial and unexpected losses over their lifetime, (C) the projected loss experience of the policies cannot be significantly improved or mitigated through reasonable rate adjustments or other reasonable methods, and (D) the insurer has made repeated and good faith attempts to stablilize loss experience of the policies, including the timely filing for rate adjustments.

10235.8. No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as to the following:

(a) Preexisting conditions or diseases.

(b) Mental or nervous disorders. However, this subdivision does not permit exclusion or limitation of benefits on the basis of Alzheimer's disease or any of the other conditions set forth in subdivision (d) of Section 10233.2.

(c) Alcoholism and drug addiction.

(d) Illness, treatment, or a medical condition arising out of any of the following:

(1) War or act of war, whether declared or undeclared.

(2) Participation in a felony, riot, or insurrection.

(3) Service in the armed forces or units auxiliary thereto.

(4) Suicide, whether sane or insane, attempted suicide, or intentionally self-inflicted injury.

(5) Aviation in the capacity of a non-fare-paying passenger.

(e) Treatment provided in a government facility, unless otherwise required by law, services for which benefits are available under Medicare or other governmental programs (except Medi-Cal or Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no fault law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance.

This section does not prohibit exclusions and limitations by type of provider or territorial limitations.

10235.10. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if that institutionalization began while the long-term care insurance was in force and continues without interruption after termination. This extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

10235.12. (a) As used in this section:

(1) "Basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when that coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.

(2) "Basis for conversion of coverage" means a policy provision to the effect that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(3) "Converted policy" means an individual policy of long-term care insurance providing benefits identical to, or benefits determined by the commissioner to be substantially equivalent to or in excess of, those provided under the group policy from which conversion is made.

If the group policy from which conversion is made restricts the provision of benefits and services to, or contains incentives to use

certain providers or facilities, the commissioner, in making the determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(4) A "managed care plan" means any health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or the use of specific provider networks.

(b) Group long-term care insurance policies delivered or issued for delivery in this state on or after January 1, 1990, shall provide covered individuals with a basis for continuation of coverage or a basis for conversion of coverage.

(c) Group policies which restrict provision of benefits and services to, or which provide incentives to use, certain providers or facilities may include continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits for this purpose and, in doing so, shall take into consideration the differences between managed care plans and other plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(d) Written application for a converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(e) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the previous group policy replaced.

(f) Continuation of coverage or issuance of a converted policy shall be mandatory, unless either of the following apply:

(1) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due.

(2) The terminating coverage is replaced not later than 31 days after termination by group coverage effective on the day following the termination of coverage and the replacement coverage meets both of the following criteria:

(A) The replacement coverage provides benefits identical to, or benefits determined by the commissioner to be substantially

equivalent to or in excess of, those provided by the terminating coverage.

(B) The premium for the replacement coverage is calculated in a manner consistent with the requirements of subdivision (e).

(g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. This provision shall only be included in a converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(i) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(j) Continuation, conversion, or replacement coverage shall not contain preexisting condition exclusions if, as of the effective date of continuation, conversion, or replacement, the group coverage from which continuation, conversion, or replacement is made would provide benefits for preexisting conditions.

(k) If the group coverage from which continuation, conversion, or replacement is made, imposes preexisting condition limitation periods, elimination, waiting or other time periods as preconditions to benefits, and any of these preconditions have been partially satisfied as of the effective date of continuation, conversion, or replacement, the period of that partial satisfaction shall be applied as a credit towards satisfaction of those preconditions to benefits contained in the continuation, conversion, or replacement coverage.

(*l*) This section shall prevail as to any conflict between its provisions and Part 6.1 (commencing with Section 12670) of Division 2 of the Insurance Code.

10235.14. (a) Individual long-term care insurance policies shall contain a renewability provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly disclose the term of coverage for which the policy is initially issued, the terms and conditions under which the policy may be renewed, and whether or not the issuer has the right to change the premium. If this right exists, the policy provisions shall

clearly and concisely describe each circumstance under which the premium may change.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the increased benefits or coverage are required by law. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, that premium charge shall be set forth in the policy, rider, or endorsement.

(c) A long-term care insurance policy or certificate which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of those terms and an explanation of the terms in the outline of coverage.

(d) If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, those limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "preexisting condition limitations."

(e) A long-term care insurance policy or certificate containing any limitations or conditions for eligibility shall set forth in a separate paragraph of the policy or certificate a description of those limitations or conditions, including any required number of days of confinement, and shall label that paragraph "Limitations or Conditions on Eligibility for Benefits."

10235.16. (a) Long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed insurance is intended to replace any other accident and sickness or long-term care insurance presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent shall furnish the applicant, prior to issuance or delivery of a policy or certificate, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following form:

"NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with a long-term care insurance coverage to be issued by (company name) Insurance Company. Your new coverage provides thirty (30) days within which you may decide, without cost, whether you desire to keep the coverage. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new coverage.

(1) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new coverage. This could result in denial or delay in payment of benefits under the new coverage, whereas a similar claim might have been payable under your present coverage.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present coverage. This is not only your right, but is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present coverage and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your coverage had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all the information has been properly recorded.

The above 'Notice to Applicant' was delivered to me on:

_____

(Date)

_____

(Applicant's Signature)"

(c) For group coverage not subject to the 30-day return provision of Section 10232.7, the notice shall be modified to reflect the appropriate time period in which the policy may be returned and premium refunded.

10235.18. (a) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy or certificate. The required notice shall be provided in the following form:

"NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance coverage delivered herewith issued by (company name) Insurance Company. Your new coverage provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy or certificate. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new coverage.

(1) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new coverage. This could result in denial or delay in payment of benefits under the new coverage, whereas a similar claim might have been payable under your present coverage.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy coverage. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy or certificate). If, after due consideration, you still wish to terminate your present coverage and replace it with new coverage, read the copy of the application attached to your new coverage and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (company name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)"

(b) For group coverage not subject to the 30-day return provision of Section 10232.7, the notice shall be modified to reflect the appropriate time period in which the policy may be returned and premium refunded.

10235.20. The commissioner may waive a specific provision or provisions of this article with respect to a specific long-term care insurance policy or certificate upon making written findings specified in subdivisions (a), (b), and (c), as follows:

(a) The waiver would be in the best interest of the insureds.

(b) The underlying purposes of this article could not be effectively or efficiently achieved without the waiver.

(c) Any of the following:

(1) The waiver is necessary to the development of an innovative and reasonable approach for insuring long-term care.

(2) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the waiver is reasonably related to the special needs or nature of such a community.

(3) The waiver is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

The commissioner may condition any waiver upon compliance with alternative requirements to achieve the purposes of this article.

10235.22. Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums if the expected loss ratio is at least 60 percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including the following:

(a) Statistical credibility of incurred claims experience and earned premiums.

(b) The period for which rates are computed to provide coverage.

(c) Experienced and projected trends.

(d) Concentration of experience within early policy duration.

(e) Expected claim fluctuation.

(f) Experience refunds, adjustments, or dividends.

(g) Renewability features.

(h) All appropriate expense factors.

(i) Interest.

(j) Experimental nature of the coverage.

(k) Policy reserves.

(*l*) Mix of business by risk classification.

(m) Product features, such as long elimination periods, high deductibles, and high maximum limits.

SEC. 3. Section 10236.5 of the Insurance Code is repealed.

SEC. 4. Section 10237 of the Insurance Code is repealed.

CHAPTER 768

An act to amend Sections 26291.7 and 26292.4 of the Government Code, and to amend Sections 6480.1, 6814, 6903, 7657, 8877, 12636, 30282, 32255, and 43157 of, and to add Section 8716 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 26291.7 of the Government Code is amended to read:

26291.7. The agency shall have the power to do all of the following:

(a) Administer this chapter.

(b) 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.

(c) 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.

(d) Hold title as necessary to land or facilities and convey title to such land or facilities to the county.

(e) 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

(f) Finance all or part of the cost of any prevention program.

(g) Reimburse costs incurred by the county in implementing the master plan, reimburse costs incurred by the county in the operation of any facility constructed or acquired pursuant to this chapter, or reimburse 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.

(h) 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.

SEC. 2. Section 26292.4 of the Government Code is amended to read:

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 110 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.

SEC. 3. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) After service of written notification by the board, on the first distribution in this state of motor vehicle fuel subject to the motor vehicle fuel license tax, the distributor shall collect

prepayment of retail sales tax from the person to whom the motor vehicle fuel is distributed. The prepayment required to be collected by the distributor constitutes a debt owed by the distributor to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a distributor or broker who has consumed the fuel has paid the use tax to the board. Each distributor shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. On each subsequent distribution of that motor vehicle fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of distribution. Each distributor shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(b) After service of written notification by the board, the broker shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel is transferred. The prepayment required to be collected by the broker constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each broker shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

Each broker shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board.

(c) A distributor or broker who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a distributor or broker who has consumed the fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the distribution was made. Failure of the distributor or broker to report prepayments or the distributor's or broker's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, distributor, or broker, either on a temporary or permanent basis or otherwise. The retailer, distributor, or broker shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents ($0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the rate per gallon, rounded to the nearest one-half of one cent, of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051 and 7202 on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every distributor, broker, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

SEC. 4. Section 6814 of the Revenue and Taxation Code is amended to read:

6814. (a) The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 6561) of Chapter 5 of this part. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. The provisions of this chapter with respect to the collection of any amount required to be paid under this part shall apply when the notice becomes final.

(b) (1) If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.

(2) Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 5. Section 6903 of the Revenue and Taxation Code is amended to read:

6903. (a) No credit or refund of any amount paid pursuant to

Chapter 3 (commencing with Section 6201) shall be allowed to any person on the ground that the storage, use, or other consumption of the property is exempted under Section 6401 unless the person establishes to the satisfaction of the board that his or her vendor has paid the sales tax to the state with respect to the sale of the property.

(b) For purposes of this section, "amount paid pursuant to Chapter 3 (commencing with Section 6201)" does not include any payment or payments made pursuant to a determination made by the board under Articles 2 (commencing with Section 6481) and 3 (commencing with Section 6511) of Chapter 5.

SEC. 6. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7660, and 7713.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 7. Section 8716 is added to the Revenue and Taxation Code, to read:

8716. (a) A permit shall be held only by persons actively engaging in or conducting a business as a vendor of fuel taxable under this part. Any person not so engaged shall forthwith surrender his or her permit to the board for cancellation. The board may revoke the permit of a person found to be not actively engaged in or conducting a business as a vendor of fuel taxable under this part.

(b) If the permit holder who transfers a business does not notify the board of the transfer, or deliver the permit to the board for cancellation, and the transferee, with the permit holder's actual or constructive knowledge, uses the permit in any way, the transferor shall be liable for taxes under this part, interest computed as specified in Section 8777, and those penalties imposed pursuant to subdivision (c).

(c) The transferor shall be liable for penalties incurred by the transferee under Sections 8779, 8876, and 9352, but shall not be liable for penalties incurred by the transferee under Sections 8780 and 9353. However, the board may, at its discretion, relieve the transferor from liability for penalties incurred by the transferee.

SEC. 8. Section 8877 of the Revenue and Taxation Code is amended to read:

8877. If the board finds that a person's failure to secure a use fuel tax permit or to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8701, 8756.5, 8801, 8854, and 8876.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 9. Section 12636 of the Revenue and Taxation Code is amended to read:

12636. If the board finds that an insurer's failure to make a timely return or payment is due to reasonable cause and to circumstances beyond the insurer's control, and which occurred despite the exercise of ordinary care and in the absence of willful neglect, the insurer may be relieved of the penalty provided by Section 12258, 12282, 12287, 12631, 12632, or 12633.

Any insurer seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 10. Section 30282 of the Revenue and Taxation Code is amended to read:

30282. If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30221, 30264, and 30281.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 11. Section 32255 of the Revenue and Taxation Code is amended to read:

32255. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32291, 32292, and 32305.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 12. Section 43157 of the Revenue and Taxation Code is amended to read:

43157. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 43155 and 43306.

Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

CHAPTER 769

An act to amend Sections 74900, 74901, 74905, 74907, 74909, and 74912 of the Government Code, relating to courts.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 74900 of the Government Code is amended to read:

74900. This article applies to the municipal court established in the judicial district embracing the County of Ventura, which shall be known as the Ventura County Municipal Court.

SEC. 2. Section 74901 of the Government Code is amended to read:

74901. There are 12 judges.

SEC. 3. Section 74905 of the Government Code is amended to read:

74905. (a) There shall be one clerk of the Ventura County Municipal Court, who shall be known as the court executive officer and who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The court executive officer shall receive the monthly compensation of five thousand ninety-five dollars ($5,095) to six thousand six hundred one dollars ($6,601).

(b) There shall be three deputy executive officers of the Ventura County Municipal Court who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The deputy executive officers shall receive the monthly compensation of three thousand three hundred sixty-five dollars ($3,365) to four thousand two hundred ninety-one dollars ($4,291).

(c) The rate of monthly compensation to be paid to the court executive officer and the deputy executive officers within the compensation ranges set forth in subdivisions (a) and (b) shall be established by joint action and approval of the board of supervisors and a majority of the judges of the court at an amount equal to that paid county employees with comparable experience and responsibility.

SEC. 4. Section 74907 of the Government Code is amended to read:

74907. The court executive officer may appoint the following positions which shall receive biweekly compensation specified in Section 74909:

(a) Three manager court divisions.
(b) Nine supervising court clerks.
(c) Twenty-four deputy municipal court clerks III.
(d) Twenty-nine deputy municipal court clerks II.
(e) Twenty deputy municipal court clerks I.

(f) Two court interpreters.
(g) One program administrator III.
(h) One administrative officer II.
(i) One administrative assistant I.
(j) Two administrative aides.
(k) One accountant III.
(*l*) One supervising accountant.
(m) One accounting technician.
(n) Two senior account clerks.
(o) Five account clerks II.
(p) One supervising collections officer.
(q) Three collections officers.
(r) Two collections investigators.
(s) Six data entry operators III.
(t) One executive secretary-confidential.
(u) Three municipal court secretaries.
(v) One microfilm technician II.
(w) One mail messenger.
(x) Three clerks.

SEC. 5. Section 74909 of the Government Code is amended to read:

74909. (a) The following biweekly salary schedule, which is consistent with the Salary Ordinance of the County of Ventura shall apply to the personnel of the Ventura County Municipal Court:

Municipal Court Classification	Biweekly Rate
Manager Court Divisions	$2,581.11–3,139.00
Supervising Court Clerk	961.03–1,169.29
Deputy Municipal Court Clerk III	792.91– 962.70
Deputy Municipal Court Clerk II	687.53– 832.22
Deputy Municipal Court Clerk I	572.94– 721.81
Court Interpreter	670.55– 811.69
Program Administrator III	1,330.93–1,589.56
Administrative Officer II	1,408.97–1,781.32
Administrative Assistant I	946.42–1,148.86
Administrative Aide	755.12– 918.16
Accountant III	1,121.53–1,364.23
Supervising Accountant	1,520.18–1,846.67
Accounting Technician	879.90–1,068.09
Senior Account Clerk	650.15– 793.73
Account Clerk II	618.94– 753.99
Supervising Collections Officer	869.65–1,055.77
Collections Officer	755.37– 915.27
Collections Investigator	701.57– 851.66
Data Entry Operator III	654.07– 795.42
Executive Secretary-Confidential	855.24–1,041.92
Municipal Court Secretary	758.62– 920.88
Microfilm Technician II	644.03– 783.72

Mail Messenger	576.28– 687.53
Clerk	476.75– 585.48

Merit increases within the salary range shall be in accordance with the salary merit increment plan.

(b) In the event that the above biweekly salary schedule is not applicable, then Section 74912 shall apply.

SEC. 6. Section 74912 of the Government Code is amended to read:

74912. Certain classifications in the Ventura County Municipal Court are deemed to be equivalent in position responsibility and salary level to certain classifications in the service of Ventura County and whenever the salary of an equivalent classification in the Ventura County service is adjusted by the board of supervisors, the salary of the equivalent classification in the Ventura County Municipal Court and the salary of the personnel in such classifications, shall be adjusted an equivalent amount. Such adjustment shall be effective on the same date as the effective date of the action by the board of supervisors as it applies to classifications in the Ventura County service. Any salary increases granted or reclassifications made pursuant to this article shall be effective only until the effective date of general legislation enacted by the Legislature at its next regular session following the date such salary increases are granted or reclassifications made. Classifications deemed to be equivalent are as follows:

Municipal Court Classification	County Classification
Supervising Court Clerk	Supervising Court Clerk
Deputy Municipal Court Clerk III	Superior Court Clerk III
Deputy Municipal Court Clerk II	Superior Court Clerk II
Deputy Municipal Court Clerk I	Superior Court Clerk I
Data Entry Operator III	Data Entry Operator III
Data Entry Operator II	Data Entry Operator II
Data Entry Operator I	Data Entry Operator I
Municipal Court Secretary	Superior Court Secretary
Administrative Assistant II	Administrative Assistant II
Accounting Technician	Accounting Technician
Mail Messenger	Mail Messenger
Account Clerk II	Account Clerk II
Clerk	Clerk
Manager Court Divisions	Manager Court Divisions
Court Interpreters	Court Interpreters
Program Administrator III	Program Administrator III

Administrative Assistant I	Administrative Assistant I
Administrative Aide	Administrative Aide
Accountant III	Accountant III
Supervising Accountant	Supervising Accountant
Senior Account Clerk	Senior Account Clerk
Supervising Collections Officer	Supervising Collections Officer
Collections Officer	Collections Officer
Collections Investigator	Collections Investigator
Executive Secretary-Confidential	Executive Secretary-Confidential
Microfilm Technician II	Microfilm Technician II

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 770

An act to amend Section 6890 of, and to add Section 6890.5 to, the Public Resources Code, relating to state lands.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 6890 of the Public Resources Code is amended to read:

6890. (a) Prospecting permits and leases for the extraction and removal of minerals, other than oil and gas or other hydrocarbon substances, from lands, including tide and submerged lands belonging to the state, may be issued as provided in this article and in this chapter insofar as not in conflict with this article. The commission shall not issue any permit or lease under this section until it has been submitted to the Attorney General and has been approved by the Attorney General as to compliance with the applicable law and rules and regulations of the commission. No lease or permit shall be issued which results in any net adverse impact to wetlands or riparian habitat

(b) Where lands, other than tide and submerged lands, belonging to the state have been dedicated to a public use, the commission may

issue permits and leases for the exploration, extraction, and removal of minerals, other than oil and gas or other hydrocarbon substances and geothermal resources, in accordance with this article. Where the lands have been acquired for the use of a specific state agency, the state agency, prior to issuance, shall approve the work to be performed under the authority of the permit or lease and the state agency shall specify terms and conditions required to ensure that the work shall be performed in a manner which is not inconsistent with the purposes for which the land is owned or operated.

(c) If the property is a wildlife management area acquired pursuant to Section 1525 of the Fish and Game Code, the commission shall not issue any permit or lease under this section unless the Department of Fish and Game determines, and reports in writing to the commission, that the proposed activity will not cause a net loss of wildlife habitat value or acreage in that area because privately owned land of greater total wildlife habitat value and acreage, which has habitat values similar in type to the area to be permitted or leased, will be acquired and dedicated to the state to replace the land of that wildlife management area. The replacement land shall be located within 10 miles of the wildlife management area where the lease or permit is to be issued.

(d) The commission shall not issue a permit or lease under this section for any land under the jurisdiction of the Department of Parks and Recreation, for any refuge or other protected area, as described in Division 7 (commencing with Section 10500) of the Fish and Game Code, or for any ecological reserve, as described in Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code.

(e) Notwithstanding Section 6217, as of June 30 of each year, a sum equal to 50 percent of the revenue received by the state for the fiscal year ending on June 30 pursuant to permits and leases for the development of minerals, other than oil, gas, or other hydrocarbon substances and geothermal resources, on lands which have been dedicated to a public use and are administered by a state agency other than the commission shall be available for appropriation by the Legislature for the support of, and apportionment and transfer by the Controller to, that state agency.

(f) If the state agency receives a majority of its funding from a special fund established for the general support of the agency, the revenue made available by subdivision (e) shall be deposited in that fund and shall be available, when appropriated, for the general purposes of the agency.

(g) Any person issued a permit or lease under subdivision (a) shall comply with all existing federal, state, and local government laws.

SEC. 2. Section 6890.5 is added to the Public Resources Code, to read:

6890.5. Notwithstanding any other law, when lands, other than tide and submerged lands, are owned by another state agency, the commission, when issuing permits and leases for the exploration,

extraction, and removal of minerals, other than oil and gas or other hydrocarbon substances and geothermal resources, may agree that the state agency owning the land will receive additional lands or in-kind payments, the value of which shall be deducted from the money royalty, including land rental payments, or a percentage of the net profits from mineral extraction.

CHAPTER 771

An act relating to schoolage parenting programs.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Existing state law provides for child care and development programs, including programs for schoolage parenting and infant development (SAPID).

(b) Currently, 60 programs are funded exclusively with state funds. Another 83 schools are requesting funding.

(c) The programs enable teen parents to complete high school and prepare for employment. The programs often break the family welfare cycle and reduce child abuse and repeat pregnancy.

SEC. 2. It is the intent of the Legislature in enacting this act to obtain federal child care and development funds for the purpose of expanding the SAPID program for Greater Avenues for Independence (GAIN) participants.

SEC. 3. (a) To the extent SAPID is used to serve GAIN participants, the State Department of Social Services shall seek Federal Financial Participation (FFP), permitted by Public Law 100-485, for SAPID child care.

(b) These additional funds shall be used only to continue and expand the child development component of the SAPID program under the State Department of Education.

(c) Notwithstanding any other provision of law, GAIN participants who meet the educational requirements of the SAPID program may use SAPID child care services.

CHAPTER 772

An act to amend Sections 4980.43, 4980.45, 4980.90, and 4982 of, and to add Sections 4980.47 and 4980.48 to the Business and Professions Code, relating to marriage, family, and child counselors, and making an appropriation therefor.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) For all applicants, a minimum of two calendar years of supervised experience is required, which experience shall consist of 3,000 hours obtained over a period of not less than 104 weeks. Not less than 1,500 hours of experience shall be gained subsequent to the granting of the qualifying master's or doctor's degree. No hours of experience may be gained prior to becoming a trainee. All experience shall be gained within the six years immediately preceding the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(b) Experience as specified in Section 4980.40 may be gained as a trainee in the following settings: a governmental entity, a school, college, or university, a nonprofit and charitable corporation, or a licensed health facility, if the experience is gained by the trainee solely as part of the position for which he or she is employed.

(c) Experience as specified in Section 4980.40 may be gained as an intern as specified in subdivision (b), or when employed in a private practice setting. Employment in a private practice setting shall not commence until the applicant has been registered as an intern. An intern employed in a private practice setting shall not pay his or her employer for supervision and shall receive fair remuneration from his or her employer.

(d) All interns shall register with the board in order to be credited for postdegree hours of experience gained toward licensure, regardless of the setting where those hours are to be gained. Except as provided in subdivision (e), all postdegree hours shall be gained as a registered intern.

(e) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration, within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(f) Trainees and interns shall not receive any remuneration from patients or clients, and shall only be paid by their employer.

(g) Trainees and interns shall only perform services at the place where their employer regularly conducts business, and shall have no proprietary interest in that business.

SEC. 2. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who is a marriage, family, and child counselor, a psychologist, a clinical social worker, a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40 may supervise or employ, at any one time, no more than two unlicensed marriage, family, and child counselor registered interns in that private practice.

(b) Within 30 days of employment and within 30 days of termination of employment, in any allowable work setting, a registered intern shall notify the board in writing of the employment or termination of employment. The notice shall include the name of the registered intern, the full name and business address of the employer, the type of work setting when the intern is gaining hours of experience, and the date employment commenced or terminated. If an intern fails to notify the board within 30 days after the date of his or her employment or termination of employment, the board shall not accept any hours of experience gained during that period of employment prior to notification for the purposes of meeting the experience requirements for licensure. "Employment," as used in this section, means the gaining of hours of experience in an allowable work setting as an employee or as a volunteer.

SEC. 3. Section 4980.47 is added to the Business and Professions Code, to read:

4980.47. (a) All trainees shall register with the board, on a form prescribed by the board, in order to be credited for hours of experience gained toward licensure. The form for trainee registration shall be submitted within 90 days of the date of enrollment, or prior to the commencement of gaining trainee hours of experience, whichever occurs first. This section shall not affect hours of experience gained pursuant to subdivision (b) of Section 4980.42.

(b) The form for trainee registration shall contain the full name and mailing address of the applicant, the full name and address of the school where the applicant is enrolled, the date of enrollment, and the name of the degree to be granted. The fee for registration shall be twenty-five dollars ($25) and shall accompany the form.

This section applies to those persons who enroll in qualifying degree programs on or after January 1, 1990.

SEC. 4. Section 4980.48 is added to the Business and Professions Code, to read:

4980.48. (a) Within 30 days of employment, and with 30 days of termination of employment, in any allowable work setting, a trainee shall notify the board in writing of the employment or termination

of employment. The notice shall include the name of the trainee, the full name and business address of the employer, the type of work setting where the trainee is gaining hours of experience, and the date employment commenced or terminated. If a trainee fails to notify the board within 30 days after the date of his or her employment or termination of employment, the board shall not accept any hours of experience gained during the period of employment prior to notification for the purposes of meeting the experience requirements for licensure. "Employment" as used in this section means the gaining of hours of experience in an allowable work setting as an employee or as a volunteer.

(b) Trainees shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

This section applies to those persons who enroll in qualifying degree programs on or after January 1, 1990.

SEC. 5. Section 4980.90 of the Business and Professions Code is amended to read:

4980.90. The board may allow any person to be examined who, in its opinion, has met the education and experience requirements for licensure while residing outside of California, or education outside California and experience within California, that are substantially the equivalent of this chapter provided that:

(a) He or she has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) He or she has completed a two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(c) He or she has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(d) He or she has completed a minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25, and any regulations promulgated thereunder.

(e) He or she has completed a minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(f) With respect to human sexuality and alcoholism and other chemical substance dependency, the board may accept training or coursework acquired out of state.

For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant has been granted a degree in a single integrated program primarily designed to train marriage, family and child counselors and if the applicant's

education meets the requirements of Sections 4980.37 and 4980.40 provided, however, that the degree title and number of units in the degree program need not be identical to those required by subdivision (a) of Section 4980.40. Where the applicant's degree does not contain the number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the applicant's degree otherwise complies with this section and the applicant completes the units required by subdivision (a) of Section 4980.40.

SEC. 6. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing any such person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4211, or of any alcoholic beverage to the extent, or in such manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that such use impairs the ability of such person applying for or holding a registration or license to conduct with safety to the public the

practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage, family, and child counseling services.

(d) Gross negligence or incompetence in the performance of marriage, family, and child counseling.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage, family, and child counselor.

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform, or permitting any registered trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation,

or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or registered trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding one's self out as being able to perform, professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a registered trainee or registered intern under one's supervision or control to perform, or permitting the registered trainee or registered intern to hold one's self out as competent to perform, professional services beyond the registered trainee's or registered intern's level of education, training, or experience.

CHAPTER 773

An act to amend Section 10216 of the Elections Code, relating to ballots.

[Approved by Governor September 24, 1989 Filed with Secretary of State September 25, 1989]

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

SECTION 1. Section 10216 of the Elections Code is amended to read:

10216. Candidates for each office shall be printed on the ballot in accordance with the following rules:

(a) The names of presidential candidates to whom candidates for delegate to the national convention are pledged and the names of chairmen or chairwomen of groups of candidates for delegate expressing no preference shall be arranged on the primary election ballot by the Secretary of State by the names of the candidates in accordance with the randomized alphabet as provided for in Section 10217 in the case of the ballots for the First Assembly District.

Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(b) The names of the pairs of candidates for President and Vice President shall be arranged on the general election ballot by the Secretary of State by the names of the candidates for President in accordance with the randomized alphabet as provided for in Section 10217 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the pair appearing first in the last preceding Assembly district shall be placed last, the order of the other pairs remaining unchanged.

(c) In the case of all other offices, the candidates for which are to be voted on throughout the state, the Secretary of State shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 10217 for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(d) If the office is that of Representative in Congress or member of the State Board of Equalization, the Secretary of State shall arrange the names of candidates for the office in accordance with the randomized alphabet as provided for in Section 10217 for that Assembly district which has the lowest number of all the Assembly districts in which candidates are to be voted on. Thereafter, for each succeeding Assembly district in which the candidates are to be voted on, the names appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(e) If the office is that of State Senator or Member of the Assembly, the county clerk shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 10217 unless the district encompasses more than one county, in which case the arrangement shall be made pursuant to subdivision (i).

(f) If the office is to be voted upon wholly within, but not throughout, one county, as in the case of municipal, district, county supervisor, municipal court, justice court, and county central committee offices, the official responsible for conducting the election shall determine the order of names in accordance with the randomized alphabet as provided for in Section 10217.

(g) If the office is to be voted on throughout a single county and there are not more than four Assembly districts wholly or partly in the county, the county clerk shall determine the order of names in accordance with the randomized alphabet as provided for in Section 10217 for the first supervisorial district. Thereafter, for each succeeding supervisorial district, the name appearing first for each office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged.

(h) If there are five or more Assembly districts wholly or partly

in the county, an identical procedure shall be followed except that rotation shall be by Assembly district, commencing with the Assembly district which has the lowest number.

(i) If the office is that of State Senator or Member of the Assembly and the district includes more than one county, the county clerk in each county shall conduct a drawing of the letters of the alphabet, pursuant to the same procedures specified in Section 10217. The results of the drawing shall be known as a county randomized ballot and shall be used only to arrange the names of the candidates when the district includes more than one county.

SEC. 2. 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 a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 774

An act to add Article 3 (commencing with Section 225) to Chapter 1 of Division 1 of the Elections Code, relating to voters, and making an appropriation therefor.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 25, 1989.]

I am deleting the $53,000 appropriation in Section 3[2] of Assembly Bill No. 2142.

This bill would enact the Visually Impaired Voters Assistance Act of 1989, and would require the Secretary of State to create a Visually Impaired Voter Assistance Advisory Board with specified membership and duties.

The 1989–90 Budget appropriated $869,000 to the Secretary of State for election purposes, which includes voter outreach. Thus, sufficient funds are available to the Secretary of State to carry out the provisions of this bill.

The demands placed on budget resources require all of us to set priorities. With legislation I will be signing and the budget enacted in July 1989, more than $50 billion in state funds will be appropriated this fiscal year. This amount is more than adequate to provide the necessary essential services provided for the State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

With this deletion, I approve Assembly Bill No. 2142.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Article 3 (commencing with Section 225) is added to Chapter 1 of Division 1 of the Elections Code, to read:

Article 3. Visually Impaired Voters

225. This article shall be known, and may be cited, as the Visually Impaired Voter Assistance Act of 1989.

226. As used in this article, "visually impaired" means a person having central visual acuity not to exceed 20-200 in the better eye, with corrected lenses, or visual acuity greater than 20-200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends at an angle of not greater than 20 degrees.

227. It is the intent of the Legislature to promote the fundamental right to vote of visually impaired individuals, and to make efforts to improve public awareness of the availability of ballot pamphlet cassette tapes and improve their delivery to these voters.

228. (a) The Secretary of State shall establish a Visually Impaired Voter Assistance Advisory Board. This board shall consist of the Secretary of State or his or her designee and the following membership, appointed by the Secretary of State:

(1) A representative from the State Advisory Council on Libraries.

(2) One member from each of three private organizations. Two of the organizations shall be representative of organizations for blind persons in the state.

(b) The board shall do all of the following:

(1) Establish guidelines for reaching as many visually impaired persons as practical.

(2) Make recommendations to the Secretary of State for improving the availability and accessibility of ballot pamphlet cassette tapes and their delivery to visually impaired voters. The Secretary of State may implement the recommendations made by the board.

(3) Increase the distribution of public service announcements identifying the availability of ballot pamphlet cassette tapes at least 45 days before any federal, state, and local election.

(4) Promote the Secretary of State's toll-free voter registration telephone line for citizens needing voter registration information, including information for those who are visually handicapped, and the toll-free telephone service regarding the California State Library and regional library service for the visually impaired.

(c) No member shall receive compensation, but each member shall be reimbursed for his or her reasonable and necessary expenses in connection with service on the board.

SEC. 2. The sum of fifty-three thousand dollars ($53,000) is hereby appropriated from the General Fund to the Controller for allocation to the Secretary of State and to the California State Library for the purposes of this act, as follows:

(a) Secretary of State	$50,000
(b) California State Library	3,000

CHAPTER 775

An act relating to education.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 25, 1989]

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

SECTION 1. The Legislature finds and declares that:

(a) Among the citizens and educators of this state there is a lack of understanding of consumer and homemaking education and its importance in assisting pupils to (1) develop personal self-esteem and acquire skills to become positive family and community members, as well as productive members of the nation's workforce and (2) balance home and work life successfully.

(b) The most efficient and effective manner to deliver consumer and homemaking education instruction is by utilizing a comprehensive approach which assures that content areas are taught as an integrated body of knowledge.

SEC. 2. The Superintendent of Public Instruction, in conjunction with the program manager of home economics education and other appropriate units within the State Department of Education, shall prepare and disseminate information to school districts and county offices of education offering instruction in consumer and homemaking education that includes all of the following:

(a) A definition of the content areas as delineated in the consumer and homemaking education model curriculum standards and framework as well as the scope and sequence of the instruction to be provided in grades 6 to 12, inclusive.

(b) Guidelines for the incorporation or implementation or incorporation and implementation of the model curriculum standards into existing consumer and homemaking education programs.

(c) A clarification of the qualifications required of personnel assigned to teach consumer and homemaking education.

(d) A delineation of how consumer and homemaking education instruction should be articulated in grades 6 to 12, inclusive, as well as with other home economics occupational programs at the secondary and postsecondary education levels.

(e) Specific information as to how consumer and homemaking education courses can be strengthened pursuant to subdivision (b) of Section 51225.3 of the Education Code in adopting alternative

means for pupils to complete the prescribed course of study for graduation.

(f) Quality criteria to ensure an effective consumer and homemaking education instructional program.

SEC. 4. Nothing in this act shall be construed to change or alter the parental notice requirement described in Sections 51550 and 51820 or the requirements of Sections 51229 and 51229.5.

CHAPTER 776

An act to amend Section 14509.5 of, and to add Section 14551.5 to, the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor September 24, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 14509.5 of the Public Resources Code is amended to read:

14509.5. "Curbside program" means a recycling program which meets all of the following criteria:

(a) The program picks up recyclables from individual residences.

(b) The program is operated by, or pursuant to a contract with, a city, county, or other public agency, or is acknowledged, in writing, by a city, county, or other public agency.

(c) The program accepts empty beverage containers from consumers with the intent to recycle them, but does not pay the redemption value or redemption bonus.

(d) The program submits information and data to the department, as required by this division.

SEC. 2. Section 14551.5 is added to the Public Resources Code, to read:

14551.5. On or before August 31, 1990, and on or before each August 31 thereafter, each curbside program which receives redemption values, redemption bonuses, and administrative fees from certified processors, or redemption values and redemption bonuses from certified recycling centers, shall submit a survey form to the department, in the form and manner which the department may prescribe. The survey shall include information concerning the general operations of the program, the actual volumes collected, and the revenues received from the sale of recyclable material, from the period of July 1 to June 30, immediately preceding the report due date. The information submitted in the survey form is subject to the procedures established pursuant to Section 14554 to protect proprietary information.

SEC. 3. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 777

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time within which actions may be commenced.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. This act may be cited as the Third Validating Act of 1989.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means counties, cities and counties, cities, and all of the following districts, authorities, agencies, boards, commissions, and other entities:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts.

Air quality management districts.

Airport districts.

Assessment districts.

Bridge and highway districts.

Bridge, highway, and transportation districts.

California water district distribution districts.

California water district improvement districts.

California water districts.

Cemetery districts.

Citrus pest control districts.

City general improvement district improvement districts.

City general improvement districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.
Community rehabilitation districts.
Community service district improvement districts.
Community service districts.
Conservancy districts.
Cotton pests abatement districts.
County boards of education.
County drainage districts.
County fire protection districts.
County flood control and water districts.
County free library systems.
County maintenance districts.
County power pumping districts.
County sanitation district improvement districts.
County sanitation districts.
County service area improvement areas.
County service areas.
County sewage and water districts.
County water agencies.
County water authorities.
County water district improvement districts.
County water districts.
County waterworks districts.
Crossing guard maintenance districts.
Department of Water Resources and other agencies acting under and pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.
Drainage districts.
Fire protection districts.
Flood control and water conservation districts.
Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Horticultural development districts.
Horticultural protection districts.
Housing authorities.
Industrial development authorities.
Integrated financing districts.
Irrigation district distribution districts.
Irrigation district improvement districts.
Irrigation districts.
Joint harbor improvement districts.

Joint highway districts.
Joint municipal sewage disposal districts.
Junior college districts.
Levee districts.
Library districts.
Local agency formation commissions.
Local health districts.
Local hospital districts.
Local transportation authorities.
Metropolitan transit development boards.
Metropolitan water districts.
Mosquito abatement districts.
Mosquito abatement or vector control districts.
Municipal facilities districts.
Municipal improvement assessment districts.
Municipal improvement district improvement districts.
Municipal improvement districts.
Municipal port districts.
Municipal sewer districts.
Municipal utility districts.
Municipal water district improvement districts.
Municipal water districts of any kind.
Parking authorities.
Parking districts.
Park, recreation, and parkway districts.
Permanent road divisions.
Pest abatement districts.
Port districts.
Project areas of redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility district improvement districts.
Public utility districts.
Rapid transit authorities.
Rapid transit districts.
Reclamation districts.
Recreational harbor districts.
Recreation and park districts.
Recreation, park, and parkway districts.
Redevelopment agencies.
Regional justice facility financing agencies.
Regional open-space districts.
Regional park and open-space districts.
Regional park districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.

Road districts.
Sanitary agencies.
Sanitary districts.
Sanitary districts annexed areas.
School districts of any kind or class.
Separation of grade districts.
Service zones of fire protection districts.
Sewer maintenance districts.
Special benefit assessment districts of the Southern California Rapid Transit District.
Special community services districts.
Special transit service districts.
Storm water districts.
Transit districts.
Underground utility districts.
Unified air pollution control districts.
Unified port districts.
Urban renewal agencies.
Vehicle parking districts.
Veterans' memorial districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage district improvement districts.
Water storage districts.
Weed abatement districts.
Zones of community service districts.
Zones of county service areas.
Zones of county water agencies.
Zones of county water authorities.
Zones of county waterworks districts.
Zones of flood control and water conservation districts.
Zones of flood control districts.

The term "public body" and the plural thereof, as used in this act, shall include only those entities which are specifically enumerated in this section.

(b) "Bonds" means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements in which the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of such body, all instruments payable from revenues or special funds of such public bodies, all certificates of participation evidencing interests in the leases or, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) "Hereafter" means any time subsequent to the effective date of this act.

(d) "Heretofore" means any time prior to the effective date of this act.

(e) "Now" means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law are hereby declared to have been legally organized and to be legally functioning as such public body. Every such public body shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of such a public body regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into any such public body or for the annexation of any such public body to any other such public body or for the withdrawal or exclusion of territory from any such public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of such territory or the consolidation, merger, or dissolution of such public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any such public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of such public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of such bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner in which issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with such authorization shall be the legal,

valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with such authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, such bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with such authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply such legislative authorization as may be necessary to authorize, confirm, and validate any such acts and proceedings heretofore taken which the Legislature could have supplied or provided for in the law under which such acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent to which the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined or which is pending and undetermined during the period of 30 days from and after the effective date of this act, and shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter which has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(d) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of such matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period in which any action may be brought beyond the period in which it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any city or district, or any change in the boundaries of any city or district, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be

filed under Sections 54900 to 54904, inclusive, of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 778

An act to add Section 65302.5 to the Government Code, and to add Section 4128.5 to the Public Resources Code, relating to land use.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 65302.5 is added to the Government Code, to read:

65302.5. With respect to the safety element required in the general plan, pursuant to subdivision (g) of Section 65302, each county which contains state responsibility areas, as determined pursuant to Section 4125 of the Public Resources Code, shall comply with Section 4128.5 of the Public Resources Code.

SEC. 2. Section 4128.5 is added to the Public Resources Code, to read:

4128.5. (a) It is the intent of the Legislature that decisions affecting the use of land in state responsibility areas result in land uses which protect life, property, and natural resources from unreasonable risks associated with wild land fires.

(b) At least 90 days prior to the adoption or amendment to the safety element of its general plan, the planning agency of each county which contains state responsibility areas shall submit the draft element or draft amendment to the board and to every local agency which provides fire protection to unincorporated territory in the county. The board shall, and a local agency may, review the draft and report its written recommendations to the planning agency within 60 days of its receipt of the draft. The board and local agency shall review the draft for consistency with the intent of this section. The board and local agency may offer written recommendations for changes to the draft which would make the draft consistent with the intent of this section.

(c) Prior to the adoption of its draft element or draft amendment, the board of supervisors of the county shall consider the recommendations made by the board and any local agency which provides fire protection to unincorporated territory in the county. If the board of supervisors determines not to accept all or some of the recommendations, if any, made by the board or local agency, the board of supervisors shall communicate in writing to the board or local agency its reasons for not accepting the recommendations. The communication shall explain how its decisions affecting the uses of

land and policies in state responsibility areas will protect lives, property, and natural resources from unreasonable risks associated with wild land fires.

(d) If the board's or local agency's recommendations are not available within the time limits set by this section, the board of supervisors may act without them. The board of supervisors shall take the recommendations into consideration at the next time it considers future amendments to the safety element.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 779

An act to amend Section 11590 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 11590 of the Health and Safety Code is amended to read:

11590. (a) Any person who, on or after the effective date of this section, is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11550, or any person who is, on or after that date, discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is, on or after that date, convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall, within 30 days after the effective date of this section or within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

For persons convicted under Section 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section

11054 and paragraph (2) of subdivision (d) of Section 11055 and to analogs of these substances as defined in Section 11401.

For persons convicted under Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who, on or after the effective date of this section, is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall, within 30 days after the effective date of this section or within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357 or 11360.

SEC. 2. This act shall become operative on July 1, 1990.

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.

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

CHAPTER 780

An act to amend Section 14320 of, and to add Section 14242 to, the Business and Professions Code, relating to trademarks.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 14242 is added to the Business and Professions Code, to read:

14242. Registration of a mark with the Secretary of State under this chapter shall be constructive notice of the registrant's claim of ownership thereof.

SEC. 2. Section 14320 of the Business and Professions Code is amended to read:

14320. (a) Subject to the provisions of Section 14340 a person shall be subject to a civil action by the owner of a registered mark and the remedies provided in Section 14330 for any of the following:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services.

(2) Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services. The registrant shall not be entitled under this paragraph to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

(b) Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed is limited as follows:

(1) If an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed is entitled only to an injunction against future printing of the mark by the innocent infringer or innocent violator.

(2) If the infringement complained of is contained in, or is part of, paid advertising matter in a newspaper, magazine, or other similar periodical, or in an electronic communication as defined in Title 18 U.S.C. Section 2510(12), the remedies of the owner of the right infringed against the publisher or distributor of the newspaper, magazine, or other similar periodical or electronic communication shall be confined to an injunction against the presentation of the advertising matter in future issues of the newspapers, magazines, or other similar periodicals or in further transmissions of the electronic communication. The limitation of this subdivision shall apply only to innocent infringers and innocent violators.

(3) Injunctive relief is not available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or electronic communication containing infringing matter if restraining the dissemination of the infringing matter in any particular issue of the periodical or in an electronic communication would delay the delivery of the issue or transmission of the electronic communication after the regular time for delivery and the delay would be due to the method by which publication and distribution of the periodical or transmission of the electronic communication is customarily conducted in accordance with sound

business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to the infringing matter.

(c) An innocent infringer or innocent violator is any person whose acts were committed without knowledge that the mark was intended to be used to cause confusion, mistake, or to deceive.

CHAPTER 781

An act to add Article 4 (commencing with Section 2340) to Chapter 4 of Part 4 of Division 4 of the Probate Code, relating to conservators, and making an appropriation therefor.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Article 4 (commencing with Section 2340) is added to Chapter 4 of Part 4 of Division 4 of the Probate Code, to read:

Article 4. Registration of Private Professional Conservators

2340. No superior court may appoint a private professional conservator pursuant to Chapter 5 (commencing with Section 2350) or Chapter 6 (commencing with Section 2400) of this part unless the conservator has filed the information required by Sections 2342 and 2343 with the county clerk in each county where a petition for appointment has been filed.

This section becomes operative on July 1, 1990.

2341. As used in this article, "private professional conservator" means a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a conservator shall comply with this article. The court may, at its discretion, require the person who is the conservator for only one conservatee not related to the conservator by blood or marriage to comply with this article.

2342. (a) A private professional conservator, shall file annually with the county clerk a statement, under penalty of perjury, containing the following information:

(1) His or her educational background and professional experience.

(2) At least three professional references.

(3) The names of the conservator's current conservatees.

(4) The aggregate dollar value of assets currently under the conservator's supervision.

(5) The conservator's addresses and telephone numbers for his or her place of business and place of residence.

(6) Whether the conservator has ever been removed for cause as conservator or has resigned as conservator in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers.

(7) The case names, court locations, and case numbers of three conservatorship cases which are closed where the private professional conservator had served as the conservator.

(b) Upon filing of a petition for appointment, a private professional conservator shall state that he or she is a private professional conservator, and that the information required by this section is on file with the county clerk.

(c) The county clerk shall order a background fingerprint check from the Department of Justice and may request a background fingerprint check from the Federal Bureau of Investigation on each private professional conservator.

The background check shall include a record of all arrests resulting in conviction and all arrests for which final disposition is pending. The Department of Justice shall retain these fingerprints in their files and shall provide any subsequent arrest information to the county clerk pursuant to Section 11105.2 of the Penal Code until notified by the county clerk that the person is no longer serving in the capacity of a private professional conservator. On and after July 1, 1990, the superior court shall review the background fingerprint check prior to the appointment of a private professional conservator. The court shall review annual updates to the criminal background check on persons currently serving in the capacity of a private professional conservator under the court's jurisdiction. The background fingerprint check may be disposed with if the petitioner was appointed as a private professional conservator or served in the capacity of a private professional conservator during the previous year and a background fingerprint check was previously made.

(d) The information required by this section shall be confidential and shall be made available to the court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, a conservator.

2343. The county clerk shall charge each private professional conservator an annual filing fee which does not exceed the annual per-conservator cost of complying with this article. This fee shall also include the cost of submitting the fingerprint card to the Department of Justice.

SEC. 2. The sum of forty-six thousand dollars ($46,000) is hereby appropriated to the Department of Justice for purposes of Article 4 (commencing with Section 2340) of Chapter 4 of Part 4 of Division

4 of the Probate Code, as added by Section 1 of this act, from the account established in the General Fund pursuant to subdivision (e) of Section 11105 of the Penal Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 782

An act to amend Section 46205 of, and to add Section 46206 to, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. (a) It is the intent of the Legislature that the State Board of Education grant waivers to statutory minimum instructional time requirements as specified in Sections 46200, 46200.5, 46201, 46201.1, 46201.5, and 46202 of the Education Code only in the event of natural disasters, such as earthquake, fire, or flood; emergencies, such as events that involve the health and safety of pupils; or unavoidable human error, provided that, in the case of human error that both of the following apply:

(1) The board may waive a portion of the penalty, based upon the number of pupils affected.

(2) The district shall make up the lost instructional time no later than the year immediately following the year in which the waiver is granted.

(b) It is further the intent of the Legislature that school districts make every effort to make up lost instructional time during the school year in which the loss occurred, rather than seek a waiver pursuant to Section 46206 of the Education Code, as added by this act.

SEC. 2. Section 46205 of the Education Code is amended to read:

46205. For purposes of this article, instructional time for school districts conducting early-late instructional programs in kindergarten and grades 1 to 8, inclusive, shall be computed by adding the total amount of instructional time provided in each portion of the early-late instructional programs to the amount of instructional time offered when all pupils in the class are scheduled to attend. It is not the intent of the Legislature to disrupt or restrict

early-late instructional programs for pupils in kindergarten and grades 1 to 8, inclusive.

This section shall be applicable only if the early-late instructional program was in operation during the 1983–84 fiscal year, except that the Superintendent of Public Instruction may approve, based on educational reasons, the application of this section to programs commencing operation after the 1983–84 fiscal year.

SEC. 3. Section 46206 is added to the Education Code, to read:

46206. Notwithstanding any other provision of law, beginning with the 1984–85 school year and each school year thereafter, the State Board of Education may waive for any sufficient reason, as determined by the board, all or any portion of the fiscal penalties which may be levied for failing to maintain the prescribed minimum length of time for the instructional school day and year as provided in this article. Any waiver granted by the board pursuant to this section shall be applicable only to the district receiving the waiver for one year and shall be granted only when the time involved is equal to or less than 900 minutes of instructional time. The waiver shall include a plan for the district to make up any instructional time lost, which precipitated the need for the waiver during a school year, in the school year immediately following the year in which the waiver is granted. If a school district fails to make up the lost instructional time in accordance with the plan submitted to the State Board of Education, the fiscal penalties set forth in Sections 46200, 46200.5, 46201, 46201.1, 46201.5, and 46202 shall be imposed. Any waiver granted pursuant to this section shall be included in an annual report by the State Board of Education to the Legislature regarding waivers granted by the State Board of Education pursuant to this section.

Exceptions to the one-year limitation and to the 900-minute limit may be granted to any school district that maintained a single session kindergarten class in the 1982–83 school year for more than the maximum number of 240 minutes permitted by state law, and that, due to the school district's growth and facilities limitations, is required to operate two sessions of kindergarten in the same classroom.

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 protect the fiscal solvency of the affected school districts, it is necessary that this act take effect immediately.

CHAPTER 783

An act to amend Sections 51420 and 51421 of, and to repeal and add Section 51422 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. The Legislature hereby finds and declares that, under the current system for the processing and issuance of high school equivalency certificates, only 33.8 percent of the applicants who successfully pass the general educational development test apply for and receive a California high school equivalency certificate. The Legislature further finds and declares that the current system of recordkeeping and the processing of California high school equivalency certificates is outdated and inadequate.

It is the intent of the Legislature in enacting this act to ensure that all applicants who successfully pass the general educational development test shall be issued a California high school equivalency certificate. It is further the intent of the Legislature to enable the State Department of Education to establish and maintain a new computerized system with multiuser capability, adequate storage capacity, and high-speed processing ability, to accurately maintain records of persons who take all or a portion of the general educational development tests.

It is further the intent of the Legislature that the Superintendent of Public Instruction be requested to evaluate the current design of the high school equivalency certificate to ensure that it is suitable for display and is comparable in format to a regular high school diploma.

SEC. 2. Section 51420 of the Education Code is amended to read:

51420. The Superintendent of Public Instruction shall issue a California high school equivalency certificate and an official score report, or an official score report only, to any person who has not completed high school and who meets the following requirements:

(a) Is a resident of this state or is a member of the armed services assigned to duty in this state.

(b) Has taken all or a portion of a general educational development test which has been approved by the State Board of Education and which is administered by a testing center approved by the Department of Education, with a score determined by the State Board of Education to be equal to the standard of performance expected from high school graduates.

(c) Is at least 18 years of age or who would have graduated from high school had he remained in school and followed the usual course of study toward graduation.

SEC. 3. Section 51421 of the Education Code is amended to read:

51421. Applications for a California high school equivalency certificate and an official score report shall be submitted by each test center following each examinee's completion of all or a portion of the five tests comprising the general educational development test battery. Applications shall be submitted on a form prescribed by the Superintendent of Public Instruction. Individual applicants may also apply to the superintendent for a California high school equivalency certificate and an official score report, as necessary. The superintendent may charge a one-time only fee, established by the State Board of Education, to be submitted with the application sufficient in an amount not greater than the amount required to pay the cost of administering this article and for the cost of providing all followup services related to the completion of the general educational development test. The amount of each fee may not exceed twenty dollars ($20) per person.

The applicant shall be responsible for submitting to the Superintendent of Public Instruction all subsequent requests for duplicate copies of the California high school equivalency certificate and all requests to forward reports of the results of the applicant's general educational development test to postsecondary educational institutions.

SEC. 4. Section 51422 of the Education Code is repealed.

SEC. 5. Section 51422 is added to the Education Code, to read:

51422. Each testing center shall provide the Superintendent of Public Instruction with a certificate of results for each applicant who has taken all or a portion of the general educational development test. Each testing center shall forward to the superintendent the application fee established pursuant to Section 51421 for each applicant who has taken the general educational development test.

SEC. 6. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction as a loan for the purpose of establishing a computerized system of recordkeeping and data access pursuant to Section 51424 of the Education Code. Repayment of the loan, together with interest thereon paid at the same rate as interest earned on moneys in the Pooled Money Investment Account, shall be made over a two-year schedule of repayment, as determined through the annual budget process, from application fees collected for the California high school equivalency certificate pursuant to Section 51421 of the Education Code.

SEC. 7. This act shall become operative on July 1, 1990.

CHAPTER 784

An act relating to taxation.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. The State Board of Equalization shall report to the Legislature by September 30, 1991, regarding compliance with the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code) by sellers at swap meets, as defined in Section 6073 of the Revenue and Taxation Code.

The report shall include, but not be limited to:

(a) Results of sample audits of swap meet sellers and other cash-basis sellers throughout the state.

(b) Results of sample tax compliance activities by board staff directed at swap meet sellers throughout the state.

(c) Recommendations for legislation or other action directed towards improving tax compliance by swap meet sellers, including, but not limited to, examination of the assignment of State Board of Equalization and city and county personnel to swap meet sites to engage in compliance activities.

(d) Recommendations for the appropriate sharing of compliance costs between local agencies and the State Board of Equalization.

CHAPTER 785

An act to amend Sections 15, 16, 17.5, 19, 19.2, 20, 21, and 38 of, and to add Section 1.5 to, the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), relating to the Mojave Water Agency.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1.5 is added to the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959), to read:

Sec. 1.5. Within the limits of its power and authority set forth in this act, the purpose of the agency shall be to do any and every act necessary to be done so that sufficient water may be available for any present or future beneficial use of the lands and inhabitants of the agency, including, but not limited to, the construction, maintenance, alteration, purchase, and operation of any and all works or improvements within the agency necessary or proper to carry out any object or purpose of this act and the gathering of data for, and

the development and implementation of, after consultation and coordination with all public and private water entities who are in any way affected, management and master plans to mitigate the cumulative overdraft of groundwater basins, to monitor the condition of the groundwater basins, to pursue all necessary water conservation measures, and to negotiate for additional water supplies from all state, federal, and other sources.

SEC. 2. Section 15 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 15. (a) The agency may do any and every act necessary to be done so that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants of the agency, including, without limiting the generality of the foregoing, irrigation, domestic, fire protection, municipal, commercial, industrial, and recreational uses.

(b) Without limiting the generality of the authority given under subdivision (a) or under any other section of this act, the agency has the following additional powers:

(1) To make surveys and investigations of the water supply and resources of the agency, to gather data on water use, to plan water projects, and to publish and distribute reports thereof.

(2) To develop, protect, conserve, and reclaim water, reduce the waste of water, control and prevent the intrusion of salinity in water, and replenish underground water supplies within the agency, including the collection, treatment, and disposal of sewage, waste, and storm water, in those areas within the agency where no reclamation authority currently exists and to fix and collect rates and charges therefor.

(3) To store, regulate, control, transport, divert, and distribute water for use within the agency by any reasonable means, including, without limitation, the construction, maintenance, alteration, purchase, and operation of works and improvements and the spreading and sinking of water into underground storage basins.

(4) To appropriate water and acquire and protect water rights for any beneficial purpose

(5) To commence, maintain, appear before, intervene in, defend and compromise, in the name of the agency, and to assume the costs of, any action, hearing or proceeding before any court of the United States or of the State of California, involving or affecting the ownership, use or supply of water, water rights or water service within or without the agency which is or may be used or useful for any purpose within the agency, or involving or affecting the interference or diminution of the natural flow of any river or stream or subterranean water supply, which is or may be used or useful for any purpose within the agency.

(6) To enter into any contract with any person, corporation, utility, district, public corporation, the United States, or the State of California, as the board determines to be proper or advisable or in the interest of the lands and inhabitants of the agency, to carry out

or to execute any of the purposes of this act.

(7) To promote and coordinate existing and planned water service facilities in the agency with the operations of the California Water Plan and Aqueduct System.

(8) To join with one or more persons, corporations, utilities, districts or other public corporations, the United States, or the State of California, for the purpose of carrying out any of the powers granted by this act.

(9) To make application to the State of California, the Department of Water Resources, or any other appropriate department or agency of the State of California for the department's or agency's share of water made available by the State Water Resources Development System or any other supplemental water source.

(10) To construct, operate, and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation, and maintenance of works for other beneficial uses and purposes, and to enter into contracts for the sale of that energy for a term not to exceed 50 years. The energy may be marketed only at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy.

(11) To gather data for, and to develop and implement, after consultation and coordination with all public and private water entities who are in any way affected, management and master plans to mitigate the cumulative overdraft of groundwater basins, to monitor the condition of the groundwater basins, to pursue all necessary water conservation measures, and to negotiate for additional water supplies from all federal, state, and other sources.

SEC. 3. Section 16 of the Mojave Water Agency Law (Chapter 2146 Statutes of 1959) is amended to read:

Sec. 16. The agency may annually levy an assessment against pumping within the agency and shall fix and collect rates and charges for water sold by the agency which, together with the assessment against pumping, will be in an amount sufficient to pay not less than the variable cost under any contract entered into with the state, for the purchase of water, and to pay the reasonable share of the costs of the construction, maintenance, alteration, purchase, and operation of necessary works, and to pay the reasonable share of an annual amount which will amortize over such period of time as the board of directors shall determine the cost of construction or acquisition of necessary works, including costs of financing studies, the acquisition of options, permits, and other preliminary costs incurred or to be incurred prior to undertaking construction or acquisition of a project, as well as costs of issuing bonds, including the payment of interest, principal, and any premium thereon, secured by a pledge of the assessment against pumping or the rates and charges for water sold by the agency, or both, and any costs relating to any other authorized purpose of the agency. The agency shall annually, at the time county taxes are levied, levy an ad valorem tax on land

only within the agency not to exceed 45 cents ($0.45) per one hundred dollars ($100) assessed valuation for the purpose of paying all other costs, expenses, and obligations of the agency under any such contract. If an ad valorem tax on land levied at a rate of 45 cents ($0.45) per one hundred dollars ($100) assessed valuation will not yield adequate revenue for such purposes, the agency shall, at the same time, levy an additional ad valorem tax on all taxable property, exclusive of personal property, within the agency for the additional revenue required for the purpose of paying all other costs, expenses, and obligations of the agency under any such contract. For the purpose of this section, the term "variable costs" means those costs paid by the agency which constitute operation, maintenance, power, and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the agency by the state.

To accomplish the administration of the agency, there shall be levied a tax not to exceed ten cents ($0.10) on each one hundred dollars ($100) of the assessed valuation of all taxable property in the agency exclusive of personal property. Taxes to pay the principal of, and interest on, bonded indebtedness shall be levied on all the property in the area subject to that taxation when duly authorized by a vote of the electors. These taxes shall be levied and collected with, and not separately from, taxes for county purposes. The revenue derived from these taxes shall be paid into the treasury of the county to the credit of the agency, and the board may control and order the expenditure thereof. The provisions of the laws of the State of California prescribing the priority, time, and manner of levying, assessing, equalizing, and collecting county property taxes, including the sale of property for delinquency and the redemption from such sale and the duties of the various county officers with respect thereto, are, so far as they are applicable and not in conflict with the specific provisions of this act, hereby adopted for the agency and made a part hereof. Agency and county officers shall be liable upon their several bonds for the faithful discharge of the duties imposed upon them by this act.

SEC. 4. Section 17.5 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 17.5. Notwithstanding the limitations contained in Section 16, the agency may issue negotiable promissory notes bearing interest at a rate not to exceed the maximum interest rate authorized by Section 53531 of the Government Code subject to the following:

(a) The notes are obligations payable out of available revenues, including taxes levied against all the taxable property (other than personal property) within the agency.

(b) The aggregate amount of notes outstanding, which have not been refunded or defeased, does not exceed five million dollars ($5,000,000).

(c) Any note issued does not mature later than five years from the date of issuance of the note.

SEC. 5. Section 19 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 19. Whenever the board of directors deems it necessary for the agency to incur a bonded indebtedness for the acquisition, construction, completion, or repair of any or all improvement, works, or property specified in this act to be payable from ad valorem taxes on real property, the board shall, by resolution, so declare and call an election to be held in the agency for the purpose of submitting to the qualified voters thereof the proposition of incurring indebtedness by the issuance of bonds of the agency. The resolution shall state all of the following:

(a) The purpose for which the proposed debt is to be incurred, which may include expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(b) The amount of debt to be incurred.

(c) The maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed 40 years.

(d) The maximum rate of interest to be paid, which shall not exceed the interest rate as may be authorized by law at the time of issuance, including, but not limited to, Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as set forth in the resolution calling the election authorizing the issuance of the bonds.

(e) The measure to be submitted to the voters.

(f) The date upon which an election shall be held for the purpose of authorizing the bonded indebtedness to be incurred.

(g) The designation of precincts, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector, and two clerks in each precinct. However, the board of directors may refer the designation of precincts, the location of polling places, and the names of the officers selected to conduct the election to the county registrar when the agency election is to be consolidated with another election or if the county registrar is to conduct the election for the agency.

SEC. 6. Section 19.2 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 19.2. If, from the bond election returns, it appears that more than two-thirds of the votes cast in the election were in favor of and assented to the incurring of the indebtedness, the board may, by resolution, at such time or times as it deems proper, issue bonds of the agency for all or any part of the amount of the indebtedness so authorized and may, from time to time, provide for the issuance of such amounts as the necessity thereof may appear, until the full amount of the bonds authorized has been issued.

The full amount of the authorized bonds may be divided into two or more series and different dates fixed for the bonds of each series. The maximum term which the bonds of any series may run before maturity shall not exceed 40 years from the date of the series.

The board shall, by resolution, prescribe the form of the bonds and

fix the time when the whole or any part of the principal shall become due and payable. The payment of the first installment of principal may be deferred for a period of not more than five years from the date of the bonds or the date of the bonds of each series.

The bonds shall bear interest at a rate not to exceed the interest rate as may be authorized by law at the time of issuance, including, but not limited to, Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as set forth in the resolution calling the election authorizing the issuance of the bonds.

The board may provide for the call and redemption of bonds prior to maturity at such times and prices and upon such other terms as it may specify. A bond shall not be subject to call or redemption prior to maturity unless it contains a recital to that effect or unless a statement to that effect is printed thereon.

The denomination of the bonds shall be stated in the resolution authorizing their issuance, but shall not be less than one hundred dollars ($100).

The principal of, and interest on, the bonds shall be payable in lawful money of the United States at the office of the treasurer of the agency or such other place as may be designated in the resolution authorizing the issuance of the bonds.

The bond shall be dated, numbered consecutively, signed by the president and treasurer of the agency, countersigned by the secretary, and the official seal of the agency shall be attached. All signatures and countersignatures may be printed, lithographed, or mechanically reproduced, except that one of the signatures or countersignatures to the bonds shall be manually affixed. Notwithstanding the foregoing, the board may determine that all of the required signatures and countersignatures shall be by facsimilies, provided that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee. All expenses incurred incident to the authorization, issuance, and sale of the bonds, including, but not limited to, the preparation, printing, and distribution of any official statement or other disclosure document, the obtaining of insurance or other credit support providing for the prompt payment of interest and principal, the printing of the bonds, and legal fees of independent bond counsel retained by the agency are legal charges against the funds of the agency and may be paid from the proceeds of sale of the bonds.

If the bond election proceedings have been limited to and have applied only to an improvement district, the bonds are bonds of the agency, shall be issued in the name of the agency, and shall be designated "Bonds of Mojave Water Agency for Improvement District No. _____." Each bond shall state that taxes levied for the payment thereof will be levied exclusively upon the taxable property, exclusive of personal property, in the improvement district.

Any bonds issued by the agency have the same force, value, and use as bonds issued by a city and are exempt from all taxation within the state.

The board of directors may sell the bonds at a negotiated sale or by competitive bidding. If the sale is by competitive bid, before selling the bonds, or any part thereof, the board shall give notice inviting sealed bids in the manner as it may prescribe. If satisfactory bids are received, the bonds offered for sale shall be awarded to the responsible bidder offering the lowest interest cost, as determined by the board. If no bids are received, or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders, it may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

The proceeds from the sale of bonds shall be paid into the treasury of the agency, placed to the credit of a special improvement fund, and expended only for the purpose for which the indebtedness was created. When that purpose has been accomplished, any money remaining in the special improvement fund may be transferred to the fund to be used for the payment of principal of and interest on the bonds.

Any money remaining in the special improvement fund from the sale of bonds of the agency after the purpose for which the indebtedness was created has been accomplished may also be used for any other Mojave Water Agency purpose. The money remaining from the sale of bonds of the agency for an improvement district therein may also be used for any purpose which will benefit the property in the improvement district.

The money may not be used for any other Mojave Water Agency purpose or improvement district purpose until two-thirds of the qualified voters of the agency or improvement district voting on the proposition at a special election called in the agency or improvement district by the board have consented thereto. Notice of the election shall be given in the manner provided for bond elections in the agency or improvement district, as the case may be, and in other respects the election shall be conducted as are other agency elections.

Interest on any bonds issued by the agency coming due before the proceeds of a tax levied at the next general tax levy after the sale of the bonds are available may be paid from the proceeds of the sale of the bonds.

The proceeds from the sale of bonds of the agency issued for an improvement district thereof may be expended for the purpose for which the indebtedness was created in any territory annexed to the improvement district after authorization of the bonds.

SEC. 6.5. Section 20 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 20. (a) The agency may, when authorized by vote of the electors at a general election or at a special election called for such purpose, issue revenue bonds pursuant to the Revenue Bond Law of

1941, or any other law which by its terms is applicable to this agency, but only to accomplish the purposes set forth in this act.

(b) The board may issue revenue bonds under the Revenue Bond Law of 1941 on behalf of any portion of the agency created as an improvement district and any election for the issuance of those revenue bonds shall be limited to the area of that improvement district. In the case of an improvement district formed specifically for the purpose of issuing revenue bonds pursuant to this section, the procedures for formation, annexation, and exclusion of territory shall be those set forth in Sections 40 to 42, inclusive, provided that the resolution of intention shall not provide for the levy of taxes. If revenue bonds are so issued on behalf of an improvement district, no proceeds of the revenue bonds shall be used to finance public improvements to provide service outside the service area of the improvement district, and only revenues which are derived from rates or charges for providing service within the service area of the improvement district shall be pledged to or used to pay the revenue bonds.

(c) As used in this section, "service area of the improvement district" means the territory of the improvement district as it existed at the time of the bond election plus lands outside the improvement district, if any, being served at the time of the bond election by the improvement district facilities plus additional territory, if any, annexed to the improvement district as it existed at the time of the bond election, not exceeding in the aggregate 40 percent by area of the improvement district as it existed at the time of the bond election.

SEC. 7. Section 21 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 21. Whenever the board deems it necessary to incur a bonded indebtedness for the acquisition, construction, completion, or repair of any or all improvements, works, or property mentioned in this act and to provide for bonded indebtedness to be payable from taxes levied upon less than all of the agency, the board shall, by resolution, declare its intention to form an improvement district and to incur the indebtedness.

The resolution of intention shall state that the board intends to form an improvement district of a portion of the agency which, in the opinion of the board, will be benefited, and to call an election in the proposed improvement district, on the date to be fixed, for the purpose of submitting to the voters thereof the proposition of incurring indebtedness by the issuance of bonds of the agency for the improvement district.

The resolution of intention shall also state all of the following:

(a) The purpose for which the proposed debt is to be incurred.

(b) The amount of debt to be incurred, which may include expenses of all proceedings for the authorization, issuance, and sale of bonds

(c) That taxes for the payment of the bonds and the interest

thereon will be levied exclusively upon the taxable property (other than personal property) in the improvement district.

The resolution of intention shall also state that a general description of the proposed improvement, together with a map showing the exterior boundaries of the proposed improvement district with relation to the territory immediately contiguous thereto and to the proposed improvement is on file with the secretary and is available for inspection by any person or persons interested. This map shall govern for all details as to the extent of the proposed improvement district.

The resolution of intention shall also state all of the following:

(a) The time and place for a hearing by the board on the questions concerning the formation and extent of the proposed improvement district, the proposed improvement, and the amount of debt to be incurred.

(b) That, at the time and place specified in the resolution, any person interested, including all persons owning property in the agency or in the proposed improvement district, will be heard. Notice of the hearing shall be given (1) by publishing a copy of the resolution of intention pursuant to Section 6066 of the Government Code prior to the time fixed for the hearing in a newspaper printed and published by the agency if there is a newspaper printed and published in the agency; and (2) by posting a copy of the resolution of intention in six public places within the proposed improvement district at least two weeks before the time fixed for the hearing. The board may change the purpose for which the proposed debt is to be incurred or the amount of bonded debt to be incurred, or both. The board may also change the boundaries of the proposed improvement district, but not so as to include any territory which will not, in its judgment, be benefited by the proposed improvement. The purpose or amount of bonded debt or the boundaries of the proposed improvement district shall not be changed by the board except after notice of its intention to do so, given by publication pursuant to Section 6061 of the Government Code in a newspaper printed and published in the agency, if there is a newspaper printed and published in the agency, and by posting in six public places within the proposed improvement district. The notice shall state the changed purpose and debt proposed and that the exterior boundaries as proposed to be changed are set forth on a map on file with the secretary, which map shall govern for all details as to the extent of the proposed improvement district, and shall specify the time and place for hearing on such change, which time shall be at least 10 days after publication or posting of the notice.

At the time and place fixed in the notice of intention, or at any time and place to which the hearing is adjourned, the board shall proceed with the hearing. At the hearing, any person interested, including any person owning property within the agency or the proposed improvement district, may appear and present any matters material to the changes stated in the notice.

At the conclusion of the hearing, the board shall, by resolution, determine whether it is deemed necessary to incur the bonded indebtedness. If so, the resolution shall also state all of the following:

(a) The purpose for which the proposed debt is to be incurred.

(b) The amount of the proposed debt.

(c) That the exterior boundaries of the portion of the agency which will be benefited are set forth on a map on file with the secretary, which map shall govern for all details as to the extent of the improvement district.

(d) That the portion of the agency set forth on the map shall thereupon constitute and be known as "Improvement District No. _____ of the Mojave Water Agency."

The determinations made in the resolution of formation shall be final and conclusive.

After the formation of the improvement district pursuant to this act, all proceedings for the purpose of a bond election shall be limited, and shall apply only to the improvement district. Taxes for the payment of the bonds and the interest thereon shall be levied exclusively upon the taxable property (other than personal property) in the improvement district.

After the board has made its determination of the matters required to be determined by the resolution of formation, and if the board deems it necessary to incur the bonded indebtedness, the board shall, by another resolution, call a special election in the improvement district for the purpose of submitting to the voters thereof the proposition of incurring indebtedness by the issuance of bonds of the agency for the improvement district.

The resolution calling the bond election shall state all of the following:

(a) The purpose for which the proposed debt is to be incurred, which may include expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(b) The amount of debt to be incurred.

(c) The maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed 40 years.

(d) The maximum rate of interest to be paid, which shall not exceed the interest rate as may be authorized by law at the time of issuance, including, but not limited to, Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as set forth in the resolution calling the election authorizing the issuance of the bonds.

(e) The measure to be submitted to the voters.

(f) The date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred.

(g) The designation of precincts, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector, and two clerks in each precinct. However, the board may refer the designation of precincts, the location of polling places, and the names of the officers selected

to conduct the election to the county registrar when the agency election is to be consolidated with another election or if the county registrar is to conduct the election for the agency.

(h) That the board deems it necessary to incur the bonded indebtedness.

(i) The improvement district to be benefited by the bonded indebtedness, as set forth in the resolution of formation of the improvement district, and that a map showing the exterior boundaries of the improvement district is on file with the secretary, which map shall govern for all details as to the extent of the improvement district.

(j) That taxes for the payment of the bonds and the interest thereon shall be levied exclusively upon the taxable property (other than personal property) in the improvement district.

Sections 19.1 and 19.2 govern the proceedings, noticing, conducting, and canvassing the returns of any election held for the purpose of forming an improvement district, as well as all proceedings governing the issuance of bonds and contesting the validity of any bonds authorized as a result of the election.

The board may advance general funds of the agency to accomplish the purposes of an improvement district formed pursuant to this act and repay the agency for any advance of funds from the proceeds of the sale of bonds authorized for purposes of the improvement district.

SEC. 8. Section 38 of the Mojave Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 38. For the purpose of paying not less than the variable costs under any contract entered into with the state for the purchase of water and the delivery and use of that water, and in accordance with the provisions of this act, the agency may establish a zone of benefit within any area within which the use of water affects or is affected by the natural available water supply within the agency, which zone of benefit shall be subject to an assessment pursuant to the limitations and conditions stated in this section.

The proceeding to establish a zone of benefit shall be initiated by a notice of intention to establish the zone which shall be published, pursuant to Section 6066 of the Government Code, in a newspaper of general circulation published within the area of the proposed zone of benefit, if there is one, and if not, then in such a newspaper published within the agency, and which shall be mailed to each person to whom any parcel or parcels of real property embraced within the proposed zone of benefit is assessed on the last equalized assessment roll available on the date the notice of intention is prepared, at the address shown on the assessment roll or otherwise known to the secretary of the agency. The notice of intention shall describe the area to be embraced within the proposed zone of benefit with sufficient clarity so that affected property owners may determine which of their lands, if any, are within the zone, shall state in general terms the reasons for the proposal to create the zone of

benefit, and shall fix a time and place for a public hearing thereon.

At any time not later than the hour set for the public hearing, any owner of property within the proposed zone of benefit may file a written request for exclusion of his or her property, or any portion thereof, from the zone of benefit. The request shall state the name of the owner of the property affected and the street address or other description of the property sufficient to identify it on the last equalized assessment roll. A request for exclusion may be made on behalf of the owner by an agent authorized in writing by the owner to act as agent with respect to the property, provided that a request made on behalf of a private corporation which is an owner of property may be made by any officer or employee of the corporation without that written authorization.

At the time and place stated in the notice, or at any time or place to which the hearing is continued, the board shall hold the public hearing provided for by the notice of intention, at which time any interested person may appear and be heard concerning any matter set forth in the notice of intention or any matters material thereto. Upon the conclusion of the hearing, the board may (a) terminate further proceedings on the proposed assessment, (b) establish the zone of benefit with the boundaries set forth in the notice of intention, or (c) eliminate lands from the proposed zone found not to be benefited by inclusion therein, and establish a zone modified as to area by reason of elimination. The board shall not include any lands within the zone of benefit not included within the area of the proposed zone as contained in the notice of intention. If the board determines to establish a zone of benefit as set forth in clause (b) or (c), the board may levy the assessment within the area of the zone of benefit, unless prior to the conclusion of the hearing, or any continued hearing, written protests against the proposed assessment signed by 25 percent of the eligible voters within the area of the zone of benefit are filed with the board, in which event the board shall not levy the assessment without an election. The protests shall be in writing, shall contain a description of the property in which each signer thereof is interested, sufficient to identify the same and, if the signers are not shown on the last equalized tax levy roll as the owners of the property, shall contain or be accompanied by written evidence that the signers are the owners of the property. All protests shall be delivered to the secretary, and no other protests or objections shall be considered.

If an election is held, a majority of the votes cast in the area of the zone of benefit shall be required to approve the assessment.

After its approval, the assessment shall be levied, collected, and enforced at the same time and in the same manner as county taxes.

The board shall make specific findings as to whether or not property as to which a request for exclusion has been filed shall be included within the zone of benefit and shall exclude from the zone any lands which the board finds will not be benefited by inclusion therein. In determining whether or not lands will be benefited by

inclusion in the zone, the board shall take into account all of the following:

(a) The condition of the local natural supply of water within the zone of benefit.

(b) The availability of water from the State Water Resources Development System to supplement the supply of water within the zone of benefit.

(c) The economic benefit to the lands resulting from a water supply being made available under the state contract.

(d) The nature, topography and use of the lands.

(e) Whether the lands can receive water either directly or through improvement in water supply by reason of such importation.

If the zone of benefit is created, the agency may annually thereafter levy an assessment upon the property within the zone of benefit, excluding personal property, in such amounts as shall pay not less than the variable costs of purchasing water under any contract entered into with the state for the purchase of water and delivery and use of that water.

CHAPTER 786

An act to amend Sections 10176 and 10176.7 of, and to add Section 10176.8 to, the Insurance Code, relating to insurance.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 10176 of the Insurance Code is amended to read:

10176. In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any such services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No such policy shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2135, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform such services.

If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide

claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under such policy for acupuncture.

Nor shall any such policy prohibit the insured, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, such certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 1.1. Section 10176 of the Insurance Code is amended to read:

10176. In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any such services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No such policy shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2135, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under the policy for acupuncture.

Nor shall any such policy, notwithstanding Section 10125 or 10125.5, prohibit the insured, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at which time, the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with

Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section or in Section 10125 or 10125.5 shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 1.2. Section 10176 of the Insurance Code is amended to read:

10176. (a) In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of these services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No policy of disability insurance shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2135, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

(b) If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under that policy for acupuncture.

(c) No policy of disability insurance shall prohibit the insured, upon referral by a physician and surgeon licensed under Section 2135

of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

(d) Nothing in this section shall be construed to allow any certificate holder or licensee specified in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(e) An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

(f) Except for physician referrals required by subdivision (c), no condition or limitation on payment for the diagnosis or treatment of a condition, illness, or injury by any certificate holder or licensee specified in this section, and expressly authorized by law to perform that diagnosis or treatment, shall be imposed by an insurer, unless the same condition or limitation is imposed on all certificate holders and licensees specified in this section with respect to the same or a similar diagnosis or treatment of the same or a similar condition, illness, or injury.

SEC. 1.3. Section 10176 of the Insurance Code is amended to

read:

10176. (a) In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of these services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No policy of disability insurance shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2135, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

(b) If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under the policy for acupuncture.

(c) Nor shall any such policy, notwithstanding Section 10125 or 10125.5, prohibit the insured, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at which time, the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to

perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

(d) Nothing in this section or Section 10125 or 10125.5 shall be construed to allow any certificate holder or licensee specified in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(e) An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

(f) Except for physician referrals required by subdivision (c), no condition or limitation on payment for the diagnosis or treatment of a condition, illness, or injury by any certificate holder or licensee specified in this section, and expressly authorized by law to perform that diagnosis or treatment, shall be imposed by an insurer, unless the same condition or limitation is imposed on all certificate holders and licensees specified in this section with respect to the same or a similar diagnosis or treatment of the same or a similar condition, illness, or injury.

SEC. 2. Section 10176.7 of the Insurance Code is amended to read:

10176.7. Disability insurance where the insurer is licensed to do business in this state and which provides coverage under a contract of insurance which includes California residents but which may be written or issued for delivery outside of California where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or a marriage, family, and child counselor who is the holder of a license under Section 17805 of the Business and Professions Code, or a respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code shall not be deemed to prohibit persons covered under the contract from selecting those licensees in California to perform the services in California which are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the insurance and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the insurance for services of those providers rendered to those persons.

SEC. 3. Section 10176.8 is added to the Insurance Code, to read:

10176.8. A disability insurance policy may provide that services of a respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of the Division 2 of the Business and Professions Code, will be paid for pulmonary rehabilitation and respiratory home care only if rendered pursuant to a method of treatment prescribed by a physician and surgeon.

SEC. 4. (a) Section 1.1 of this bill incorporates amendments to Section 10176 of the Insurance Code proposed by both this bill and AB 360. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 10176 of the Insurance Code, and (3) AB 2044 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 360, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 10176 of the Insurance Code proposed by both this bill and AB 2044. It shall only become operative if (1) both bills are enacted and become effective Janury 1, 1990, (2) each bill amends Section 10176 of the Insurance Code, (3) AB 360 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2044 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 10176 of the Insurance Code proposed by this bill, AB 360 and AB 2044. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 10176 of the Insurance Code, and (3) this bill is enacted after AB 360 and AB 2044, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 787

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 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. The sum of four hundred three thousand three hundred nine dollars and seven cents ($403,309.07) 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) Twenty-six thousand six hundred twenty-six dollars and sixty-five cents ($26,626.65) from the Bank and Corporation Tax Fund.

(b) Ten thousand two hundred eighty-two dollars and fifteen cents ($10,282.15) from the Beverage Container Recycling Fund.

(c) Forty-five thousand four hundred ninety-eight dollars and eighty cents ($45,498.80) from the Employment Development Contingent Fund.

(d) Nine hundred forty-seven dollars ($947) from the Federal Trust Fund.

(e) Eighty-six thousand three hundred forty-seven dollars and twenty-five cents ($86,347.25) from the General Fund.

(f) Two hundred fifty-seven dollars and five cents ($257.05) from the Health Care Deposit Fund.

(g) Twenty-three thousand seven hundred twenty-two dollars and seventy cents ($23,722.70) from the Legislators' Retirement Fund.

(h) Fifty-eight dollars ($58) from the Litigation Deposit Fund.

(i) Three hundred thirty-six dollars and eighty-two cents ($336.82) from the Lottery Fund.

(j) Nine hundred nine dollars ($909) from the Personal Income Tax Fund.

(k) Twelve thousand one hundred two dollars and one cent ($12,102.01) from the Retail Sales Tax Fund.

(*l*) Five hundred fifty-eight dollars and sixty-nine cents ($558.69) from the Service Revolving Fund.

(m) Twenty-five thousand seven hundred fifty-six dollars and eighty-five cents ($25,756.85) from the Tax Relief and Refund Account.

(n) Two hundred one dollars and twenty-six cents ($201.26) from the Teacher Credentials Fund.

(o) One thousand five hundred seventy-seven dollars and sixty-seven cents ($1,577.67) from the Unemployment

Administration Fund.

(p) Three hundred fifty dollars ($350) from the Unemployment Compensation Disability Fund.

(q) Four hundred fifty-nine dollars ($459) from the Unemployment Fund.

(r) One hundred sixty-seven thousand three hundred eighteen dollars and seventeen cents ($167,318.17) from funds appropriated in Section 2.00 of the Budget Act of 1989, as follows:

(1) One thousand four hundred ten dollars and ninety cents ($1,410.90) from category (a) of Item 0820-001-001.

(2) One hundred dollars ($100) from category (c) of Item 0820-001-001.

(3) Three hundred twenty dollars ($320) from category (g) of Item 0820-001-001.

(4) Seventy-five dollars and thirty-two cents ($75.32) from category (a) from Item 0840-001-001.

(5) One thousand one hundred eighty-seven dollars and seventy cents ($1,187.70) from category (b) of Item 0860-001-001.

(6) Sixteen thousand dollars ($16,000) from category (a) of Item 1510-070-761.

(7) Thirty-eight dollars and fifty cents ($38.50) from category (a) of Item 1760-001-666.

(8) Fifty-nine dollars ($59) from category (b) of Item 1760-001-666.

(9) Seven thousand six hundred seventy-five dollars and thirteen cents ($7,675.13) from category (a) of Item 1960-001-001.

(10) Thirteen thousand two hundred thirty-three dollars and seventy-two cents ($13,233.72) from category (a) of Item 1970-011-001.

(11) Eight thousand seven hundred twenty-five dollars ($8,725) from category (a) of Item 2240-001-001.

(12) One hundred fifty dollars ($150) from category (a) of Item 2320-001-317.

(13) Forty-seven thousand eight hundred ninety-one dollars and thirty-five cents ($47,891.35) from category (b) of Item 2660-001-042.

(14) Seven thousand four hundred forty-six dollars and twenty-nine cents ($7,446.29) from category (a) of Item 2720-001-044.

(15) One thousand two hundred sixty-three dollars and ninety-six cents ($1,263.96) from category (a) of Item 2740-001-044.

(16) Five hundred sixty-seven dollars and ninety-one cents ($567.91) from category (a) of Item 3340-001-001.

(18) Eighty-eight dollars ($88) from category (a) of Item 3560-001-001.

(19) One thousand one hundred five dollars and thirty-seven cents ($1,105.37) from category (a) of Item 3790-001-001.

(20) One thousand eight hundred fifty-eight dollars and forty cents ($1,858.40) from category (b) of Item 3790-001-001.

(21) Fifteen dollars and fifty-one cents ($15.51) from category (c)

of Item 3860-001-001.

(22) Two hundred twenty-two dollars and fifty cents ($222.50) from Item 4220-001-001.

(23) Two hundred fifty-two dollars and eighteen cents ($252.18) from category (b) of Item 4260-101-001.

(24) One thousand two hundred twenty-nine dollars and eighty-two cents ($1,229.82) from category (a) of Item 4300-001-001.

(25) One thousand six hundred seventy-seven dollars and forty-five cents ($1,677.45) from category (a) of Item 4300-101-001.

(26) Thirty-two dollars and one cent ($32.01) from category (b) of Item 4300-101-001.

(27) Two hundred seventy-two dollars and fifteen cents ($272.15) from category (a) of Item 4300-111-001.

(28) Nine hundred eighty dollars ($980) from category (b) of Item 4440-001-001.

(29) Two thousand thirty-nine dollars and thirty-six cents ($2,039.36) from category (a) of Item 4440-011-001.

(31) One thousand one hundred forty dollars and eighty cents ($1,140.80) from category (a) of Item 5100-001-870.

(32) Four hundred fifty-nine dollars and nine cents ($459.09) from category (b) of Item 5100-001-870.

(33) Three hundred fifty-three dollars ($353) from category (a) of Item 5160-001-001.

(34) One thousand six hundred fifteen dollars and sixty-one cents ($1,615.61) from category (a) of Item 5180-001-001.

(35) Two hundred forty-six dollars and fifty-one cents ($246.51) from category (b) of Item 5180-001-001.

(36) Thirty-two thousand three hundred eleven dollars and forty-seven cents ($32,311.47) from category (a) of Item 5240-001-001.

(37) Eight hundred thirty dollars and ninety-seven cents ($830.97) from category (a) of Item 5430-001-001.

(38) Five hundred sixty dollars and eight cents ($560.08) from category (a) of Item 5460-001-001.

(39) Five hundred sixty-five dollars and eight cents ($565.08) from category (b) of Item 5460-001-001.

(40) Forty-three dollars and fifty cents ($43.50) from category (a) of Item 6110-001-001.

(41) Two hundred thirteen dollars ($213) from category (a) of Item 6610-001-001.

(42) Nine thousand five hundred eleven dollars and fifty-three cents ($9,511.53) from category (e) of Item 6610-001-001.

(43) One hundred eighty-nine dollars ($189) from category (a) of Item 8320-001-001.

(44) Seven hundred twelve dollars and seventeen cents ($712.17) from category (ax) of Item 8350-001-001.

(45) Two thousand thirty-six dollars and eighty-one cents ($2,036.81) from category (b) of Item 8550-001-191.

(46) Thirty-six dollars ($36) from category (a) of Item

8560-001-510.

(47) Five hundred thirty-nine dollars and thirty-six cents ($539.36) from category (a) of Item 8570-001-001.

(48) Thirty-six dollars and sixty-six cents ($36.66) from category (b) of Item 8660-001-412.

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 meritorious claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 788

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 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. The sum of forty-seven million nine hundred ninety-seven thousand six hundred ninety dollars ($47,997,690) is hereby appropriated, in accordance with the following schedule, to the Controller for the payment of claims for reimbursement of state-mandated costs:

(a) Forty-six million eight hundred eighty thousand six hundred forty-four dollars ($46,880,644) from the General Fund, to be allocated as follows:

(1) Seven million eight hundred forty-one thousand dollars ($7,841,000) for the payment of claims of all local education agencies seeking reimbursable state-mandated costs incurred pursuant to Chapter 115 of the Statutes of 1985 (cost accounting procedures) for the 1985–86 fiscal year.

(2) One million nine hundred eighty-one thousand dollars ($1,981,000) for the payment of claims of school districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 498 of the Statutes of 1983 (expulsion reports) for the 1983–84, 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, and 1989–90 fiscal years.

(3) Four million one hundred ninety-nine thousand dollars ($4,199,000) for the payment of claims of local entities seeking reimbursable state-mandated costs incurred pursuant to Chapter 1017 of the Statutes of 1986 (investigations of guardianships) for the 1986–87, 1987–88, 1988–89, and 1989–90 fiscal years. Prior to the disbursement of any funds provided by this subdivision for costs

incurred pursuant to Chapter 1017 of the Statutes of 1986, the parameters and guidelines for this program shall be amended to specify that costs related to court operations incurred after January 1, 1989, are not reimbursable for counties participating in the Trial Court Funding Program. The Controller shall prepare and submit the proposed parameters and guidelines amendments to the Commission on State Mandates.

(4) Eight hundred fifty thousand dollars ($850,000) for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 1111 of the Statutes of 1981 (charging documents) for the 1981–82, 1982–83, 1983–84, 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(5) Three million six hundred seventy-two thousand dollars ($3,672,000) for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 1117 of the Statutes of 1984 (airport land use) for the 1985–86, 1986–87, 1987–88, 1988–89, and 1989–90 fiscal years.

(6) Four million nine hundred sixty-seven thousand dollars ($4,967,000) for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 1352 of the Statutes of 1985, Title 9, CCR, Section 549, and State Department of Mental Health Letters No. 85-40, 86-17, 86-30, 87-17, 87-26 (Residential Care Services) for the 1987–88, 1988–89, and 1989–90 fiscal years.

(7) Six million sixty-five thousand dollars ($6,065,000) for the payment of claims of cities seeking reimbursable state-mandated costs incurred pursuant to Chapter 1490 of the Statutes of 1984 (business tax reporting requirements) for the 1985–86, 1986–87, 1987–88, 1988–89, and 1989–90 fiscal years.

(8) Ten million three hundred thirty-six thousand seven hundred twenty-four dollars ($10,336,724) to cover deficiencies in prior appropriations for reimbursement of costs incurred under state-mandated programs.

(9) Four million eight hundred thirty-seven thousand dollars ($4,837,000) for the 1988–89 fiscal year in augmentation of schedule 44 of Item 8885-101-001 of the Budget Act of 1988.

(10) One million seven hundred one thousand nine hundred twenty dollars ($1,701,920) for the 1988–89 fiscal year in augmentation of schedule 45 of Item 8885-101-001 of the Budget Act of 1988.

(11) Two hundred eight thousand dollars ($208,000) to the Controller to restore funding for the payment of claims for state-mandated costs incurred pursuant to Chapter 743 of the Statutes of 1978 (Judicial Arbitration) for the period July 1, 1987, to July 7, 1987.

(12) Thirteen thousand dollars ($13,000) to the Controller to restore funding for the payment of claims for state-mandated costs incurred pursuant to Chapter 1262 of the Statutes of 1978 (Victims' Statement) for the period July 1, 1987, to July 7, 1987.

(13) Twenty-one thousand dollars ($21,000) to the Controller to restore funding for the payment of claims for state-mandated costs incurred pursuant to Chapter 1088 of the Statutes of 1982 (Juvenile Felony Arrests) for the period July 1, 1987, to July 7, 1987.

(14) One hundred eighty-eight thousand dollars ($188,000) to the Controller to restore funding for the payment of claims for state-mandated costs incurred pursuant to Chapter 1640 of the Statutes of 1984 (Trial Juror Fees) for the period July 1, 1987, to July 7, 1987.

(b) One million one hundred seventeen thousand forty-six dollars ($1,117,046) from the Restitution Fund to cover deficiencies in prior appropriations for reimbursement of state-mandated costs incurred pursuant to Chapter 1123 of the Statutes of 1977 (Victim Indemnity).

SEC. 2. The Commission on State Mandates shall amend the parameters and guidelines for Chapter 1026 of the Statutes of 1985 (Extended Day Care Services) to specify that the costs to a school district of complying with this mandate shall not be reimbursable if the district itself is applying to the State Department of Education for extended day care program funding.

SEC. 3. The Commission on State Mandates shall amend the parameters and guidelines or claiming instructions for the programs identified below to clarify that any increased costs associated with court operations resulting from these programs shall not be reimbursed for counties participating in the Trial Court Funding Program. These programs include:

(a) Chapter 1357 of the Statutes of 1976 (Guardian and Conservatorship Filings).

(b) Chapter 1399 of the Statutes of 1976 (Custody of Minors).

(c) Chapter 991 of the Statutes of 1979 (Recommitments of Mentally Disordered Offenders).

(d) Chapter 644 of the Statutes of 1980 (Judicial Proceedings for Mentally Ill).

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 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.

CHAPTER 789

An act to amend Sections 56375, 61601, and 61601.7 of, to add Sections 61017, 61222, and 61621.8 to, to repeal Sections 61601.12, 61601.13, 61601.16, 61601.17, 61601.18, and 61601.20 of, to repeal and add Section 61601.10 of, and to repeal and add Part 2 (commencing with Section 61100) of Division 3 of Title 6 of, the Government Code, to amend Section 4816 of, and to add Section 4730.7 to, the Health and Safety Code, to amend Section 13074 of, and to add Sections 5506.7, 5538.7, and 5539.7 to, the Public Resources Code, to amend Section 36578 of the Water Code, and to amend Section 96 of Chapter 22 of the Statutes of 1960, First Extraordinary Session, relating to special districts.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization. However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory which the commission finds is either:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.

(2) Located within an urban service area which has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

As a condition to the annexation of an area, which is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

A commission shall not impose any conditions which would directly regulate land use density or intensity, property development, or subdivision requirements When the development

purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. This paragraph does not prohibit a commission from requiring, as a condition to annexation, that a city prezone the territory to be annexed. However, the commission shall not specify how, or in what manner, the territory shall be prezoned.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization which includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated, successor city or district.

(d) To approve the annexation to a city after notice and hearing, and authorize the conducting authority to order annexation of the territory without an election, if the commission finds that the territory contained in an annexation proposal meets all of the following requirements:

(1) It does not exceed 75 acres in area, that area constitutes the entire island, and the island does not constitute a part of an unincorporated area which is more than 100 acres in area.

(2) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(3) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

(C) The presence of physical improvements upon the parcel or parcels within the area.

(4) It is not prime agricultural land, as defined by Section 56064.

(5) It will benefit from the annexation or is receiving benefits from the annexing city.

(e) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56111, located in the same county as that in which the city is located, and which is owned by a city and used for municipal purposes and to authorize the conducting authority to annex the territory without notice and hearing.

(f) Subject to Section 56029, to designate in the resolution making determinations the conducting authority for proceedings.

(g) When a change of organization or a reorganization includes the annexation of inhabited territory to a city and the assessed value

of land within the territory equals one-half or more of the assessed value of land within the city, or the number of registered voters residing within the territory equals one-half or more of the number of registered voters residing within the city, to determine as a condition of the proposal that the change of organization or reorganization shall also be subject to confirmation by the voters in an election to be called, held, and conducted within the territory of the city to which annexation is proposed.

(h) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district. The number of registered voters shall be calculated as of the time of the last report of registration by the county clerk to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation.

(i) To adopt written procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in Section 56841. Any standards adopted by the commission shall be written.

(j) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653.

(k) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(*l*) To incur usual and necessary expenses for the accomplishment of its functions.

(m) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(n) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(o) To waive the restrictions of Section 56109 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(p) To waive the application of Section 25210.90 of this code or Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(q) If the proposal includes the incorporation of a city, as defined

in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56842.

SEC. 2. Section 61017 is added to the Government Code, to read:

61017. "Principal county" means the county having all or the greater portion of the entire assessed value, as shown on the last equalized assessment roll of the county or counties, of all taxable property within a district.

SEC. 3. Part 2 (commencing with Section 61100) of Division 3 of Title 6 of the Government Code is repealed.

SEC. 4. Part 2 (commencing with Section 61100) of Division 3 of Title 6 is added to the Government Code, to read:

PART 2. FORMATION

CHAPTER 1. INITIATION

61100. (a) A new district may be formed pursuant to this part. A district formed or proposed to be formed pursuant to this part is not subject to the District Investigation Law of 1933 (Chapter 2 (commencing with Section 58500) of Division 2).

(b) A proposal to form a district may be made by a petition of registered voters or by the adoption of a resolution of application.

61101. A proposal to form a new district may be made by petition which shall do all of the following:

(a) State that the proposal is made and request that proceedings be taken for the formation pursuant to this part.

(b) Set forth a description of the boundaries of the territory to be included in the district.

(c) Set forth the methods by which the district will be financed.

(d) State the reasons for forming the district.

(e) Propose a name for the district.

(f) Designate no more than three persons as chief petitioners, setting forth their names and mailing addresses.

(g) State whether the formation is consistant with the sphere of influence of any affected city or affected district.

(h) Specify the number of members, either three or five, of the initial board of directors and the method of their selection, as provided by Chapter 3 (commencing with Section 61120).

61102. (a) Before circulating any petition, the chief petitioners shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for forming the district. The notice shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the territory proposed to be included in the district. If the territory proposed to be included in the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each of the counties.

(b) The notice shall be signed by at least one, but not more than three, chief petitioners and shall be in substantially the following form:

"Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition proposing to form the _____ (name of the district). The reasons for the proposal are: _____."

(c) Within five days after the date of publication, the chief petitioners shall file with the executive officer of the local agency formation commission of the principal county a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of publication.

(d) After the filing required pursuant to subdivision (c), the petition may be circulated for signatures.

61103. The petition shall be signed by not less than 10 percent of the registered voters residing in the area to be included in the district, as determined by the local agency formation commission pursuant to subdivision (h) of Section 56375. The provisions of Sections 41 and 44 of the Elections Code shall govern the signing of the petition and the format of the petition.

61104. A petition may consist of a single instrument or separate counterparts. The chief petitioner or petitioners shall file the petition, including all counterparts, with the executive officer of the local agency formation commission of the principal county within six months of the date on which the chief petitioner or petitioners filed the affidavit with the executive officer pursuant to subdivision (c) of Section 61102.

61105. (a) Within 30 days after the date of filing a petition, the executive officer of the local agency formation commission shall cause the petition to be examined and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers.

(b) If the certificate of the executive officer shows the petition to be insufficient, the executive officer shall immediately give notice by certified mail of the insufficiency to the chief petitioners. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, the chief petitioners may file with the executive officer a supplemental petition bearing additional signatures.

(c) Within 10 days after the date of filing a supplemental petition, the executive officer shall examine the supplemental petition and certify in writing the results of his or her examination.

(d) The executive officer shall sign and date a certificate of sufficiency. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the executive officer's examination. The executive officer shall mail a

copy of the certificate of sufficiency to the chief petitioners.

61106. (a) A proposal to form a new district may also be made by the adoption of a resolution of application by the legislative body of any county or city which contains territory proposed to be included in the district. Except for the provisions regarding signers and signatures, a resolution of application shall contain all of the matters specified for a petition in Section 61101. Before submitting a resolution of application, the legislative body shall conduct a public hearing on the resolution.

(b) Notice of the hearing shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the county or city.

(c) At the hearing, the legislative body shall give any person an opportunity to present his or her views on the resolution.

(d) The clerk of the legislative body shall file a certified copy of the resolution of application with the executive officer of the local agency formation commission of the principal county.

61107. Once the chief petitioners have filed a sufficient petition or a legislative body has filed a resolution or application, the local agency formation commission shall proceed pursuant to Chapter 5 (commencing with Section 56825) of Part 3 of Division 3 of Title 5.

CHAPTER 2. ELECTION AND FORMATION

61110. (a) If the local agency formation commission approves the formation of a district, with or without amendment, wholly, partially, or conditionally, the executive officer shall mail a copy of the resolution of the commission's determinations to the board of supervisors of each county within which territory of the proposed district lies. Within 35 days following the adoption of the commision's resolution, the board of supervisors shall call and give notice of the election to be held in the proposed district. If the proposed district lies in more than one county, the board of supervisors shall call and give notice of the election to be held in the territory of the proposed district which lies in that county.

(b) The election shall be held on the next regular or special election date not less than 113 nor more than 150 days after the date the board of supervisors calls and gives notice of the election.

(c) Notice of the election shall be published pursuant to Section 6061 in a newspaper of general circulation circulated within the territory of the proposed district which lies in the county.

61111. (a) Notwithstanding Section 61110, if the board of supervisors of the principal county finds that the petition filed with the executive officer of the local agency formation commission pursuant to Section 61104 has been signed by not less than 80 percent of the registered voters residing within the area to be included within the district, the board may dispense with an election, adopt the resolution required pursuant to Section 61117, and designate the members of the board of directors pursuant to Chapter 3

(commencing with Section 61120).

(b) Notwithstanding Section 61110, if the local agency formation commission approves a consolidation or reorganization pursuant to Section 56839 which results in the formation of a district without an election, the commission may designate the members of the board of directors from the membership of the board of directors of any of the consolidated or reorganized districts pursuant to subdivision (k) of Section 56844. The terms of office of the directors shall be determined pursuant to Section 23506 of the Elections Code.

61112. Within five days after the district formation election has been called, the board of supervisors of each county within which territory of the proposed district lies shall transmit by registered mail a written notification of the election call to the executive officer of the local agency formation commission of the principal county. The written notice shall include the name and a description of the proposed district and may be in the form of a certified copy of the resolution adopted by the board of supervisors calling the district formation election.

The executive officer of the local agency formation commission shall submit an impartial analysis of the proposed district formation to the officials in charge of conducting the district formation election, pursuant to Section 56859.

61113. (a) The chief petitioners, the agency filing the resolution, or any member or members of the board of supervisors authorized by the board, any individual voter or bona fide association of citizens entitled to vote on the district formation proposition, or any combination of these voters and associations of citizens, may file with the elections official of the prinicipal county a written argument for or a written argument against the proposed district formation.

Arguments shall not exceed 300 words in length. Based on the time reasonably necessary to prepare and print the text of the proposition, analysis, arguments, and sample ballots and to permit the 10-day public examination period as provided in Section 3795 of the Elections Code for the particular election, the elections official of the principal county shall fix and determine a reasonable date prior to the election after which no arguments for or against the measure may be submitted for printing and distribution to the voters pursuant to Section 61114. Notice of the date fixed shall be published by the elections official pursuant to Section 6061. Arguments may be changed until and including the date fixed by the elections official.

(b) If more than one argument for or more than one argument against the proposed district formation is filed with the elections official within the time prescribed, the elections official shall select one of the arguments for printing and distribution to the voters.

In selecting the arguments, the elections official shall give preference and priority in the order named to the arguments of the following:

(1) Chief petitioners or the agency filing the resolution.

(2) The board of supervisors or any member or members of the

board authorized by the board.

(3) Individual voters or bona fide associations of citizens or a combination of these voters and associations.

(c) When the elections official of the principal county has selected the arguments for and against the measure which will be printed and distributed to the voters, he or she shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the elections official of the principal county not more than 10 days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut and shall be titled "Rebuttal to Argument in Favor of Measure (or Proposition) _____" or "Rebuttal to Argument Against Measure (or Proposition) _____," the blank spaces being filled in only with the letter or number, if any, which designates the measure. Words used in the title shall not be counted when determining the length of any rebuttal argument.

61114. The officials in charge of conducting the election shall cause a ballot pamphlet concerning the district formation proposition to be voted on to be printed and mailed to each voter entitled to vote on the district formation question at least 10 days prior to the date of the election. The ballot pamphlet is "official matter" within the meaning of Section 10010 of the Elections Code. The provisions of Section 3795 of the Elections Code shall apply to the materials required to be contained in the ballot pamphlet.

The ballot pamphlet shall contain the following in the order prescribed:

(a) The complete text of the proposition.

(b) The impartial analysis of the proposition submitted by the executive officer of the local agency formation commission.

(c) The argument for the proposed district formation.

(d) The rebuttal to the argument in favor of the proposed district formation.

(e) The argument against the proposed district formation.

(f) The rebuttal to the argument against the proposed district formation.

61115. The notice of the election published pursuant to sudivision (c) of Section 61110 shall contain all of the following:

(a) The date of the election.

(b) The name of the proposed district.

(c) The purposes for which the district is to be formed.

(d) A statement that the first directors will be elected at that election or will be appointed, as the case may be, if the district is formed.

(e) A description of the boundaries of the proposed district.

61116. (a) Except as otherwise provided in this chapter, the

formation election and the election of members of the district board, if any, shall be held and conducted in accordance with the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code).

(b) If less than a majority of the votes cast at the election is in favor of forming the district, the board of supervisors of the principal county shall declare the proceedings terminated.

(c) Notwithstanding subdivision (b), the formation election may be combined with a proposal for the adoption by the voters of a special tax and presented to the voters as a single ballot proposition. If both proposals are presented as a single ballot proposition, the proposed district shall not be formed and the special tax shall not take effect unless the proposition is approved by two-thirds of the voters voting upon the proposition. If less than two-thirds of the votes cast at the election is in favor of forming the district, the board of supervisors shall declare the proceedings terminated

61117. If the majority of the votes cast at the election is in favor of forming the district or if, pursuant to subdivision (c) of Section 61116, two-thirds of the votes cast at the election is in favor of forming the district, the board or boards of supervisors shall by resolution entered on its minutes declare the district duly organized under this division, giving the name of the district, and the purposes for which it is formed, and describing its boundaries. If the district lies in more than one county, the clerk of the board of supervisors of the principal county shall transmit a certified copy of the resolution to the clerk of the board of supervisors of each of the other counties in which the district lies.

61118. Immediately after adoption of a resolution pursuant to Section 61117, the clerk of the board of supervisors of the principal county shall transmit a certified copy of the resolution along with a remittance to cover the fees required by Section 54902.5 to the executive officer of the local agency formation commission. The executive officer shall complete the proceedings pursuant to Chapter 8 (commencing with Section 57200) of Part 4.

61119. (a) No informality in any proceeding, including informality in the conduct of any election not substantially affecting adversely the legal rights of any person, shall invalidate the formation of any district.

(b) The validity of the formation and organization of a district shall not be contested in any proceeding commenced more than 60 days after the date that the formation of the district is complete.

CHAPTER 3. INITIAL BOARD OF DIRECTORS

61120. The initial board of directors of a district formed on or after January 1, 1990, shall be determined pursuant to this chapter.

61121. In the case of a district which contains only unincorporated territory in a single county, the district board may be elected or may be appointed by the county board of supervisors

which may appoint itself as the district board.

61122. In the case of a district which contains only unincorporated territory in more than one county, the district board may be elected or may be appointed by the boards of supervisors of the counties in which the district is located. If the district board is appointed by the boards of supervisors, they shall appoint directors according to the proportionate share of population of that portion of each county within the district, provided that each board of supervisors shall appoint at least one director.

61123. In the case of a district which contains unincorporated territory and the territory of one or more cities:

(a) The district board may be elected or appointed by the county board of supervisors and the city councils in which the district is located. If the district board is to be appointed, the board of supervisors and the city council or councils shall appoint directors according to the proportionate share of population that portion of the county and each city within the district, provided that the board of supervisors and each city council shall appoint at least one director. The board of supervisors or city council may appoint one or more of its own members to the district board.

(b) Notwithstanding subdivision (a), the county board of supervisors may appoint itself as the district board, if the city council of each of the cities consents by resolution.

61124. In the case of a district which includes only incorporated territory within a single city, the district board may be elected or appointed by the city council which may appoint itself as the district board.

61125. In the case of a district which includes only incorporated territory in more than one city, the district board may be elected or appointed by the city councils in which the district is located. If the district board is appointed, the city councils shall appoint directors according to the proportionate share of population of that portion of each city within the district. However, each city council shall appoint at least one director. The city council may appoint one or more of its own members to the district board.

SEC. 5. Section 61222 is added to the Government Code, to read:

61222. (a) If a majority of the voters voting upon the question at a general district or special election are in favor, a district which has an appointed board shall have an elected board, or a district which has an elected board shall have an appointed board.

(b) The board may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 10 percent of the registered voters of the district, the board shall adopt a resolution placing the question on the ballot.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and ballot shall contain a statement of the question.

(d) If a majority of voters voting upon the question approves of changing from an appointed board to an elected board, the members of the board shall be elected at the next general district election. If a majority of voters voting upon the question approves of changing from an elected board to an appointed board, members shall be appointed to the board as vacancies occur.

(e) Before circulating any petition pursuant to this section, the chief petitioners shall publish a notice of intention which shall include a written statement not to exceed 500 words in length, setting forth the reasons for the proposal. The notice shall be published pursuant to Section 6061 in one or more newspapers of general circulation within the district. If the district is located in more than one county, publication of the notice shall be made in at least one newspaper of general circulation in each of the counties.

(f) The notice shall be signed by at least one, but not more than three, chief petitioners and shall be in substantially the following form:

"Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition affecting the Board of Directors of the _____ (name of the district). The petition proposes that _____ (description of the proposal)."

(g) Within five days after the date of publication, the chief petitioners shall file with the secretary of the board a copy of the notice together with an affidavit made by a representative of the newspaper in which the notice was published certifying to the fact of publication. After the filing, the petition may be circulated for signatures. The provisions of Sections 41 and 44 of the Elections Code shall govern the signing of the petition and the format of the petition.

(h) A petition may consist of a single instrument or separate counterparts. The chief petitioner or petitioners shall file the petition, together with all counterparts, with the secretary of the board. The secretary shall not accept a petition for filing unless the signatures have been secured within six months of the date on which the first signature was obtained and the chief petitioner or petitioners submitted the petition to the secretary for filing within 60 days after the last signature was obtained.

(i) Within 30 days after the date of filing a petition, the secretary of the board shall cause the petition to be examined and shall prepare a certificate of sufficiency indicating whether the petition is signed by the requisite number of signers. The secretary shall cause the names of the signers on the petition to be compared with the voters' register in the office of the county clerk or registrar of voters and ascertain (1) the number of registered voters in the district, and (2) the number of qualified signers appearing upon the petition.

(j) If the certificate of the secretary shows the petition to be

insufficient, the secretary shall immediately give notice by certified mail of the insufficiency to the chief petitioners. That mailed notice shall state in what amount the petition is insufficient. Within 15 days after the date of the notice of insufficiency, the chief petitioners may file with the secretary a supplemental petition bearing additional signatures. Within 10 days after the date of filing a supplemental petition, the secretary shall examine the supplemental petition and certify in writing the results of his or her examination.

(k) The secretary shall sign and date a certificate of sufficiency. That certificate shall also state the minimum signature requirements for a sufficient petition and show the results of the secretary's examination. The secretary shall mail a copy of the certificate of sufficiency to the chief petitioners.

(*l*) Once the chief petitioners have filed a sufficient petition, the district board shall take the actions required pursuant to this section.

SEC. 6. Section 61601 of the Government Code is amended to read:

61601. Whenever the board determines by resolution that it is feasible, economically sound, and in the public interest for the district to exercise its powers for any of the purposes specified in Section 61600 which are not designated in the petition for formation of the district, the board may call a special district election and submit to the voters of the district, or submit to them at the next general district election, the question of whether the district should adopt the additional purpose or purposes. If a majority of the voters voting on the proposition vote in favor of the adoption of the additional purpose or purposes, then the district may exercise those powers. The district may divest itself of the power to carry on any purpose in the same manner.

SEC. 7. Section 61601.7 of the Government Code is amended to read:

61601.7. Notwithstanding the provisions of Sections 61600 and 61601, whenever the Board of Directors of the Golden Hills Community Services District or the Board of Directors of the Ranch House Estates Community Services District determines by resolution that it is feasible, economically sound, and in the public interest for the district to exercise its power for the purpose of enforcing the covenants, conditions, and restrictions adopted for each tract within the boundaries of the district, and to 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, the board shall adopt the additional purpose by resolution entered in the minutes and that power of the district may be exercised thereafter.

The board may thereafter divest the district of the power to carry on those activities in the same manner as it may acquire that power.

For the purposes of this section, "tract" means any parcel of land

for which the county has authorized development.

SEC. 8. Section 61601.10 of the Government Code is repealed.

SEC. 9. Section 61601.10 is added to the Government Code, to read:

61601.10. (a) Notwithstanding the provisions of Section 61600, whenever the board of directors of a district listed in subdivision (b) determines by resolution that it is feasible, economically sound, and in the public interest, and if a majority of the voters voting on the proposition vote in favor of the additional purpose pursuant to Section 61601, the district may enforce the covenants, conditions, and restrictions adopted for each tract within the district and to assume the duties of the architectural control committee for each tract within the district for the purposes of maintaining uniform standards of development within each tract as adopted in the covenants, conditions, and restrictions. The district shall exercise the duties of an architectural control committee for any tract only to the extent that an architectural control committee is authorized by the covenants, conditions, and restrictions which apply to the tract. For the purposes of this subdivision, "tract" means any parcel of land for which the county or the city has authorized development. The district may divest itself of the power in the same manner as the power was acquired.

(b) This section shall apply only to the following districts:

(1) Bel Marin Keys Community Services District.

(2) Big River Community Services District.

(3) Brooktrails Community Services District.

(4) Cameron Estates Community Services District.

(5) Cameron Park Community Services District.

(6) El Dorado Hills Community Services District.

(7) Golden West Community Services District.

(8) Lake Shastina Community Services District.

(9) Rancho Murieta Community Services District.

(10) Salton Community Services District.

(11) Sea Oasis Community Services District.

(12) Stallion Springs Community Services District.

(13) Tenaja Community Services District.

SEC. 10. Section 61601.12 of the Government Code is repealed.

SEC. 11. Section 61601.13 of the Government Code is repealed.

SEC. 12. Section 61601.16 of the Government Code is repealed.

SEC. 13. Section 61601.17 of the Government Code is repealed.

SEC. 14. Section 61601.18 of the Government Code is repealed.

SEC. 15. Section 61601.20 of the Government Code is repealed.

SEC. 16. Section 61621.8 is added to the Government Code, to read:

61621.8. (a) This section shall apply only to the Bell Canyon Community Services District and the Lake Sherwood Community Services District.

(b) Notwithstanding any other provision of law, in the case of roads which a district owns and which are not formally dedicated to

or kept open for use by the public for the purpose of vehicular travel, the district may by ordinance adopt regulations which limit access to and the use of those roads to landowners and residents of the district.

(c) Notwithstanding any other provision of law, a district may by ordinance adopt regulations that limit access to or the use of its park and recreational facilities and property to landowners and residents of the district.

(d) Violation of any regulation adopted pursuant to this section is a misdemeanor.

SEC. 17. Section 4730.7 is added to the Health and Safety Code, to read:

4730.7. The governing board of the Delta Diablo Sanitation District may designate any depository or depositories pursuant to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code for the custody of any or all revenue collected or received for operation and maintenance purposes. All moneys deposited with a designated depository or depositories shall be invested in checking accounts, savings accounts, certificates of deposit, or other insured accounts. All other district revenue, including any moneys collected or received for the payment of principal and interest on district bonds, other indebtedness, or certificates of participation, and any moneys designated for capital outlay expenditure shall be paid into the county treasury to the credit of the district. Every designated depository shall give security sufficient to secure the district against possible loss and shall pay the warrants or checks drawn by the district for demands against the district under any rules as the governing board may prescribe.

SEC. 18. Section 4816 of the Health and Safety Code is amended to read:

4816. The tax shall be levied and collected at the same time and in the same manner as the general tax levy for county purposes, and the revenue derived from the tax shall be paid into the county treasury to the credit of the operating fund of the district, unless the board has designated a depository or depositories pursuant to Section 4730.5 or Section 4730.7 in which case the revenue shall be paid into the depository or depositories, as directed by the board, and the district board shall control and order its expenditure.

SEC. 19. Section 5506.7 is added to the Public Resources Code, to read:

5506.7. (a) Proceedings for the formation of a district in Riverside County may be initiated by resolution of the Board of Supervisors of the County of Riverside, in lieu of a petition.

(b) The resolution shall do all of the following:

(1) Name the district and state the reasons for forming it.

(2) Specify that the board of supervisors shall act, ex officio, as the governing body of the district. The provisions of this article pertaining to the election of district directors do not apply, and all powers and authority of the district shall be vested in the board of

supervisors in its capacity as the governing body of the district.

(3) Describe the territory to be included in the district. Notwithstanding Section 5502, the territory of the district shall consist of at least all unincorporated areas of the county lying west of a north-south line passing through Chiriaco Summit. However, if requested by resolution of the governing body of any city, that city may be included in the district and the description shall reflect its inclusion.

(4) Describe the methods by which the district will be financed.

(5) Call and give notice of an election to be held in the proposed district for the purpose of determining whether the district shall be created and established. The election shall be consolidated with a statewide election or any election conducted throughout Riverside County.

SEC. 20. Section 5538.7 is added to the Public Resources Code, to read:

5538.7. If a district is created and established in Riverside County, officers and employees of the County of Riverside may act, ex officio, as officers and employees of the district and may discharge the authority and responsibility specified in this article.

SEC. 21. Section 5539.7 is added to the Public Resources Code, to read:

5539.7. (a) In addition to the authority conferred in Section 5539.5, all provisions of the Landscaping and Lighting Act of 1972 (Division 15 (commencing with Section 22500) of the Streets and Highways Code) are applicable to a district if created and established in Riverside County.

(b) Notwithstanding any provision of the acts listed in Section 5539.5 and in this section, no assessment shall be levied on real property in the district created and established in Riverside County unless and until it is approved by a majority of the electors of the district. An election called for this purpose may be consolidated with the election for the creation and establishment of the district.

(c) The particular amount of the proposed assessment, or a range within which the governing body may fix the amount of the assessment and thereafter revise it during a specified period of time, shall be specified in the measure submitted to the electors pursuant to subdivision (b). In addition, the measure may contain a provision obligating the district, if created and established in Riverside County, to issue to any person paying the assessment an annual pass or coupons entitling that person to the free use, or use on a reduced-fee basis, of district facilities, of a value not to exceed the amount paid by the person as an assessment.

SEC. 22. Section 13074 of the Public Resources Code is amended to read:

13074. The board may compel all residents and property owners in the district to connect their houses, habitations and structures requiring sewage or drainage disposal service or a joint water system with the sewer and storm drains or water facilities of the district, and

to use district garbage and refuse removal service and facilities. The board may charge reasonable and necessary fees for these services.

SEC. 23. Section 36578 of the Water Code is amended to read:

36578. If the board elects to have land within the district valued pursuant to Section 36577, the following procedures shall apply:

(a) Prior to its adoption of a valuation based upon benefits under this section, the board shall hold a public hearing at which owners of property or residents of the district may appear and be heard. Notice of the hearing shall be given by the secretary by posting notice thereof at the district office at least 20 days prior to the hearing, stating the purpose, time, and place of hearing, together with publication thereof in a newspaper of general circulation in each county in which the district has land in accordance with Section 6063 of the Government Code. The notice shall also be mailed to each landowner as shown in the records of the district at least 20 days prior to the hearing.

(b) At the hearing, evidence shall be introduced by the assessor and may be introduced by landowners or residents within the district as to the valuation schedules to be adopted by the board.

(c) At the conclusion of the hearing, or as it may be continued from time to time, the board shall adopt a schedule of valuations on a per acre basis, or fractions thereof, for agricultural land and on a parcel, acreage, or square foot basis for nonagricultural land. The schedule shall reflect the proportional benefits bestowed on the property assessed by the operation of the district. Land may be classified as to direct or indirect receipt of district benefit, irrigated or nonirrigated use, commercial, industrial, or residential use, or any other method which reflects the benefits received.

(d) Upon the board's adoption of a schedule of valuations, the duties and responsibilities of the board of supervisors and clerk of the board of supervisors established in this chapter and Chapter 2 (commencing with Section 36725) shall be carried out by the board and secretary of the district, respectively.

(e) There shall be no allocation of property tax revenues pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code to any district that utilizes the provisions of Section 36577. Each district utilizing Section 36577 shall notify the county auditor pursuant to Section 100 of the Revenue and Taxation Code that the district does not desire to receive a property tax allocation.

SEC. 24. Section 96 of Chapter 22 of the Statutes of 1960, First Extraordinary Session, is amended to read:

Sec. 96. The district may make and enforce all necessary and proper regulations, including ordinances, not in conflict with the laws of this state, for the removal of garbage and refuse and the supplying of sewage, water, storm water and reclamation service. A violation of a regulation of the district is an infraction punishable as provided in Sections 19c and 19d of the Penal Code and as provided in subdivision (b) of Section 36900 of the Government Code. A

violation of a regulation of the district governing the supplying of storm water or reclamation service shall also constitute a public nuisance and may be summarily abated by the district pursuant to Article 6 (commencing with Section 38771) of Chapter 10 of Part 2 of Division 3 of Title 4 of the Government Code, or as provided by Title 2 (commencing with Section 3479) of Part 3 of Division 4 of the Civil Code. A regulation of the board shall be adopted by ordinance and shall be posted for one week in three public places in the district and shall take effect upon expiration of the week of that posting. A subsequent finding of the board, entered in its minutes, that posting has been made is conclusive evidence that the posting has been properly made.

SEC. 25. The Legislature finds and declares that, by amending Section 61601.7 of, and by adding Section 61601.10 to, the Government Code, and by repealing Sections 61601.10, 61601.12, 61601.13, 61601.16, and 61601.20 of the Government Code in this act, that it is the intent of the Legislature to preserve the authority for specific community services districts to enforce covenants, conditions, and restrictions pursuant to Sections 61601.7 and 61601.10 of the Government Code. Any community services district which exercised that authority pursuant to any of the sections repealed by this act shall be deemed to exercise that authority pursuant to Sections 61601.7 and 61601.10 of the Government Code.

SEC. 26. In enacting this act and adding subdivision (c) to Section 61116 of the Government Code, it is not the intent of the Legislature to grant any new authority to community service districts to levy special taxes.

SEC. 27. The Legislature finds and declares that a special act is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the following circumstances:

The Bell Canyon Community Services District and the Lake Sherwood Community Services District in Ventura County serve territory with unique patterns of land tenure. The roads, parks, and recreational facilities in these districts have traditionally been used for the exclusive benefit of the landowners and residents of the districts. Therefore, the enactment of Section 61621.8 of the Government Code as a special law is necessary to restrict the costs and benefits of maintaining these facilities to the landowners and residents of the districts.

SEC. 28. The Legislature finds and declares that a special act is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the following circumstances:

The Delta Diablo Sanitation District faces unique problems with the issuance of warrants by the Treasurer of the County of Contra Costa because the district's office is distant from the county treasurer's office in Martinez. In order to solve these problems, it is necessary for the district to have the power to designate one or more

depositories near its administrative office. Therefore, the enactment of Section 4730.7 of the Health and Safety Code as a special law is needed to solve the problems of the Delta Diablo Sanitation District.

SEC. 29. The Legislature finds and declares that a special act is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the following circumstances:

There are unique problems involved in meeting the recreational needs of the people of the County of Riverside, taking into consideration such factors as the county's topography, natural resources, population density, and the proximity of urban centers of large and expanding population to open-space lands and other lands of high recreational value. Therefore, the enactment of Sections 5506.7, 5538.7, and 5539.7 of the Public Resources Code as a special law is necessary.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because, for those costs which a local agency or school district may incur, 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 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 new crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 790

An act relating to state property.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. The Department of General Services shall conduct a study of the feasibility of the sale to the County of San Diego of state-owned real property interests located within downtown San

Diego. The study shall also evaluate the feasibility of erecting, in conjunction with the sale of the state's downtown real property interests, a new state building centrally or otherwise appropriately located within the City of San Diego, and locating within that building state and local government offices, including a Traffic Operations Center, jointly operated by the Department of Transportation and the Department of the California Highway Patrol, providing incident communication and dispatch services and implementing a traffic flow management system. The department shall complete the study and report its findings to the Legislature and affected local governments on or before January 1, 1991. It is the intent of the Legislature that the department shall recover the costs of conducting the study from the proceeds of any sales of state-owned property undertaken as recommended by the study.

SEC. 2. This act shall be effective only upon a final adjudication by a court of competent jurisdiction upholding that county measure known as Proposition A, adopted by San Diego County at the election held on June 7, 1988.

CHAPTER 791

An act to amend Section 13826.6 of, and to add Section 13826.62 to, the Penal Code, relating to crime prevention.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 13826.6 of the Penal Code is amended to read:

13826.6. For purposes of this chapter, a "community-based" organization is defined as a nonprofit operation established to serve gang members, their families, schools, and the community with programs of community supervision and service which maintain community participation in the planning, operation and evaluation of their programs.

(a) Unless funded pursuant to subdivision (c), community-based organizations supported under the Gang Violence Suppression Program shall implement the following activities:

(1) Providing information to law enforcement agencies concerning gang related activities in the community.

(2) Providing information to school administrators and staff concerning gang related activities in the community.

(3) Provide conflict resolution by means of intervention or mediation to prevent and limit gang crisis situations.

(4) Increase witness cooperation through coordination with local law enforcement and prosecutors and by education of the

community about the roles of these government agencies and the availability of witness protection services.

(b) Community-based organizations funded pursuant to subdivision (a) shall also implement at least one of the following activities:

(1) Maintaining a 24-hour public telephone message center for the receipt of information and to assist individuals seeking services from the organization.

(2) Maintaining a "rumor control" public telephone service to provide accurate and reliable information to concerned citizens.

(3) Providing technical assistance and training concerning gang related activities to school staff members, law enforcement personnel, and community members including parental groups. This training and assistance shall include coverage of how to prevent and minimize intergang confrontations.

(4) Providing recreational activities for gang members or potential gang members.

(5) Providing job training and placement services for youth.

(6) Referring gang members, as needed, to appropriate agencies for the treatment of health, psychological, and drug-related problems.

(7) Administration of the Urban Corps Program pursuant to Section 13826.62.

(c) Community-based organizations funded under the Gang Violence Suppression Program for specialized school prevention and intervention activities shall only be required to implement activities in the schools which are designed to discourage students from joining gangs and which offer or encourage students to participate in alternative programs.

SEC. 2. Section 13826.62 is added to the Penal Code, to read:

13826.62. (a) There is hereby established in the Office of Criminal Justice Planning, the Urban Corps Program. The Urban Corps Program is established as an optional activity under Section 13826.6. Community-based organizations receiving grants to participate in the Urban Corps Program shall implement the following activities:

(1) Identification of publicly and privately administered programs in the county dealing with the suppression or prevention of criminal gang activities, or both.

(2) Maintenance of a listing of programs within the county identified as dealing with the suppression or prevention of criminal gang activities, or both.

(3) Surveying gang suppression and prevention organizations for the types of services and activities each is engaged in, and identifying needs among these organizations for resources to provide services and fulfill their activities.

(4) Recruitment of volunteers, identification of their skills, abilities and interests, and matching volunteers with the resources needs of gang prevention and suppression organizations.

(5) Establishment of an urban respite program for the purpose of preventing self-destructive activities and diverting (A) identified youth gang members, and (B) youths who are at risk of becoming gang members, for the purposes of reducing or eliminating incentives for those youths to participate in gang-related crime activities.

(b) The Urban Corps Program shall operate within the Office of Criminal Justice Planning for two years following the establishment of a contract with a community-based organization to administer the program.

(c) The Office of Criminal Justice Planning shall complete and submit a report on the Urban Corps Program to the Legislature within six months after the completion of the project. The report shall include all of the following:

(1) A master list of available community resources that are involved in the suppression or prevention of criminal gang activities, or both.

(2) A list of volunteers and private sector resources recruited.

(3) The number of volunteers trained.

(4) The number of volunteers matched with identified needs.

(5) The number of private sector resources matched with identified needs.

(6) The number of youth gang members and the number of youths who are at risk and who were referred to the urban respite program.

(7) The number of gang members and the number of youths who are at risk and who participated in the urban respite program.

(d) This section shall be implemented to the extent that funds are available to the Office of Criminal Justice Planning for this purpose.

CHAPTER 792

An act to amend Section 20129 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 20129 of the Public Contract Code is amended to read:

20129. (a) Except as provided in subdivision (b), the person to whom the contract is awarded shall file a bond executed by an admitted surety insurer to be approved by the board for the faithful performance of the contract.

(b) (1) The person to whom the contract is awarded shall file a bond executed either by an admitted surety insurer or by at least two

personal sureties whose individual net worth equals or exceeds the penal amount of the bond, provided the bond is approved by the board for the faithful performance of the contract. Individual net worth shall only be established through audited financial statements prepared by a certified public accountant.

(2) This subdivision shall apply to any business that has been in existence for less than three years.

CHAPTER 793

An act to amend Section 199.71 of the Health and Safety Code, relating to AIDS, and making an appropriation therefor.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. The Legislature finds and declares that:

(a) One-third of all citizens in California suffering from HIV infection reside in San Francisco.

(b) San Francisco has the highest incidence of AIDS of any city in the nation. There are 687 cases of AIDS per 100,000 population in San Francisco as compared to 73 per 100,000 in Los Angeles.

(c) The cost to Medi-Cal for treatment of AIDS in San Francisco is one-half the cost of treatment in Los Angeles according to a study conducted by the State Department of Health Services.

(d) There is a need to develop a model for a cost-effective comprehensive treatment center that provides a continuum of care to persons with HIV infection. This continuum would include, but not be limited to, outpatient treatment, day care services, counseling, skilled nursing care, acute care, and hospice care for persons suffering from HIV infection.

SEC. 2. Section 199.71 of the Health and Safety Code is amended to read:

199.71. (a) The State Department of Health Services shall:

(1) Additionally, use funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for purposes of making reimbursements to counties pursuant to Section 1632, for preventive education for individuals who are seropositive as a result of antibody testing.

(2) Issue contracts to evaluate the effectiveness of the AIDS information and education program conducted by the state department.

(3) Issue contracts for development and implementation of pilot programs of professional education and training for hospital, home health agency, and attendant care workers.

(4) Issue contracts for the development and implementation of pilot programs to reduce the spread of AIDS through residential

detoxification and outpatient detoxification and treatment services for intravenous drug users with AIDS or AIDS-related conditions.

(5) Monitor state and federal AIDS-related budget and policy development, and coordinate budget items to ensure that funding for matters related to AIDS is adequate and complete within the state department each fiscal year.

(6) Develop and maintain an information clearinghouse within the state department including periodic updates or releases to inform health professionals or community organizations providing services to people with AIDS or AIDS-related conditions of the status of current or new clinical drug trials. These updates shall be compiled through review of scientific journals and in conjunction with the UC AIDS Task Force and researchers conducting clinical drug trials in California.

(7) Review, edit, and input summaries from scientific journals into the Computerized AIDS Information Network (CAIN), and do outreach about CAIN availability to health professionals.

(8) Develop and conduct a needs assessment of the availability of supportive services for people with AIDS or AIDS-related conditions. The needs assessment shall be conducted in conjunction with the state's AIDS education contractors and with any public or private agencies providing services to people with AIDS or AIDS-related conditions.

(9) Promote information and education programs for the general public to correct misinformation about AIDS. This shall include, but need not be limited to, periodic press releases to the printed and broadcast media and public service announcements.

(10) Prepare a report to the Legislature on the feasibility of coordinating various levels of health care, including health facility licensure categories within one program in a city and county which would serve persons with HIV infections, AIDS-related complex, and AIDS. The levels of health care to be covered in the report include, but are not limited to, general acute care hospital, acute psychiatric hospital, skilled nursing facility, hospice, intermediate care facility, residential care facility, adult day health care facility, and congregate living health facility. The report shall be developed in cooperation with the Office of Statewide Health Planning and Development, and shall be submitted to the Legislature before July 1, 1990. The State Director of Health Services may contract for services necessary for completion of the report that cannot be provided through existing resources of the state department.

(b) The State Director of Health Services shall contract for a prospective two-year study to accomplish the following objectives:

(1) Determine the medical costs of AIDS, comparing inpatient care, outpatient care, physician services, and community support services.

(2) The study shall include cost factors in the review of inpatient costs which may not be apparent in the analysis of charges, such as private rooms and social work.

The study shall include an interim report to the Legislature six months after receipt of funding and a final report to the Legislature within two years of receipt of funding so that the state can be in a knowledgeable position to plan for and provide the services and funding needed to meet this public health crisis.

(c) Notwithstanding any provision of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, if the State Director of Health Services determines that it is in the best interest of the state to enter into a contract for the purposes specified below without competitive bids, then the state director may, during the 1985–86 fiscal year, enter into a sole source contract for all of the following:

(1) Educational program evaluation.

(2) Education of hospital, home health agency, and attendant care workers.

(3) Drug education and treatment programs.

(4) The cost-of-care study.

(d) Notwithstanding any provision of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, if the State Director of Health Services determines that it is in the best interest of the state to enter into a contract for the purposes of the preparation of the feasibility report required by paragraph (10) of subdivision (a) without competitive bids, then the state director may enter into a sole source contract for the preparation of the feasibility report. The contract for the feasibility report shall be exempt from the requirement of approval by the Department of General Services and the Department of Finance.

SEC. 3. The sum of eighty thousand dollars ($80,000) is hereby appropriated from the General Fund to the State Department of Health Services for the purposes of funding the preparation of the feasibility report required by paragraph (10) of subdivision (a) of Section 199.71 of the Health and Safety Code.

CHAPTER 794

An act to amend Sections 26.5 and 26.7 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951), relating to the Santa Clara Valley Water District.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 26.5 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951) is amended to read:

Sec. 26.5. (a) The district shall annually prepare a written report upon the district's activities in the protection and augmentation of

the water supplies of the district. The report shall include, among other information the board may order, a financial analysis of the district's water utility system; information as to the present and future water requirements of the district, the water supply available to the district, and future capital improvement and maintenance and operating requirements; a method of financing those requirements; a recommendation as to whether or not a groundwater charge should be levied in any zone or zones of the district during the ensuing water year and, if any groundwater charge is recommended, a proposal of a rate or rates per acre-foot for agricultural water and a rate or rates per acre-foot for all water other than agricultural water for the zone or zones, which rate or rates, as applied to operators who produce groundwater above a specified annual amount, may be subject to prescribed, fixed, and uniform increases in proportion to increases by that operator in groundwater production over the production of that operator for a prior base period to be specified by the board.

(b) The report shall not contain a recommendation of any increases in proportion to increased production in a zone unless based upon an analysis showing the cause of the reduction in the groundwater levels of the zone requiring the increases, with attention given to the effect of extractions of pumpers outside of, as well as within the zone, and with an evaluation of alternative measures which may feasibly be taken within the entire affected groundwater basin and of any alternative supplies of water available for that zone, including the availability of treated water supplied by the district or treated groundwaters or groundwaters extracted in a cleanup operation and available to the district for reuse. The report shall be consistent with any conservation and reuse plan approved by the State Water Resources Control Board. The report shall also include all of the following:

(1) The amount of groundwater produced in the proposed zone and alternative water sources.

(2) The estimated costs of recharging each zone or zones.

(3) The estimated costs of mitigating any effects of pumping.

(4) Information specifying the benefits that have been received and will be received within the zone or zones where a groundwater charge has been levied and collected, or is recommended to be levied and collected.

SEC. 2. Section 26.7 of the Santa Clara Valley Water District Act (Chapter 1405 of the Statutes of 1951) is amended to read:

Sec. 26.7. (a) Prior to the end of the water year in which the hearing is held, and based upon the findings and determinations from the hearing, the board shall determine whether or not a groundwater charge should be levied in any zone or zones. If the board determines that a groundwater charge should be levied, it shall levy, assess, and affix the charge or charges against all persons operating groundwater-producing facilities within the zone or zones during the ensuing water year. The charge shall be computed at a

fixed and uniform rate or rates per acre-foot for agricultural water, and at a fixed and uniform rate or rates per acre-foot for all water other than agricultural water. Different rates may be established in different zones, except that in each zone the rate or rates for agricultural water shall be fixed and uniform and the rate or rates for water other than agricultural water shall be fixed and uniform. The rate or rates, as applied to operators who produce groundwater above a specified annual amount, may, except in the case of any person extracting groundwater in compliance with a government-ordered program of cleanup of hazardous waste contamination, be subject to prescribed, fixed, and uniform increases in proportion to increases by that operator in groundwater production over the production of that operator for a prior base period to be specified by the board, upon a finding by the board that conditions of drought and water shortage require the increases. The increases shall be related directly to the reduction in the affected zone groundwater levels in the same base period. The rates shall be established each year in accordance with a budget for that year submitted by the district to the Board of Supervisors of Santa Clara County pursuant to this act and shall be fixed and uniform rates for agricultural water and for all water other than agricultural water, respectively, except that each such rate for agricultural water shall not exceed one-fourth of the rate for all water other than agricultural water.

(b) Any groundwater charge levied pursuant to this section shall be in addition to any general tax or assessment levied within the district or any zone or zones thereof.

(c) Clerical errors occurring or appearing in the name of any person or in the description of the water-producing facility where the production of water therefrom is otherwise properly charged, or in the making or extension of any charge upon the records which do not affect the substantial rights of the assessee or assessees, shall not invalidate the groundwater charge.

CHAPTER 795

An act to add Section 729 to the Business and Professions Code, relating to crimes.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 729 is added to the Business and Professions Code, to read:

729. (a) Any psychotherapist, or any person holding himself or herself out to be a psychotherapist, who engages in sexual

intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the psychotherapist has referred the patient or client to an independent and objective psychotherapist, recommended by a third-party psychotherapist, for treatment, is guilty of sexual exploitation by a psychotherapist.

(b) Sexual exploitation by a psychotherapist is a public offense:

(1) Violation of subdivision (a) is a misdemeanor.

(2) The second and subsequent violation of subdivision (a) shall be punishable by imprisonment in the county jail for a period of not more than one year, or a fine not exceeding one thousand dollars ($1,000), or both, or by imprisonment in the state prison, or a fine not exceeding five thousand dollars ($5,000), or both.

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons who engage in psychotherapy shall not be guilty of sexual exploitation by a psychotherapist for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

(1) "Psychotherapist" has the same meaning as defined in Section 728.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

(d) In the investigation and prosecution of a violation of this section, no person shall seek to obtain disclosure of any confidential files of other patients, clients, or former patients or clients of the psychotherapist.

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

CHAPTER 796

An act to amend Sections 39037.05, 43800, 43803, and 43804 of the Health and Safety Code, and to add and repeal Sections 740.2 and 745 of the Public Utilities Code, relating to air quality.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. The Legislature finds and declares that it is in the interest of the State of California to encourage the development and market penetration of clean fuel vehicles, including electric and compressed natural gas fueled vehicles, to assist attainment and maintenance of healthful air quality, and to provide transportation fuel security through diversity of fuel types.

SEC. 2. Section 39037.05 of the Health and Safety Code is amended to read:

39037.05. "Low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

(a) Is capable of operating on methanol, as determined by the state board, and will have an adverse impact on ambient ozone air quality not greater than a vehicle which meets the requirements of subdivision (c).

(b) Is capable of operating on any available fuel other than gasoline or diesel and, in the determination of the state board, will have an adverse impact on ambient ozone air quality not greater than a vehicle operating on methanol.

(c) Operates exclusively on gasoline and is certified to meet a hydrocarbon exhaust emission standard which is at least twice as stringent as otherwise applicable to gasoline vehicles of the same year and class.

SEC. 3. Section 43800 of the Health and Safety Code is amended to read:

43800. As used in this article, "low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

(a) Is capable of operating on methanol, as determined by the state board, and will have an adverse impact on ambient ozone air quality not greater than a vehicle which meets the requirements of subdivision (c).

(b) Is capable of operating on any available fuel other than gasoline or diesel and, in the determination of the state board, will have an adverse impact on ambient ozone air quality not greater than a vehicle operating on methanol.

(c) Operates exclusively on gasoline and is certified to meet a hydrocarbon exhaust emission standard which is at least twice as stringent as otherwise applicable to gasoline vehicles of the same year and class.

(d) Is capable, in the case of a heavy-duty diesel vehicle, of meeting standards for either oxides of nitrogen or particulate matter that are twice as stringent as otherwise applicable.

SEC. 4. Section 43803 of the Health and Safety Code is amended to read:

43803. For each vehicle identified by the state board as a low-emission motor vehicle, the Department of General Services, in consultation with the state board and the State Energy Resources Conservation and Development Commission, shall determine if the low-emission motor vehicle meets all of the following requirements:

(a) The vehicle can be manufactured or obtained in sufficient numbers for the purpose of proper evaluation.

(b) The vehicle meets the performance needs for state vehicles.

(c) The cost of the vehicle does not exceed by more than 100 percent the average cost of comparable state vehicles purchased in the preceding fiscal year.

(d) If the vehicle is purchased by the state, there would be a sufficient number of servicing and maintenance outlets.

(e) The average operating and maintenance costs for the vehicle are comparable to the average operating and maintenance costs for all other state passenger vehicles. In no event, however, shall the average operating and maintenance costs for the vehicle exceed the average costs of operating and maintaining all other state vehicles by more than 50 percent.

SEC. 5. Section 43804 of the Health and Safety Code is amended to read:

43804. (a) If a low-emission motor vehicle meets the requirements of this chapter and the performance, cost, service, and maintenance requirements adopted by the Department of General Services for such motor vehicles, and if funds are appropriated for the purpose of purchasing motor vehicles, the state shall purchase, beginning with the next fiscal year, as many of such low-emission motor vehicles as the Department of General Services determines are reasonable and available to meet state needs.

(b) If a sufficient number of low-emission motor vehicles are available, the percentage of all such motor vehicles to be purchased in that year shall not be less than 25 percent of all motor vehicles purchased by the state in the preceding fiscal year. In purchasing vehicles pursuant to this section, the state shall seek to acquire a mix of least polluting and least cost qualifying low-emission motor vehicles.

SEC. 6. Section 740.2 is added to the Public Utilities Code, to read:

740.2. (a) The commission shall encourage gas and electric corporations to pursue research, development, and demonstration

activities in furtherance of the legislative goal of achieving substantial market penetration of electric and compressed natural gas fueled vehicles. For the purposes of this division, "electric vehicle" means a vehicle powered solely by batteries and a vehicle which has an onboard means of generating electricity.

(b) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 7. Section 745 is added to the Public Utilities Code, to read:

745. (a) The commission may establish a special incentive tarriff for electric utilities which applies to refueling of electric vehicles, as defined in Section 740.2. The tariff may apply to vehicle refueling which occurs during time periods when electric demand is lowest, and shall be designed to recover costs and minimize adverse effects on other ratepayers.

(b) The commission may establish a special incentive tariff for gas utilities which applies to gas sold by the utility for refueling of compressed natural gas fueled vehicles, as defined in Section 740.2. The tariff shall be designed to recover the costs and minimize adverse effects on other ratepayers.

(c) The commission shall review any such tariffs annually to ensure that the tariffs do not result in any direct or indirect subsidy from residential gas or electric customers to persons using gas or electricity to refuel vehicles.

(d) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

CHAPTER 797

An act to amend Sections 17053.20 and 23615 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 17053.20 of the Revenue and Taxation Code is amended 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 taxable year no more than 25 employees including owner-operators and which makes the minimum contribution required by this section on behalf of an eligible individual. 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 an individual who, on a form prescribed by the Franchise Tax Board and retained by the qualified employer, certifies that he or she is a resident of California (within the meaning of Section 17014), and who:

(A) Performs services for an eligible employer for an average of at least 35 hours per week for remuneration, or

(B) 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, or

(C) As owner-operator or a managing partner, 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 those benefits and provisions as may be required of employers in this state by the enactment of Assembly Bill 350 of the 1989–90 Regular Session, 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*) Subdivisions (a) to (k), inclusive, shall become operative on the date that the Tucker Health Insurance Act of 1989 becomes operative.

SEC. 2. Section 23615 of the Revenue and Taxation Code is amended to read:

23615. (a) There shall be allowed as a credit against the tax (as defined by Section 23036), 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 23036) 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 income year no more than 25 employees including owner-operators and which makes the minimum contribution required by this section on behalf of an eligible individual. 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 an individual who, on a form prescribed by the Franchise Tax Board and retained by the qualified

employer, certifies that he or she is a resident of California (within the meaning of Section 17014), and who:

(A) Performs services for an eligible employer for an average of at least 35 hours per week for remuneration, or

(B) 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, or

(C) As an owner-operator or shareholder, 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, or 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 those benefits and provisions as may be required of employers in this state by the enactment of Assembly Bill 350 of the 1989–90 Regular Session, 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*) Subdivisions (a) to (k), inclusive, shall become operative on the date that the Tucker Health Insurance Act of 1989 becomes operative.

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 798

An act to amend Section 637 of, and to add Section 637.1 to, the Unemployment Insurance Code, relating to unemployment insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 637 of the Unemployment Insurance Code is amended to read:

637. "Employment" does not include service performed by any of the following:

(a) The officers and director of a corporation who are the sole shareholders of the corporation and it is not subject to the Federal Unemployment Tax Act.

(b) The officers and director of a corporation engaged in agriculture who are shareholders of the corporation and it is not subject to the Federal Unemployment Tax Act.

(c) An officer of a corporation who is the sole shareholder, or the only shareholder other than his or her spouse, and the service is not subject to the Federal Unemployment Tax Act.

SEC. 2. Section 637.1 is added to the Unemployment Insurance Code, to read:

637.1. In a private corporation, any individual who is included within the meaning of "employee" pursuant to subdivision (a) of Section 621 and who is the sole shareholder, or the only shareholder other than his or her spouse, may file a statement electing to be excluded from disability insurance coverage for benefits and contributions under this division. The election shall be effective on the first day of the calendar quarter in which the statement is filed. The election shall be effective during the remainder, if any, of the calendar year in which the statement is filed and not less than the two succeeding complete calendar years, and in all subsequent calendar quarters while the statement is in effect.

SEC. 3. The Employment Development Department shall notify all employers of the provisions of this act for sole shareholder unemployment and disability insurance tax exemptions.

SEC. 4. 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:

In order to reenact the exemption of sole shareholders from state disability insurance taxes, which was repealed on January 1, 1989, as soon as possible, thus mitigating the hardship of excess taxation, it is necessary that this act take effect immediately.

CHAPTER 799

An act to repeal Chapter 4.7 (commencing with Section 25380) of Division 15 of the Public Resources Code, to add Chapter 15.5 (commencing with Section 2570) to Division 3 of the Streets and Highways Code, and to amend Section 2 of Chapter 1435 of the Statutes of 1988, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Chapter 4.7 (commencing with Section 25380) of Division 15 of the Public Resources Code is repealed.

SEC. 2. Chapter 15.5 (commencing with Section 2570) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 15.5. VANPOOL FINANCING

2570. For purposes of this chapter, the following terms have the meanings given in this section:

(a) "Vanpool operator" means any person who files an application and who is approved for a loan or grant under this chapter.

(b) "Vanpool vehicle" means, notwithstanding any other provision of law, a motor vehicle designed for carrying more than six but less than 16 persons, including the driver, which is maintained and used primarily for the work-related transportation of adults for the purpose of ridesharing.

(c) "Useful life," with respect to a vanpool vehicle, means either 100,000 miles and four years old or 200,000 miles without regard to age.

2571. The Ridesharing Vanpool Revolving Loan and Grant Fund is hereby created in the State Treasury. The fund shall be administered by the department for purposes of making loans and grants to vanpool operators. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated, without regard to fiscal years, to the department to carry out the purposes of this chapter.

2572. Any person may submit an application to the department for a loan from the fund to purchase a vanpool vehicle for operation by the person as a vanpool operator. Title to the vehicle shall be retained by the department until the loan is repaid in full. The loan shall be repaid over a period of time not to exceed the vehicle's useful life. Once the loan is repaid in full, title to the vehicle shall be transferred to the vanpool operator.

2573. The department shall charge a rate of interest for loans made under this chapter reasonably calculated to ultimately keep the fund at a constant level and in addition recover the administrative costs incurred by the department under this chapter.

2574. The vanpool grant program shall be administered by the department. From funds appropriated to the department for the purpose, the department shall make grants to persons approved as vanpool operators for the purchase or lease of vanpool vehicles.

2575. (a) Any person may submit an application to the department for a grant of not more than 70 percent of the cost to purchase or lease a new vanpool vehicle or vehicles.

(b) A vanpool operator who receives a purchase grant shall operate the vanpool vehicle as a vanpool for the useful life of the vehicle. The vanpool operator's failure to do so shall result in a forfeiture of the grant, the return of the vanpool vehicle to the department, and forfeiture of the operator's contribution toward the purchase price of the vehicle.

(c) Title to the vanpool vehicle shall be retained by the department until the expiration of the vehicle's useful life. Once the vanpool vehicle's useful life has been reached, title to the vehicle shall be transferred to the vanpool operator.

2576. A vanpool operator who receives a lease grant shall operate the vanpool vehicle as a vanpool for the duration of the lease. The vanpool operator's failure to do so shall result in a forfeiture of all rights under the lease, the return of the vanpool vehicle to the lessor, and forfeiture of the operator's contribution toward the lease of the vehicle.

2577. All money received by the department under this chapter shall be deposited in the Ridesharing Vanpool Revolving Loan and Grant Fund.

2578. (a) The department shall adopt guidelines for the making of loans and for the purchase and lease of vanpool vehicles. The guidelines shall, in the case of loans, include, but not be limited to, a procedure to evaluate the vanpool operator's ability to repay the loan in a timely fashion, as well as the need for the vanpool vehicle and other criteria for selecting applicants. The department shall assign priority in the following descending order:

(1) Vanpools operating on routes with no alternative public transportation.

(2) Vanpool operators applying for loans or grants for new vanpool vehicles.

(3) Applicants having previous successful experience as vanpool operators.

(4) Vanpool operators applying for loans or grants for replacement vanpool vehicles. For purposes of this paragraph, the vanpool vehicle to be replaced shall be at least four years old or have operated 250,000 or more miles, or both.

(b) Concurrently with the award of each loan or grant, the department shall require each applicant to comply with subdivision (h) of Section 12804 of the Vehicle Code and Section 34509 of the Vehicle Code, and the insurance coverage requirements of the department. The guidelines shall also set forth the limitations on the nonwork-trip use of the vanpool vehicle, the maximum percentage of the cost of a vanpool vehicle which may be covered by a loan or grant under this chapter, and other requirements determined to be necessary by the department.

(c) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the adoption of the guidelines.

2579. A vanpool operator is not eligible for any California income tax deduction or credit applicable to vanpooling with respect to the amount of any grant under this chapter.

SEC. 3. Section 2 of Chapter 1435 of the Statutes of 1988 is amended to read:

Sec. 2. Notwithstanding 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 vehicle purchase loans pursuant to Chapter 15.5 (commencing with Section 2570) of Division 3 of the Streets and Highways Code.

(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 or purchasing vanpool vehicles or the cost of the down payment on vanpool vehicles pursuant to Chapter 15.5 (commencing with Section 2570) of Division 3 of the Streets and Highways Code.

(c) The Department of Transportation shall take action to ensure a reasonable distribution of grant and loan funds throughout the state, subject to the actual receipt of applications and the residency of persons submitting the applications.

SEC. 4. Funds appropriated by this act from the petroleum violation escrow account 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 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:

Many of the urban areas of the state are experiencing severe motor vehicle traffic congestion and resulting air pollution. In order to, as quickly as possible, provide relief from these serious problems for commuters by encouraging and facilitating vanpooling, it is necessary that this act to take effect immediately.

CHAPTER 800

An act to amend Section 790.03 of the Insurance Code, relating to health coverage.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 790.03 of the Insurance Code is amended to read:

790.03. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

(a) Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement

misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his or her insurance.

(b) Making or disseminating or causing 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 whatsoever, any statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

(c) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(d) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(e) Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

(f) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

This subdivision shall be interpreted, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, to require differentials based upon the sex of the individual insured or annuitant in the rates or dividends or

benefits, or any combination thereof. This requirement is satisfied if those differentials are substantially supported by valid pertinent data segregated by sex, including, but not necessarily limited to, mortality data segregated by sex.

However, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, but before the compliance date, in lieu of those differentials based on data segregated by sex, rates, or dividends or benefits, or any combination thereof, for ordinary life insurance or individual life annuity on a female life may be calculated as follows: (a) according to an age not less than three years nor more than six years younger than the actual age of the female insured or female annuitant, in the case of a contract of ordinary life insurance with a face value greater than five thousand dollars ($5,000) or a contract of individual life annuity; and (b) according to an age not more than six years younger than the actual age of the female insured, in the case of a contract of ordinary life insurance with a face value of five thousand dollars ($5,000) or less. "Compliance date" as used in this paragraph shall mean the date or dates established as the operative date or dates by future amendments to this code directing and authorizing life insurers to use a mortality table containing mortality data segregated by sex for the calculation of adjusted premiums and present values for nonforfeiture benefits and valuation reserves as specified in Sections 10163.5 and 10489.2 or successor sections.

Notwithstanding the provisions of this subdivision, sex based differentials in rates or dividends or benefits, or any combination thereof, shall not be required for (1) any contract of life insurance or life annuity issued pursuant to arrangements which may be considered terms, conditions, or privileges of employment as these terms are used in Title VII of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and (2) tax sheltered annuities for employees of public schools or of tax exempt organizations described in Section 501(c)(3) of the Internal Revenue Code.

(g) Making or disseminating, or causing to be made or disseminated, before the public in this state, in any newspaper or other publication, or any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, whether directly or by implication, any statement that a named insurer, or named insurers, are members of the California Insurance Guarantee Association, or insured against insolvency as defined in Section 119.5. This subdivision shall not be interpreted to prohibit any activity of the California Insurance Guarantee Association or the commissioner authorized, directly or by implication, by Article 14.2 (commencing with Section 1063).

(h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

(4) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(6) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

(7) Attempting to settle a claim by an insured for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

(8) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, his or her representative, agent, or broker.

(9) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made.

(10) Making known to insureds or claimants a practice of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

(14) Directly advising a claimant not to obtain the services of an attorney.

(15) Misleading a claimant as to the applicable statute of limitations.

(16) Delaying the payment or provision of hospital, medical, or

surgical benefits for services provided with respect to acquired immune deficiency syndrome or AIDS-related complex for more than 60 days after the insurer has received a claim for those benefits, where the delay in claim payment is for the purpose of investigating whether the condition preexisted the coverage. However, this 60-day period shall not include any time during which the insurer is awaiting a response for relevant medical information from a health care provider.

CHAPTER 801

An act to amend Sections 2435, 2436, 2499.5, and 2499.6 of the Business and Professions Code, relating to licensing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to physician's and surgeon's certificates, certificates of drugless practitioners, and certificates to practice midwifery:

(a) Each applicant for a certificate based upon a national board diplomate certificate, and each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) Between January 1, 1987, and December 31, 1989, the application and processing fee, for the first year, shall be two hundred seventy-five dollars ($275), and, for each subsequent year, shall be equal to the prior year's fee plus a sum fixed by the Division of Licensing equal to not more than 10 percent of the prior year's fee, up to a maximum of three hundred fifty dollars ($350). On and after January 1, 1990, the application and processing fee shall be fixed by the Division of Licensing by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant for a certificate by written examination, unless otherwise provided by this chapter, shall pay an examination fee fixed by the board, which shall equal the actual cost to the board of the purchase of the written examination furnished by the organization pursuant to Section 2176, plus the actual cost to the board of administering the written examination. Such actual cost to

the board of administering the written examination that shall be charged to the applicant shall not exceed one hundred dollars ($100). The board may charge the examination fee provided for in this section 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, if any. On and after July 1, 1987, the initial license fee shall be fixed by the board at an amount not less than two hundred ninety dollars ($290), and not to exceed four hundred dollars ($400), in accordance with paragraph (2) of subdivision (e). Any applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(e) (1) The biennial renewal fee shall be fixed by the board at an amount not less than two hundred ninety dollars ($290), and not to exceed four hundred dollars ($400), in accordance with paragraph (2).

(2) The board shall fix the biennial renewal fee and the initial license fee so that, together with the amounts from other revenues, the reserve balance in the board's contingent fund shall be equal to approximately four months of annual authorized expenditures. Any change in the renewal and initial license fees shall be effective upon a determination by the board, by emergency regulations adopted pursuant to Section 2436, that changes in the amounts are necessary to maintain a reserve balance in the board's contingent fund equal to four months of annual authorized expenditures in the state fiscal year in which the expenditures are to occur.

(f) Notwithstanding Section 163.5, the delinquency fee is 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars ($50), and the certification and letter of good standing fees shall each be ten dollars ($10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Board of Medical Quality Assurance equal to approximately four months' operating expenditures.

SEC. 2. Section 2436 of the Business and Professions Code is amended to read:

2436. The fees in this article fixed by the board shall be set forth as emergency regulations duly adopted by the Division of Licensing or the Division of Allied Health Professions, as the case may be.

SEC. 3. 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 eight hundred dollars ($800). 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 eight hundred dollars ($800). 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).

SEC. 4. Section 2499.6 of the Business and Professions Code is amended to read:

2499.6. The fees in this article shall be fixed by the board in accordance with Section 313.1.

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 Board of Medical Quality Assurance has the mandated responsibility to investigate complaints of violations of the medical practice act and other laws affecting the practice of physicians and surgeons. The board currently has a backlog of more than 700 cases awaiting assignment for investigation. The current resources of the board are not sufficient to permit prompt assignment of those cases and efficient completion of investigations. In order to achieve its intended results, it is necessary that this act take effect immediately.

CHAPTER 802

An act to amend Sections 2, 4.1, 4.2, 12, 13, 16, 26, 27, 31.5, 34, 38.1, 52, and 67 of, and to add Section 8 to, the Orange County Water District Act (Chapter 924 of the Statutes of 1933), relating to the Orange County Water District.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 2 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 2. The "Orange County Water District" shall have the following powers:

1. To have perpetual succession.

2. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals.

3. To adopt a seal and alter it at pleasure.

4. To take by grant, purchase, gift, devise, or lease, to hold, use and enjoy, and to lease, convey, or dispose of, real and personal property of every kind, within or without the district, necessary or convenient to the full exercise of its powers.

5. Within or outside of the district to construct, purchase, lease, or otherwise acquire, and to operate and maintain necessary waterworks and other works, machinery, facilities, canals, conduits, waters, water rights, spreading grounds, lands, rights and privileges useful or necessary to replenish the underground water basin within the district, or to augment and protect the quality of the common water supplies of the district, and purposes incidental thereto.

6. For the common benefit of the district and for the purpose of managing the groundwater basin and managing, replenishing, regulating, and protecting the groundwater supplies within the district to exercise the following powers:

(a) Provide for the conjunctive use of groundwater and surface water resources within the district area.

(b) Store water in underground water basins or reservoirs within or outside of the district.

(c) Regulate and control the storage of water and the use of groundwater basin storage space in the groundwater basin within the district and pursuant to the provisions set forth in Section 2.1 to (1) determine the amount of storage space available in the groundwater basin within the district, (2) allocate that available groundwater storage space, and (3) enter into groundwater storage agreements, provided that the district shall have no authority under the provisions of this section, except the provisions of paragraph (*l*) of this subdivision, to limit the extraction of groundwater within the district, except to the extent that a party may agree thereto under any such groundwater storage or other agreement.

(d) Appropriate and acquire water and water rights within or outside of the district.

(e) Purchase and import water into the district.

(f) Conserve and reclaim water within or outside of the district.

(g) Buy and sell water at such rates as shall be determined by the board of directors.

(h) Exchange water.

(i) Distribute water to persons in exchange for ceasing or reducing groundwater extractions.

(j) Transport, reclaim, purify, treat, inject, extract, or otherwise manage and control water for the beneficial use of persons or property within the district and to improve and protect the quality of the groundwater supplies within the district.

(k) Fix the terms and conditions of any contract under which owners or operators of water-producing facilities within the district may agree to use water from an alternative nontributary source in lieu of groundwater, and to that end the district may become a party to such a contract and may pay from district funds that portion of the cost of water from an alternate source as will encourage the purchase and use of the same in lieu of producing groundwater, as long as persons or property within the district are directly or indirectly benefited by the resulting replenishment.

(*l*) Fix the terms and conditions of any contract under which the owner or operator of a water-producing facility within the district may agree to increase the production of groundwater in lieu of water from an alternative nontributary source for the purpose of removing contaminants or pollutants from the groundwater basin. The district may become a party to that contract and may pay from district funds that portion of the cost of the groundwater production as will encourage the production for beneficial use of polluted or contaminated groundwater, as long as that pollution or contamination is impairing the quality of the water supplies within the district and the quality of the water supplies within the district will be improved by that production.

(m) Determine in the manner herein provided the amount and percentage of water produced from the groundwater supplies within the district to the total amount of water produced within the district by all persons and operators, including the total amount of water from supplemental sources; require that persons and operators produce more or less of their total water needs from the groundwater within the district than the basin production percentage determined by the district as provided herein; levy a basin equity assessment, which may be uniform or nonuniform in amount as determined by the board of directors of the district, on each person and operator who produces more water from the groundwater within the district; and to compensate other persons and operators who are directed by the district to produce less than the basin production percentage from groundwater within the district.

7. To provide for the protection and enhancement of the environment within and outside the district in connection with the water activities of the district.

8. To provide, by agreement with other public agencies or private persons or entities or otherwise, for the recreational use of the lands, facilities, and works of the district which shall not interfere, or be inconsistent, with the primary use and purpose of the lands, facilities, and works by the district.

9. To carry out the purposes of this act, to commence, maintain, intervene in, defend, and compromise, in the name of the district, or otherwise, and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with water or water rights used or useful to lands within the district, or diminution of the quantity or pollution or contamination of the water supply of the district, or to prevent unlawful exportation of water from the district, or to prevent any interference with the water or water rights used or useful in the district which may endanger or damage the inhabitants, lands, or use of water in the district; provided, however, that the district shall not have power to intervene or take part in, or to pay costs or expenses of, actions or controversies between the owners of lands or water rights all of which are entirely within the boundaries of the district and which do not involve pollution or contamination of water within the district or exporting water outside of the district's boundaries or any threat thereof.

10. To exercise the right of eminent domain to take any property necessary to the exercise of any of the powers granted by this act, except that the district shall not have the right of eminent domain as to water, water rights, reservoirs, pipelines, water distributing systems, waterworks, or powerplants, all or any of which are already devoted to beneficial or public use and located within the watershed of the Santa Ana River, and excepting further from the exercise of the right of eminent domain by the district any property maintained and actually used for the scientific propagation and study of plantlife.

No language or provision of this act, or of this subdivision, shall be interpreted or construed so as to limit or abridge the right of the district, or its board of directors, to exercise its right of eminent domain to condemn property at any place within the Santa Ana River watershed for rights-of-ways upon and across and under which to construct pipelines, conduits, tunnels and/or aqueducts necessary or convenient for any of the purposes of the district provided the property sought to be condemned for the purposes is not already being used by other corporations, municipalities, districts, or individuals for similar purposes; providing, however, that neither the district nor its board of directors shall have power to enter in or upon the Mojave River or any of its tributaries or appropriate, take, or condemn any of the water or the right to the use of any of the water of the Mojave River or any of its tributaries; nor shall anything in this act be deemed as authorizing or empowering the district or its board of directors to so do.

11. The district shall, in addition to the other powers herein granted by this act, have the following rights and powers: to act jointly with or cooperate with the United States or any agency thereof, the State of California or any agency thereof, any county of the State of California, districts of any kind, public and private corporations, and any person or persons, to carry out the provisions and purposes of this act. In those joint or cooperative activities, the district may act within or outside of its boundaries.

12. To cause assessments and/or charges to be levied as hereinafter provided to accomplish the purposes of this act.

13. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

14. To carry on technical and other investigations of all kinds, necessary to carry out this act, and for this purpose the district shall have the right of access through its authorized representative to all properties within the district.

SEC. 2. Section 4.1 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 4.1. The district may employ counsel to defend any action brought against it or against any of its officers, directors, agents, or employees on account of any claimed action or inaction involving any claimed injury, taking, damage, or destruction, and in the case of an action brought against an officer, director, agent, or employee, it is alleged that the action or inaction was in his or her official capacity, and the fees and expenses involved therein shall be a lawful charge against the district.

SEC. 3. Section 4.2 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 4.2. If any officer, director, agent, or employee of the district is held liable for any act or omission in his or her official capacity, except in the case of actual fraud or actual malice, and any judgment is rendered thereon, the district shall pay the judgment without obligation for repayment by the officer, director, agent, or employee.

SEC. 4. Section 8 is added to the Orange County Water District Act (Chapter 924 of the Statutes or 1933), to read:

Sec. 8. (a) The district may conduct any investigations of the quality of the surface and groundwaters within the district which the district determines to be necessary and appropriate to determine whether those waters are contaminated or polluted.

(b) The district may expend available funds to perform any cleanup, abatement, or remedial work required under the circumstances which, in the determination of the board of directors, is required by the magnitude of the endeavor or the urgency of prompt action needed to prevent, abate, or contain any threatened or existing contamination of, or pollution to, the surface or groundwaters of the district This action may be taken in default of, or in addition to, remedial work by the person causing the contamination or pollution, or other persons. The district may perform the work itself, by contract, or by or in cooperation with any other governmental agency.

(c) If, pursuant to subdivision (b), the contamination or pollution is cleaned up or contained, the effects thereof abated, or in the case of threatened contamination or pollution, other necessary remedial action is taken, the person causing or threatening to cause that contamination or pollution shall be liable to the district to the extent of the reasonable costs actually incurred in cleaning up or containing the contamination or pollution, abating the effects of the contamination or pollution, or taking other remedial action. The amount of those costs, together with court costs and reasonable attorneys' fees, shall be recoverable in a civil action by, and paid to, the district. In any such action, the necessity for the cleanup, containment, abatement, or remedial work, and the reasonableness of the costs incurred therewith, shall be presumed, and the defendant shall have the burden of proving that the work was not necessary, and the costs not reasonable.

SEC. 5. Section 12 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 12. (a) An election shall be held on the first Tuesday after the first Monday in November of each even-numbered year, in those divisions of 1 to 7 inclusive, at which directors for the district shall be elected to fill the offices of the directors whose terms of office shall expire at noon on the last Friday in that month, in accordance with the Uniform District Election Law.

(b) In Divisions 8, 9, and 10 of the district, the governing body of the city comprising each such division shall appoint the director to represent the division upon the board of directors, to serve at the pleasure of that governing body.

(c) Vacancies occurring in any elective office shall be filled pursuant to Section 1780 of the Government Code. If the vacancy is that of an appointed director, the appointing body shall appoint a successor.

(d) Each director shall execute an official bond in the sum of one

thousand dollars ($1,000) which shall be approved by a judge of the Superior Court of the County of Orange, and shall be recorded in the office of the county recorder of the county, and then filed with the secretary of the board of directors. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of the county officers.

(e) Premiums for bonds required by this act shall constitute a proper charge against the district.

SEC. 6. Section 13 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 13. (a) At a meeting of the board of directors in December following the election, the directors elected at that election, those whose terms have not expired and those appointed, shall meet and organize as a board, elect a president and a first and second vice president, and may appoint a general manager and a secretary, who shall each hold office at the pleasure of the board. Each director appointed or elected shall hold office until his or her successor is elected, or appointed, and has qualified. The term of office of each elected director is hereby fixed at four years, except as herein otherwise provided or as provided in the Uniform District Election Law. The office of the district shall be established by the board of directors at some proper and convenient place within the County of Orange, but does not have to be established or maintained within the district. After the office is once established, it shall not be changed without giving notice thereof by posting in three public places within the district and by publishing a similar notice pursuant to Section 6066 of the Government Code at least once a week for two weeks in some newspaper of general circulation published in Orange County.

(b) The general manager and secretary of the district need not be one of the directors. The salary of the general manager and secretary and amount of the bond to be given for the faithful performance of their duties shall be fixed by the board of directors. The bond of the general manager and secretary of the district shall be filed in the office of the district.

SEC. 7. Section 16 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 16. (a) The board of directors at a meeting during the fourth month following the close of each fiscal year shall render and immediately thereafter cause to be filed with the secretary and posted conspicuously in the office of the district a verified statement of the financial condition of the district, showing in detail the receipts and disbursements during the last preceding year, together with the sources of the receipts and purposes of the disbursements. A summary of the statement shall be published pursuant to Section 6066 of the Government Code in some newspaper published in the district, and shall refer to the itemized statement filed and posted in the office of the district for further particulars.

(b) For the purpose of rendering the statement, the district shall designate a certified public accountant who shall make an

independent audit of the accounts and other evidences of financial transactions of the district during the preceding year. The certified public accountant shall have no personal interest directly or indirectly in the financial affairs of the district.

SEC. 8. Section 26 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 26. (a) On the second Wednesday in February of each year, the engineering investigation and report shall be delivered to the secretary of the district in writing. The secretary shall publish pursuant to Section 6061 of the Government Code a notice of the receipt of the report and of the public hearing to be held on the date of the regular meeting of the board of directors in March in a newspaper of general circulation, printed and published within the district, at least 10 days prior to the date at which the public hearing regarding groundwater conditions shall be held. The notice, among other information which the district may provide therein, shall contain an invitation to all operators of water-producing facilities within the district to call at the offices of the district to examine the engineering investigation and report.

(b) There shall be held, by the board of directors, on the date of a meeting of the board of directors in March of each year, at the district offices a public hearing at which time any operator of a water-producing facility within the district or any person interested in the condition of the groundwater supplies of the district may in person or by representative appear and submit evidence concerning the groundwater conditions of the district. Appearances, also, may be made supporting or protesting the written engineering investigation and report. The board of directors shall, before the levy of the replenishment assessments, find and determine the average annual overdraft for the immediate past five water years; the estimated annual overdraft for the current water year; the estimated annual overdraft for the ensuing water year; the accumulated overdraft as of the last day of the preceding water year; the estimated accumulated overdraft as of the last day of the current water year; the amount of water which should be purchased for the replenishment of the groundwater supplies of the district for the ensuing water year, and the sum of money necessary therefor.

(c) That finding and determination by the board shall be conclusive and binding upon all persons and parties.

SEC. 9. Section 27 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 27. (a) If the board of directors finds and determines that an overdraft, either annual or accumulated, does exist, the board may levy and assess a charge or replenishment assessment against all persons operating water-producing facilities and producing water during the ensuing water year, which assessment or charge shall be computed and fixed at a uniform rate per acre-foot of such water production.

(b) The total of the replenishment assessment levied in any year

shall not exceed an amount of money found to be necessary to purchase sufficient water to replenish the average annual overdraft for the immediate past five water years plus an additional amount of water sufficient to eliminate over a period of not less than 10 years nor more than 20 years, the accumulated overdraft, plus an amount of money to pay the costs of initiating, carrying on, and completing any of the powers, projects, and purposes for which this district is organized.

(c) On the date of a meeting of the board of directors in April of each year, the board of directors shall hold a public hearing for the purpose of determining the need and desirability of levying a replenishment assessment and fixing the rate thereof. In computing and fixing the replenishment assessment rate, there shall be allowed that percent, not to exceed 10 percent, as shall be determined by the board of directors of the district for delinquencies. Notice of the hearing shall be published in the district pursuant to Section 6061 of the Government Code, at least 10 days prior to the date set for the hearing.

(d) Any replenishment assessment levied by this section shall be in addition to any general assessment levied by the district.

(e) Clerical errors occurring or appearing in the name of any person or in the description of the water-producing facility where the production of water therefrom is otherwise properly assessed, or in the making or extension of any assessment upon the records, which do not affect the substantial rights of the assessee or assessees, shall not invalidate the assessment.

SEC. 10. Section 31.5 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 31.5. (a) Basin equity assessments, as well as production requirements and limitations on persons and operators within the district are declared to be in furtherance of district activities in the protection of water supplies for users within the district which are necessary for the public health, welfare and safety of the people of this state. The basin equity assessments, as well as the production requirements and limitations provided for herein, are authorized to be levied upon and applied to all persons and producers within the district for the benefit of all who rely directly or indirectly upon the groundwater supplies of the district.

(b) The basin equity assessments levied pursuant to this act against all persons and operators within the district may be uniform or nonuniform in amount, as determined by the board of directors of the district, in order to effectuate the goals and purposes of the district. The proceeds of the basin equity assessments levied and collected shall be used as provided for herein to equalize the cost of water to all persons and operators within the district, and to acquire water to replenish the groundwater supplies of the district.

(c) As used in this act:

(1) "Supplemental sources" means sources of water outside the watershed of the Santa Ana River, excepting that portion of that

watershed on and along Santiago Creek upstream of the downstream toe of the slope of the Villa Park Flood Control Dam, such as, but not limited to, water produced from the Metropolitan Water District of Southern California.

(2) "Basin production percentage" means the ratio that all water to be produced from groundwater supplies within the district bears to all water to be produced by persons and operators within the district from supplemental sources as well as from groundwater within the district during the ensuing water year.

(d) The district shall annually order an investigation and report to be prepared by an engineer or engineers employed by the district. The investigation and report shall set forth the following information, together with such other information as the district may desire, relating to the preceding water year:

(1) Amount of water produced by persons and operators from groundwater within the district.

(2) Amount of water produced by persons and operators from supplemental sources.

(3) Amount of water produced by persons and operators from all other sources.

(4) Condition of groundwater supplies within the district.

(5) Information as to the probable availability of water from supplemental sources during the next succeeding fiscal year.

(6) The cost of producing water from groundwater within the district, including any replenishment assessment of the district.

(7) The cost of water produced within the district from supplemental sources.

(e) On the second Wednesday in February of each year, the engineering investigation and report provided for herein shall be delivered to the secretary of the district, in writing. The secretary shall publish, pursuant to Section 6061 of the Government Code, a notice of the receipt of the report and of the public hearing to be held on the date of a meeting of the board of directors in March, in a newspaper of general circulation printed and published within the district, at least 10 days prior to the date at which the public hearing regarding water supplies within the district shall be held. The notice, among other information which the district may provide therein, shall contain an invitation to all persons or operators within the district to call at the offices of the district to examine the engineering investigation and report. There shall be held, by the board of directors on the date of a meeting of the board of directors in March of each year, a public hearing at which time any person or operator within the district or any person interested in the amounts and source from which all persons and operators produce their total supply of water as well as the estimated difference in the cost of water produced from groundwater within the district or supplemental sources, may in person, or by representative, appear and be heard.

(f) On the date of a meeting of the board of directors in April of

each year, the board of directors shall hold a public hearing for the purpose of determining the need and desirability of levying basin equity assessments and the amounts thereof as well as the need for establishing production requirements and limitations and the extent thereof as to each person or operator within the district for the ensuing water year. In computing and fixing the amount of any such basin equity assessment for any such person or operator within the district, the board may allow a percent not to exceed 10 percent, as shall be determined by the board of directors of the district, for delinquencies. Notice of the proposed hearing shall be published in the district pursuant to Section 6061 of the Government Code at least 10 days prior to the date set for the hearing.

The notice shall set forth the following:

(1) That a report regarding water supplies within the district has been prepared.

(2) The date, time, and place of the proposed hearing.

(3) The board shall consider at the hearing the need and desirability of levying basin equity assessments and the amounts thereof, as well as establishing production requirements and limitations, on persons and operators within the district for the ensuing water year and surcharges in connection therewith.

(4) An invitation to all persons and operators to appear at the public hearing and be heard in regard to any of the foregoing matters.

(g) At the hearing, the board shall hear, take, and receive all competent evidence presented and offered in regard to the need for basin equity assessments, production requirements and limitations in general, and specifically, the extent of those requirements or limitations as to each person or operator within the district, the amount of the basin equity assessment which shall be levied against each person and operator for all purposes other than irrigation at uniform or nonuniform rates and may be levied against each person and operator for irrigation purposes at uniform or nonuniform rates for the ensuing water year and the amount of surcharges for production in excess of the basin production limitations. Subsequent to the hearing, the board may, by adopting a resolution which resolution shall require the vote of eight members of the board, find and determine for the ensuing water year as follows:

(1) The estimated total amount of water to be produced by all persons and operators within the district from the groundwater within the district and the estimated amount to be produced by such persons and operators from supplemental sources.

(2) The basin production percentage.

(3) That a basin equity assessment and production requirement and limitation from groundwater within the district are necessary for the protection of the water supply of the district.

(4) The surcharge, in an amount to be determined in the discretion of the board, for production in excess of the production limitations.

(5) The amount of the basin equity assessment to be levied against each person and operator in a dollar amount per acre-foot of water produced from the groundwater supply for all purposes other than irrigation, which basin equity assessment need not be uniform as to each such person or operator within the district and that the amount is reasonable.

(6) The amount of the basin equity assessment to be levied against each person and operator in a dollar amount per acre-foot of water produced from the groundwater supply for irrigation purposes, which basin equity assessment need not be uniform as to each such person or operator within the district, and that the amount is reasonable.

(7) Production requirements or limitations and the surcharge for production in excess of the basin production limitations on persons and operators within the district shall be applicable during the ensuing water year. The requirements and limitations shall be on the amount of groundwater produced by those persons and operators expressed in a percentage of overall water produced or obtained by those persons or operators from groundwater within the district and from supplemental sources.

(8) That during the ensuing water year, upon the district giving published notice thereof, pursuant to Section 6061 of the Government Code in a newspaper of general circulation printed and published within the district at least 10 days prior to such a hearing, a subsequent public hearing may be held to modify the basin production percentage, any basin equity assessment, any production requirement or limitation, or the surcharge for production in excess of the production limitation established by the district. The modifications, if any, shall be effective on the date established by the board and the district shall give notice of the modification 10 days prior to the effective date thereof in the manner provided hereafter in subdivision (e).

(h) (1) The board may exclude all persons and operators who produced 25 acre-feet or less of water from groundwater within the district during the ensuing water year from the levy of the basin equity assessment and the production requirements and limitations provided for herein.

(2) The findings and determinations of the board in regard to any of the foregoing shall be final, conclusive, and binding upon all persons and parties.

(i) The district shall thereafter, and in any event prior to July 1 in each year, give notice to each person or operator within the district which notice shall state the following:

(1) The amount of the basin equity assessment levied against that person or operator per acre-foot of water produced for purposes other than irrigation and the amount of the basin equity assessment levied against that person or operator per acre-foot of water produced for irrigation purposes.

(2) The basin production percentage.

(3) The production requirement or limitation upon the person or operator.

(4) The amount of surcharge imposed for production in excess of the basin production limitations.

The notice provided for herein and the notice of any subsequent modifications may be sent by post card or by other first-class mail with postage prepaid by the district.

(j) (1) Each person or operator within the district not excluded from the levy of a basin equity assessment and the production requirements and limitations, shall file with the district, on or before the 30th day of September of each year, a basin equity assessment report in the form prescribed by the district setting forth the total amounts of water produced from groundwater within the district and from supplemental sources during the preceding water year by such person or operator. The statement shall be verified by a written declaration under penalty of perjury.

(2) If the person or operator has been required by the district to produce or has in fact produced more water from groundwater within the district than the equivalent of the basin production percentage determined by the district, that person or operator shall pay to the district, on or before September 30, an amount determined by the number of acre-feet of water which the person or operator has produced from groundwater within the district in excess of the acre-foot equivalent of the basin production percentage multiplied by the basin equity assessment rate applicable to that person or operator, plus the amount of surcharge due for production in excess of the production limitations.

(3) If a person or operator, pursuant to the requirement of the district, has produced from groundwater within the district less than the equivalent of the basin production percentage, such person or operator, on or before the 30th day of November, shall be paid by the district from the basin equity assessment fund an amount determined by the number of acre-feet by which the production of such person or operator from groundwater as required by the district is less than the acre-foot equivalent of the basin production percentage multiplied by the basin equity assessment rate applicable to that person or operator, or if the production of such person or operator from groundwater is more than the production required by the district and less than the equivalent of the basin equity production percentage, then such person or operator shall be paid by the district an amount determined by the number of acre-feet by which the actual production of such person or operator from groundwater is less than the acre-foot equivalent of the basin production percentage multiplied by the basin equity assessment applicable to that person or operator.

(k) If any person or operator shall fail to pay, when due, the applicable basin equity assessment or surcharge due for production in excess of the production limitations, the district shall charge interest on the delinquent amount at the rate of 1 percent each

month or fraction thereof for which the amount remains delinquent. Should any person or operator within the district fail to file a basin equity assessment report on or before the 30th day of September of any year, the district shall, in addition to charging interest as provided herein, assess a penalty charge against that person or operator in the amount of 10 percent of the amount found by the district to be due.

(*l*) (1) The district may, from time to time, require other reports from persons and operators as necessary and desirable in the application of the basin equity assessment procedures provided herein.

(2) Upon good cause shown, an amendment to any report required under this section may be filed or a correction of any such report may be made within six months after the date the report was filed with the district.

SEC. 11. Section 34 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 34. The district may bring a suit in the court having jurisdiction against any operator of a water-producing facility within the district for the collection of any delinquent replenishment assessment or basin equity assessment. As a provisional remedy in any such action, the district may seek an attachment against the property of any such delinquent water-producing facility operator named as a defendant therein, the appointment of a receiver to collect revenues generated directly or indirectly to that operator from the production of the water-producing facility, or both an attachment and the appointment of a receiver. Prior to making application to the court for an order providing for the attachment of property or the appointment of a receiver, the district shall provide mailed notice to each person or entity known to the district to be an operator of or a user or consumer of water from the water-producing facility, which notice shall set forth the amount of the delinquency, the remedy or remedies to be sought by the district, and the reasons therefor. The cost and expenses incurred in executing the attachment or for the receiver shall be recovered as costs by the district. The court having jurisdiction of the suit may, in addition to allowing recovery of costs to the district as allowed by law, fix and allow as part of the judgment, interest and penalties as provided in Section 29. Should the district, as a provisional remedy in bringing the suit, seek an attachment against the property of any named defendant therein, or the appointment of a receiver as described in this section, the district shall not be required to provide a bond or undertaking as is otherwise provided for in the Code of Civil Procedure of the State of California in Part 2 of Title 7 of Chapter 4 thereof.

SEC. 12. Section 38.1 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 38.1. (a) Any water-producing facility which is producing water within the exterior boundaries of the district may be exempted

by order of the board of directors from any or all of the following, upon the filing of a verified petition by the owner of the water-producing facility and the findings required to be made by this section:

(1) The payment of all or any portion of the replenishment assessments.

(2) The levy of all or any portion of the basin equity assessment applicable to the owner or operator of the facility or facilities.

(3) The production requirements and limitations provided for in this act.

(b) The petition shall be filed with the board of directors of the district and shall include a description of the land upon which the water-producing facility is located, a description of the water-producing facility, a statement of water quality analysis of the water produced by the water-producing facility, the names and addresses of the owners of the water-producing facility, and shall set forth the purpose or purposes for which any water produced from the water-producing facility will be used. The petition may include one or more water-producing facilities located in the same general area, provided each of those facilities are owned by the same owner. The petitioner shall pay to the district the expenses of advertising and costs incident to the proceedings.

(c) Upon the filing of the petition, the general manager of the district shall cause an investigation to be made by the district geologist or an engineer or engineers for the purpose of determining whether the water produced by the water-producing facility is suitable or unsuitable for domestic or agricultural purposes. Upon completion of the investigation, a report of the results thereof shall be filed with the board of directors and a copy shall be mailed to the petitioner. Upon filing of the report, the board of directors shall fix a time for a hearing upon the petition and report, which time shall be not less than 10 days and not more than 75 days after the filing of the report, and shall cause a notice of the filing thereof and time and place fixed for the holding of the hearing to be published one time, at least 10 days before the date fixed for the hearing, in a newspaper of general circulation printed and published within the district. A copy of the notice shall be mailed to the petitioner by first-class mail with postage prepaid not less than seven days prior to the date of the hearing.

(d) At the time of the hearing, the board of directors shall determine the quality of the water produced from the water-producing facility or facilities and the impact on the water supplies of the district from production of that water. The board of directors may exempt the water produced from the water-producing facility or facilities from the levy and payment of all or a portion of the replenishment assessments and basin equity assessment, and from the production requirements and limitations under this act, as follows:

(1) If the board of directors finds and determines that the water

produced from the facility or facilities or any of them is unsuitable for domestic or agricultural purposes, and further finds and determines that the production of that unsuitable water will have no adverse effects on the groundwater supplies of the district, the board of directors may make an order that water produced from the water-producing facility or facilities shall be exempted from any or all of the following:

(A) The payment of all or any portion of the replenishment assessments.

(B) The levy of all or any portion of the basin equity assessment applicable to the owner or operator of the facility or facilities.

(C) The production requirements and limitations as provided in this act.

(2) If the board of directors finds and determines that the water produced from the facility or facilities or any of them has or will have a beneficial effect upon the quality of the water supplies of the district, the board of directors may make an order that water produced from the water-producing facility or facilities shall be exempted from either or both of the following:

(A) The levy of all or any portion of the basin equity assessment applicable to the owner or operator of the facility or facilities.

(B) The production requirements and limitations as provided in this act.

(e) Nothing contained in this section shall exclude the operator of any water-producing facility exempted from the payments of all or any portion of replenishment assessments from affixing a water-measuring device to the facility as provided in Section 35 or from filing the water production statements provided for in Section 29.

(f) The board of directors of the district may from time to time require that the owner of any water-producing facility or facilities, which are exempted from the payment of all or any portion of either the replenishment assessments or the basin equity assessments, or from the production requirements or limitations, provide additional water quality analyses of water being produced from any water-producing facility which has been so exempted.

(g) The district shall at all times have the right to enter upon the premises where an exempted water-producing facility or facilities are located for the purpose of obtaining samples of the water being produced.

(h) If at any time it appears that the quality of water being produced from a water-producing facility which has been exempted from payment of all or any portion of the replenishment assessments, from the levy of all or any portion of the basin equity assessment applicable to the owner or operator of that facility or facilities, or from the production requirements and limitations, has become suitable for domestic or irrigation purposes, or if at any time it appears that the production of that water does not have a beneficial effect upon the quality of the water supplies of the district, the board

of directors shall fix a time for a hearing to determine whether the water produced from the water-producing facility either:

(1) Has become suitable for domestic or agricultural purposes in the case of any exemption granted under paragraph (1) of subdivision (d).

(2) That the production of that water no longer has a beneficial effect upon the quality of the water supplies of the district in the case of any exemption granted under paragraph (2) of subdivision (d). The board of directors of the district shall cause a notice of the hearing to be published one time, at least 10 days before the date fixed for the hearing, in a newspaper of general circulation printed and published within the district. A copy of the notice shall be mailed to the owner of the water-producing facility by first-class mail with postage prepaid not less than seven days prior to the date of the hearing.

(i) If upon the hearing, the board of directors finds and determines either that the quality of the water being produced from the water-producing facility has become suitable for domestic or irrigation purposes or that the production of water therefrom will have an adverse effect on the groundwater supplies of the district in the case of any exemption granted under paragraph (1) of subdivision (d), or that the production of water from the water-producing facility does not have a beneficial effect upon the quality of the water supplies of the district in the case of any exemption granted under paragraph (2) of subdivision (d), the board of directors shall make an order that the exemption or exemptions previously granted with respect to that water production shall be canceled or modified. Notice of the cancellation or modification of any exemption shall be sent to the owner of the specified water-producing facility by first-class mail with postage prepaid. The effective date of the cancellation or modification of any exemption shall be 10 days after the date of mailing of the notice of cancellation or modification.

Sec. 13. Section 52 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 52. The secretary of the board of directors shall cause a notice of the filing of the petition to be published in the district pursuant to Section 6066 of the Government Code. The notice shall state the purpose of the petition and describe the boundaries of the tract of land proposed to be included and give the names of the petitioners, and it shall notify all persons interested in or that may be affected by the proposed inclusion of the land within the district to appear at the office of the board at a time named in the notice for the hearing of the petition, and objections thereto and show cause in writing, why the land or any of it should not be included as proposed in the petition. The time to be specified in the notice for the hearing of the petition and any objections thereto shall be a meeting of the board after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient

money to pay for the publication of the notice, otherwise the secretary shall refuse to publish the notice.

Sec. 14. Section 67 of the Orange County Water District Act (Chapter 924 of the Statutes of 1933) is amended to read:

Sec. 67. The secretary of the board of directors shall cause a notice of the filing of the petition to be published in the district pursuant to Section 6066 of the Government Code. The notice shall state the filing of the petition, the names of the petitioners, a description of the lands mentioned in the petition, and the prayer of the petition; and it shall notify all persons interested in, or who may be affected by the change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause, in writing, why the change of the boundaries of the district, as proposed in the petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be a meeting of the board after the expiration of the time for the publication of the notice.

CHAPTER 803

An act to amend Sections 11837, 11837.1 11837.2, 11837.4, and 11837.5 of the Health and Safety Code, to amend Sections 23161, 23166, 23181, and 23186 of the Vehicle Code, and to repeal Section 13 of Chapter 1041 of the Statutes of 1987, relating to driving offenses.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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 18 months 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 in a licensed alcohol or drug education and counseling services program or pursuant to Section 23166, 23171, 23176, 23181, 23186, or 23191 of the

Vehicle Code, to a licensed 18-month 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 18-month 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 11837.2, 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. An 18-month 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 an 18-month 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 18-month 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 an alcohol or drug education and counseling program pursuant to Section 23161 or 23181 of the Vehicle Code, to an 18-month 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 an 18-month 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 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 18-month 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. 4. 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 alcohol or drug education and counseling services programs specified in subdivision (b) of Section 11837, each program shall provide for close and regular face-to-face interviews. For the 18-month 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 first 12 months of the program and shall provide only community reentry supervision during the final six months of the program. In the last six months of the 18-month program, the provider shall monitor the participant's community reentry activity with self-help groups, employment, family, and other areas of self-improvement. Unless otherwise ordered by the court, the provider's monitoring services is limited to not more than six hours. 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 any of those programs 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) 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 an alcohol or drug education and counseling services program, an 18-month program, or a 30-month program or any or all of those programs described in this section shall be required to obtain only one license. The department's regulations shall specify the requirements for the establishment of each program. The license issued by the department shall identify the program or programs licensed to operate.

(d) Departmental approval for the establishment of a 30-month program by a licensed 18-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.

(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. 4.5. 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 drinking driver programs. The department shall set the fees in an amount sufficient to cover all administrative costs incurred by the department and to reimburse the Department of Motor Vehicles for the costs of the evaluation and report required by Section 9 of Senate Bill 1344 of the 1989–90 Regular Session.

(c) The department may fine a provider who is delinquent in the payment of licensing fees. The department shall deposit fines collected from delinquent providers in the Drinking Driver Program Licensing Trust Fund, and the revenues from the fines shall be used, upon appropriation, to offset costs incurred by the department in the administration of the program and to reimburse the Department of Motor Vehicles for the costs of the evaluation and report required by Section 9 of Senate Bill 1344 of the 1989–90 Regular Session.

(d) If a program fails to pay licensing fees or assessed fines , the department may deny an initial license or revoke an existing license.

(e) There is established in the State Treasury a Drinking Driver Program Licensing Trust Fund. All fees and fines collected from 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 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 carried forward 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. 5. 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) (1) Each county shall, through the county alcohol program administrator, determine its ability to establish, through public or private resources, a program, which is self-supporting through fees collected from program participants, of alcohol or drug education and counseling services, of at least three months' duration and totaling at least 30 hours of direct education and counseling services,

which shall be authorized by each county and licensed by, and operated under general regulations established by, the State Department of Alcohol and Drug Programs. A county which shows the State Department of Alcohol and Drug Programs that it has insufficient resources, insufficient potential program participants, or other material disadvantages is not required to establish such a program.

(2) The State Department of Alcohol and Drug Programs may license an alcohol or drug education program that is less than 30 hours in length in any county where the board of supervisors has provided the showing pursuant to paragraph (1), and the State Department of Alcohol and Drug Programs has upheld that showing. The shorter program is subject to all other applicable regulations developed by that state department pursuant to paragraph (3) of subdivision (b) of Section 11837.4.

(3) In any county where the board of supervisors has approved and the State Department of Alcohol and Drug Programs has licensed 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 and counseling 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 and which is licensed by the State Department of Alcohol and Drug Programs shall make provision for persons who can document current inability to pay the program fee, in order to enable those persons to participate. The county shall 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 and counseling 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 and counseling 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, 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 and counseling 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. The county alcohol program administrator shall coordinate the reporting requirements with the Department of Motor Vehicles and the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (1) failure to enroll in, or failure to successfully complete, the program, or (2) successful completion of the program as ordered.

(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. 6. 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 18 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. 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. 7. Section 23181 of the Vehicle Code is amended to read:

23181. (a) If the court grants probation to any person punished under Section 23180, 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 confined in the county jail for at least five 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 (2) of subdivision (a) of Section 13352.

(b) (1) In any county where the county alcohol program administrator has certified, and 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 and counseling program, established pursuant to subdivision (b) of Section 23161, as designated by the court.

(2) In any county where the board of supervisors has approved and the State Department of Alcohol and Drug Programs has licensed such a program or programs, the court shall also impose as a condition of probation that the driver participate in, and successfully complete, an alcohol or drug education and counseling 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 and which is licensed by the State Department of Alcohol and Drug Programs shall make provision for persons who can document current inability to pay the program fee, in order to enable those persons to participate. The county shall 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 and counseling 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 and counseling 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 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 and counseling 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. The county alcohol program administrator shall coordinate the reporting requirements with the Department of Motor Vehicles and the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (1) failure to enroll in, or failure to successfully complete, the program, or (2) successful completion of the program as ordered.

SEC. 8. Section 23186 of the Vehicle Code is amended to read:

23186. If the court grants probation to any person punished under Section 23185, 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 all of the provisions of either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars ($390) but not 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.

(b) All of the following:

(1) Be confined in the county jail for at least 30 days 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) Pursuant to Section 13352.5, have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, 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 restricted by the Department of Motor Vehicles for two additional years to necessary travel to and from that person's place of employment, and to and from the 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 revoke 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) Participate, for at least 18 months 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.

SEC. 9. The Department of Motor Vehicles shall conduct an evaluation of the effects of the alcohol or drug education program authorized pursuant to Sections 23161 and 23181 of the Vehicle Code, the 18-month program authorized pursuant to Sections 23166 and 23186 of the Vehicle Code, and the 30-month program authorized pursuant to Sections 23171, 23176, and 23191 of the Vehicle Code. For the purposes of this section, the evaluation shall be limited to the study of program participants' subsequent violations of Section 23103, as specified in Section 23103.5 or Section 23152 or 23153, of the Vehicle Code. The department shall report its findings to the Legislature on or before January 1, 1995. The department shall be reimbursed for the costs of the evaluation and report pursuant to Section 11837.5 of the Health and Safety Code.

SEC. 10. Section 13 of Chapter 1041 of the Statutes of 1987 is repealed.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 804

An act to amend Section 4726 of the Civil Code, and to amend Sections 10815, 11475.1, and 11490 of the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 4726 of the Civil Code is amended to read:

4726. (a) (1) The court shall require that health insurance coverage for the supported children shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent or parents. In cases in which the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision which specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to the parent or parents, the parent or parents shall apply for that coverage.

(2) The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(3) As used in this section, "health insurance coverage" also includes provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(b) Where the district attorney has been designated as the assigned payee for child support, the court shall order the parent or parents to notify the district attorney upon applying for and obtaining health insurance coverage for the child within a reasonable period of time.

The district attorney shall obtain a completed medical form from the parent or parents in accordance with Section 11490 of the Welfare and Institutions Code and shall forward the completed form to the State Department of Health Services.

(c) In those cases where the district attorney is providing medical support enforcement services, the district attorney shall provide the parent or person having custody of the child or children with information pertaining to the health insurance policy which has been secured for that child or children.

(d) This section is applicable in all cases, irrespective of whether

the support award made is based on the mandatory minimum schedule or a higher amount based on a state or county schedule.

SEC. 1.5. Section 4726 of the Civil Code is amended to read:

4726. (a) (1) The court shall require that health insurance coverage for the supported children shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent or parents. In cases in which the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision which specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to the parent or parents, the parent or parents shall apply for that coverage.

(2) The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(3) As used in this section "health insurance coverage" includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan. "Health insurance coverage" also includes provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(b) Where the district attorney has been designated as the assigned payee for child support, the court shall order the parent or parents to notify the district attorney upon applying for and obtaining health insurance coverage for the child within a reasonable period of time.

The district attorney shall obtain a completed medical form from the parent or parents in accordance with Section 11490 of the Welfare and Institutions Code and shall forward the completed form to the State Department of Health Services.

(c) In those cases where the district attorney is providing medical support enforcement services, the district attorney shall provide the parent or person having custody of the child or children with information pertaining to the health insurance policy which has been secured for that child or children.

(d) This section is applicable in all cases, irrespective of whether the support award made is based on the mandatory minimum schedule or a higher amount based on a state or county schedule.

SEC. 2. Section 10815 of the Welfare and Institutions Code is amended to read:

10815. (a) The department shall ensure the efficient, effective, and equitable administration of public assistance programs by

implementing, in accordance with the provisions of this chapter, a statewide automated welfare system based upon state-mandated standards for the following public assistance programs: Aid to Families with Dependent Children-unemployed parents, Aid to Families with Dependent Children-family group, Aid to Families with Dependent Children-foster care, food stamps, Medi-Cal eligibility, aid for adoption of children, special adult programs, and, to the extent feasible, social services programs.

(b) In addition, for the child support enforcement program, the department shall submit an advance automated planning document to the Secretary of the United States Department of Health and Human Services on or before October 1, 1990, which does all of the following:

(1) Meets all of the requirements for a statewide automated system specified in Title IV-D of the federal Social Security Act.

(2) Interfaces with the system or systems developed for public assistance programs.

(3) Operates in all political subdivisions, except Los Angeles County, which county shall develop and implement an automated system which interfaces with the statewide automated system.

SEC. 3. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively enforcing child and spousal support obligations and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to enforce this obligation when the child is receiving public assistance, including Medi-Cal, and when requested to do so by the individual on whose behalf the enforcement efforts will be made when the child is not receiving public assistance, including Medi-Cal. To the extent required by federal law, actions brought by the district attorney to establish or enforce support obligations in all cases, other than paternity cases or those cases involving complex issues, shall be completed within the following time limits: (1) 90 percent of the actions shall be completed within three months from the date of service; (2) 98 percent of the actions shall be completed within six months from the date of service; and (3) 100 percent of the actions shall be completed within 12 months from the date of service. As used in this section, "service" means the service of process required by law for the particular proceeding. This responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act, the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date. In any action brought or enforcement proceedings instituted by the district attorney

pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority. The county shall undertake an outreach program to inform the public that this service is available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that child and spousal support enforcement services are provided to all individuals whether or not they are recipients of public social services.

In any action for child support brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under subdivision (a) of Section 7004 of the Civil Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of

a spouse or former spouse as authorized under any other provision of law.

As used in this subdivision, "complex issues" means issues arising in the following types of cases: (1) any case which could directly result in a person's incarceration; (2) any case involving the right to jury trial; and (3) any case so deemed by a commissioner, a referee, or a superior court judge.

In counties which operate an expedited process in accordance with Section 640.1 of the Code of Civil Procedure, commissioners and referees shall order a temporary support obligation under the expedited process in complex cases, as defined in this section, prior to referring those cases to the full judicial system.

(b) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations and (2) the obtaining by the district attorney of an initial order for child support, by civil or criminal process, without regard to whether the child is receiving public assistance.

(c) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(d) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act. The district attorney shall seek a wage assignment in any case as soon as the obligor is in arrears in payment in a sum equal to the amount of support payable for one month pursuant to Section 4701 of the Civil Code.

(e) The district attorney shall comply with any guidelines established by the State Department of Social Services which guidelines set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

SEC. 3.5. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, to take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) To the extent required by federal law, actions brought by the

district attorney to establish or enforce support obligations in all cases, other than paternity cases or those cases involving complex issues, shall be completed within the following time limits: (1) 90 percent of the actions shall be completed within three months from the date of service; (2) 98 percent of the actions shall be completed within six months from the date of service; and (3) 100 percent of the actions shall be completed within 12 months from the date of service. As used in this section, "service" means the service of process required by law for the particular proceeding. The district attorney's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act, the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(d) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(e) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under subdivision (a) of Section 7004 of the Civil Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the

birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

As used in subdivision (b), "complex issues" means issues arising in the following types of cases: (1) any case which could directly result in a person's incarceration; (2) any case involving the right to jury trial; and (3) any case so deemed by a commissioner, a referee, or a superior court judge.

In counties which operate an expedited process in accordance with Section 640.1 of the Code of Civil Procedure, commissioners and referees shall order a temporary support obligation under the expedited process in complex cases, as defined in this section, prior to referring those cases to the full judicial system.

(f) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(g) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(h) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act. The district attorney shall seek a wage assignment in any case as soon as the obligor is in arrears in payment of support pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law.

(i) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), the Uniform Parentage Act (Part 7 (commencing with Section 7000) of Division 4 of the Civil Code), or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(j) The district attorney shall comply with any guidelines established by the State Department of Social Services which guidelines set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

SEC. 4. Section 11490 of the Welfare and Institutions Code is amended to read:

11490. (a) The state medical insurance form required in Section 4726 of the Civil Code shall include, but shall not be limited to, all of the following:

(1) The parent or parents' names, addresses, and social security numbers.

(2) The name and address of each parent's place of employment.

(3) The name or names, addresses, policy number or numbers, and coverage type of the medical insurance policy or policies of the parents, if any.

(4) The name, AFDC case number, social security number, and Title IV-E foster care case number or Medi-Cal case numbers of the parents and children covered by the medical insurance policy or policies.

(b) In any action brought or enforcement proceeding instituted by the district attorney under this article for payment of child or spousal support, a completed state medical insurance form shall be obtained and sent by the district attorney to the State Department of Health Services in the manner prescribed by the State Department of Health Services.

Where it has been determined under Section 4726 of the Civil Code that health insurance coverage is not available at no or

reasonable cost, the district attorney shall seek a provision in the support order which provides for health insurance coverage should it become available at no or reasonable cost.

Health insurance coverage shall be considered reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. As used in this section, "health insurance coverage" also includes provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(c) (1) The district attorney shall request employers and other groups offering health insurance coverage that is being enforced under this article to notify the district attorney if there has been a lapse in insurance coverage. The State Department of Health Services shall notify the district attorney when there has been a lapse in court-ordered insurance coverage.

(2) The district attorney shall take appropriate action, civil or criminal, to enforce the obligation to obtain health insurance when there has been a lapse in insurance coverage or failure by the responsible parent to obtain insurance as ordered by the court.

(3) The district attorney shall inform all individuals upon their application for child support enforcement services that medical support enforcement services are available.

If the spouse or child does not receive public assistance or aid and is not a Medi-Cal applicant or recipient, the district attorney shall obtain the applicant's consent prior to providing medical support enforcement services.

SEC. 5. The State Department of Social Services shall:

(a) Assess, in consultation with district attorneys and the Judicial Council, the need for simplified civil procedures for voluntarily acknowledging paternity and establishing paternity in contested cases. The department shall report to the Legislature, on or before January 1, 1991, with recommendations on the need for simplified civil procedures.

(b) Report to the Legislature, on or before October 1, 1990, regarding whether legislative or administrative changes are needed to increase the number of paternities established in the state, in order to meet the new federal standards for paternity establishments.

(c) Report to the Legislature, on or before April 15, 1990, on the department's proposed statewide plan to review and adjust child support awards, as required by the federal Family Support Act of 1988 (P.L. 100-485).

(d) Establish guidelines which set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 4726 of the Civil Code proposed by both this bill and AB 1904. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4726 of the Civil Code, and (3) this bill is enacted after AB 1904, in which case Section 1 of this bill shall not become operative.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 11475.1 of the Welfare and Institutions Code proposed by both this bill and AB 1904. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 11475.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1904, in which case Section 3 of this bill shall not become operative.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 805

An act to amend Section 68618.5 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 68618.5 of the Government Code is amended to read:

68618.5. Notwithstanding any other provision of law, the Superior Courts of Sonoma, Humboldt, Napa, Yolo, Fresno, San Joaquin, and Santa Barbara Counties may establish exemplary delay reduction programs and adopt local delay reduction rules effective after December 31, 1987, pursuant to this article. These rules are not subject to subdivision (b) of Section 68619.

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 allow local trial court delay reduction rules for the superior court in Sonoma County to become operative as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 806

An act to amend Sections 1286, 1308, 1309, and 1309.5 of, and to add Section 1308.1 to, the Labor Code, relating to minors.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1286 of the Labor Code is amended to read:

1286. As used in this article:

(a) "Director" means the Director of Industrial Relations or his or her designee.

(b) "Department" means the Department of Industrial Relations.

(c) "Minor" means any person under the age of 18 years who is required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code. A person under the age of 18 years who is not required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code solely because that person is a nonresident of California shall still be considered a minor.

(d) "Labor Commissioner" means the Chief of the Division of Labor Law Enforcement, his or her deputies or agents, who shall have the authority to conduct informal hearings and determine the amount of civil penalties in accordance with this article.

SEC. 2. Section 1308 of the Labor Code is amended to read:

1308. (a) Any person is guilty of a misdemeanor and is punishable by a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000), imprisonment for not exceeding six months, or both, who, as parent, relative, guardian, employer, or otherwise having the care, custody, or control of any minor under the age of 16 years, exhibits, uses, or employs, or in any manner or under any pretense, sells, apprentices, gives away, lets out, or disposes of the minor to any person, under any name, title, or pretense for, or who causes, procures, or encourages the minor to engage in any of the following:

(1) Any business, exhibition, or vocation injurious to the health or dangerous to the life or limb of the minor.

(2) The vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider,

in any place whatsoever.

(3) Any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever. Notwithstanding any other provision of law, this paragraph shall apply to a person with respect to any minor under the age of 18 years.

(4) Any mendicant or wandering business.

(b) Nothing in this section applies to or affects any of the following:

(1) The employment or use of any minor as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music.

(2) The employment of any minor as a musician at any concert or other musical entertainment on the written consent of the mayor of the city or president of the board of trustees of the city where the concert or entertainment takes place.

(3) The participation by any minor of any age, whether or not the minor receives payment for his or her services or receives money prizes, in any horseback riding exhibition, contest, or event other than a rough stock rodeo event, circus, or race. As used in this paragraph, "rough stock rodeo event" means any rodeo event operated for profit or operated by other than a nonprofit organization in which unbroken, little-trained, or imperfectly trained animals are ridden or handled by the participant, and shall include, but not be limited to, saddle bronc riding, bareback riding, and bull riding. As used in this paragraph, "race" means any speed contest between two or more animals which are on a course at the same time which is operated for profit or operated other than by a nonprofit organization.

(4) The leading of livestock by a minor in nonprofit fairs stock parades, livestock shows and exhibitions.

SEC. 3. Section 1308.1 is added to the Labor Code, to read:

1308.1. No minor under the age of 16, permitted by law or regulation to engage in door-to-door selling of newspaper or magazine subscriptions, or of candy, cookies, flowers, or other merchandise or commodities, shall be employed in those activities more than 50 miles from his or her place of residence.

SEC. 4. Section 1309 of the Labor Code is amended to read:

1309. Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, for any of the purposes mentioned in Section 1308, any minor under the age of 16, or under the age of 18, as specified in paragraph 3 of subdivision (a) of Section 1308, is guilty of a misdemeanor punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or imprisonment for not more than six months, or both.

SEC. 5. Section 1309.5 of the Labor Code is amended to read:

1309.5. (a) Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of these facts that he or she should reasonably know that the person is a minor under 18 years of age, knowingly sells or distributes for resale films,

photographs, slides, or magazines which depict a minor under 18 years of age engaged in sexual conduct as defined in Section 311.4 of the Penal Code, shall determine the names and addresses of persons from whom this material is obtained, and shall keep a record of these names and addresses. These records shall be kept for a period of three years after the material is obtained, and shall be kept confidential except that they shall be available to law enforcement officers as described in Section 830.1 and subdivision (h) of Section 830.3 of the Penal Code upon request.

(b) Every retailer who knows or reasonably should know that films, photographs, slides, or magazines depict a minor under the age of 18 years engaged in sexual conduct as defined in Section 311.4 of the Penal Code, shall keep a record of the names and addresses of persons from whom this material is acquired. These records shall be kept for a period of three years after the material is acquired, and shall be kept confidential except that they shall be available to law enforcement officers as described in Section 830.1 and subdivision (h) of Section 830.3 of the Penal Code upon request.

(c) The failure to keep and maintain the records described in subdivisions (a) and (b) for a period of three years after the obtaining or acquisition of this material is a misdemeanor. Disclosure of these records by law enforcement officers, except in the performance of their duties, is 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 807

An act to amend Section 1812.97 of the Civil Code, and to amend Section 45304 of, to add Section 44940.5 to, and to repeal and add Section 44940 of, the Education Code, relating to health and safety.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. (a) The Legislature hereby declares its concern over reports of inappropriate anabolic steroid use in the general population, and its special concern with the dangers of steroid use

among junior and senior high school students, both athletes and nonathletes.

(b) The Legislature further finds and declares all of the following:

(1) A recent study published in the Journal of the American Medical Association indicates that approximately 6.6 percent of 12th grade male students have used or are using anabolic steroids.

(2) The study data indicate that 65 percent of the users participated in school-sponsored sports, while the other 35 percent did not, and that 27 percent of all users took steroids to improve their appearance.

(3) The study reports that 60.5 percent of the adolescent steroid users used the "black market" (other athletes, coaches, or people at gyms), as their primary source, and 20 percent used health care professionals (physicians and surgeons, pharmacists, or veterinarians), as their source of obtaining anabolic steroids.

SEC. 2. Section 1812.97 of the Civil Code is amended to read:

1812.97. (a) Every contract which has as its purpose the lease or rental of athletic facilities for instruction, training, or assistance in physical culture, body building, exercising, reducing, figure development, or any other related physical skill, or for baseball, football, tennis, basketball, gymnastics, track and field, hockey, ice skating, weightlifting, wrestling, or bicycling shall contain the following warning statement in 10-point bold type:

Warning: Use of steroids to increase strength or growth can cause serious health problems. Steroids can keep teenagers from growing to their full height; they can also cause heart disease, stroke, and damaged liver function. Men and women using steriods may develop fertility problems, personality changes, and acne. Men can also experience premature balding and development of breast tissue. These health hazards are in addition to the civil and criminal penalties for unauthorized sale, use, or exchange of anabolic steroids.

(b) Commencing June 1, 1990, the warning statement required pursuant to subdivision (a) shall be conspicuously posted in all athletic facilities in this state which have locker rooms. At least one warning statement shall be posted in every locker room of the athletic facility.

(c) As used in this section, "athletic facilities" includes a health studio regulated pursuant to Title 2.5 (commencing with Section 1812.80), a professional boxers' training gymnasium, as defined in Section 18685 of the Business and Professions Code, any privately owned sports facility or stadium in this state which is open to the general public, and any publicly owned sports facility or stadium in this state, including facilities in institutions of higher learning and schools that include any or all grades 7 to 12, inclusive.

(d) As used in this section, "anabolic steroids" include, but are not limited to, the following:

(1) Dianabol (methandrostenelone).

(2) Winstrol (stabozalol).

(3) Maxibolin (ethyl estrenol).
(4) Durabolin (nandrolone phenpropionate).
(5) Deca-Durabolin (nandrolone decanote).
(6) Testosterone propionate.
(7) Pregnyl (chorionic gonadotropin).
(8) Anavar (toxandroprione).

(e) When an athletic facility seeks to renew an operating license, if it can be demonstrated by a preponderance of the evidence that an athletic facility has not posted the sign required pursuant to this section, the licensing agency may impose a fine in the amount of fifty dollars ($50) per day for each day that the violation occurred, as a condition of obtaining the license renewal.

SEC. 3. Section 44940 of the Education Code is repealed.

SEC. 4. Section 44940 is added to the Education Code, to read:

44940. (a) For purposes of this section, "charged with a mandatory leave of absence offense" is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Section 11054, 11055, and 11056 of the Health and Safety Code, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.

(b) For purposes of this section, "charged with an optional leave of absence offense" is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, 11363, or 11364 of the Health and Safety Code, insofar as these sections relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.

(c) For purposes of this section and Section 44940.5, the term "school district" includes county offices of education.

(d) Whenever any certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), the governing board of the school district shall immediately place the employee upon compulsory leave of absence for a period of time extending for not more than 10 days after the date of entry of the judgment in the proceedings. The employee's teaching or service credential shall be automatically suspended for the same period of time.

(e) Whenever any certificated employee of a school district is charged with an optional leave of absence offense as defined in subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall

into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section.

SEC. 5. Section 44940.5 is added to the Education Code, to read:

44940.5. Any certificated employee placed on compulsory leave of absence pursuant to Section 44940 and any classified employee placed on compulsory leave of absence pursuant to Section 45304 shall be subject to the following procedures:

(a) The governing board of the school district may extend the compulsory leave of absence of the employee beyond the initial period specified in Section 44940 or 45304, whichever is applicable, by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

(b) Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him or her during the period of the compulsory leave of absence in case the employee is convicted of the charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the school district shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.

(c) If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against him or her are dismissed, the school district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the school district.

(d) Any action taken pursuant to this section by a governing board shall be reported immediately to the Commission for Teacher Preparation and Licensing. The commission shall give priority to the investigation and resolution of these cases.

SEC. 6. Section 45304 of the Education Code is amended to read:

45304. (a) For reasonable causes, an employee may be suspended without pay for not more than 30 days, except as provided in this section, or may be demoted or dismissed. In such case, the personnel director shall, within 10 days of the suspension, demotion, or dismissal, file written charges with the commission and give to the employee or deposit in the United States registered mail with postage prepaid, addressed to the employee at his or her last known place of address, a copy of the charges.

(b) Whenever an employee of a school district or county office of

education is charged with a mandatory leave of absence offense, as defined in subdivision (a) of Section 44940, the governing board of the school district shall immediately place the employee upon a compulsory leave of absence for a period of time extending for not more than 10 days after the date of entry of the judgment in the proceedings. Once the employee is placed on leave of absence, he or she is subject to the provisions of Section 44940.5.

(c) Whenever an employee of a school district or county office of education is charged with an optional leave of absence offense, as defined in subdivision (b) of Section 44940, the governing board of the school district may immediately place the employee upon a compulsory leave of absence in accordance with the provisions of Section 44940.5.

SEC. 7. The Legislature hereby requests that the Superintendent of Public Instruction, not later than July 1, 1990, notify all schools that include any or all of grades 7 to 12, inclusive, of the requirements of Section 1812.97 of the Civil Code. The Legislature hereby requests that each institution of postsecondary education, not later than July 1, 1990, be notified by its respective statewide office or its statewide member association of the requirements of Section 1812.97 of the Civil Code.

SEC. 8. Section 2 of this act shall become operative June 1, 1990.

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

CHAPTER 808

An act to amend Section 16000 of, and to add Section 16000.1 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The current provisions of the Financial Responsibility Laws inadvertently do not permit the Department of Motor Vehicles to

exercise its authority to suspend the driving privilege of an uninsured motorist who inflicts bodily injury or death upon individuals or who damages vehicles, buildings, or other property located on public and private property off the streets and highways. The Legislature further finds and declares that untold numbers of Californians are victims involved in these accidents.

(b) It is the intent of the Legislature in amending the Financial Responsibility Laws to strengthen enforcement actions against uninsured motorists and to provide additional remedies for the victims of uninsured motorist accidents occurring off the streets and highways as soon as the department can reasonably implement the changes in Section 16000 of the Vehicle Code made by this act.

SEC. 2. Section 16000 of the Vehicle Code is amended to read:

16000. The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway accident defined in Section 16000.1 which has resulted in damage to the property of any one person in excess of five hundred dollars ($500) or in bodily injury or in the death of any person shall within 10 days after the accident, report the accident on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this chapter. A report shall not be required in the event that the motor vehicle involved in the accident was owned or leased by or under the direction of the United States, this state, or any political subdivision of this state or any municipality of this state.

SEC. 3. Section 16000.1 is added to the Vehicle Code, to read:

16000.1. (a) For purposes of this division, a "reportable off-highway accident" means an accident which includes all of the following:

(1) Occurs off the street or highway.

(2) Involves a vehicle that is subject to registration under this code.

(3) Results in damages to the property of any one person in excess of five hundred dollars ($500) or in bodily injury or in the death of any person.

(b) A "reportable off-highway accident" does not include any accident which occurs off-highway in which damage occurs only to the property of the driver or owner of the motor vehicle and no bodily injury or death of a person occurs.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

SEC. 5. This act shall become operative on July 1, 1990.

CHAPTER 809

An act to amend Sections 66780.5, 66796.32, 66798, 66798.1, 66798.4, 66798.5, and 66798.7 of, to amend the heading of Article 9 (commencing with Section 66798) of Chapter 3 of Title 7.3 of, and to add Sections 66798.2 and 66798.9 to, the Government Code, relating to hazardous waste.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 66780.5 of the Government Code is amended to read:

66780.5. In addition to the other requirements of this title, the county solid waste management plan prepared pursuant to Section 66780 shall:

(a) Include in the first revision as required in Section 66780.7 an amendment delineating an enforcement program in accordance with Chapter 3 (commencing with Section 66795), which has been reviewed by the board and the State Department of Health Services.

(b) (1) Except as provided in paragraph (2), on or before the next review of the plan occurring after January 1, 1990, a household hazardous waste plan shall be prepared by a county and each city within a county which identifies a program for the safe collection, recycling, and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households and which should be separated from the solid waste stream, in accordance with the guidelines adopted pursuant to Section 66798.4. The household hazardous waste plan shall be in the form of an attachment to the county solid waste management plan.

(2) If a county, or a city within a county, demonstrates to the board that, due to the county's or city's small geographic size or population, or due to the small quantity of household hazardous waste generated in the city or county, the preparation and implementation of a program for the collection, recycling, and disposal of hazardous waste generated by households, as specified in paragraph (1), is not feasible, and the board concurs in this demonstration, the county solid waste management plan shall instead include an attachment to the county solid waste management plan which specifies a method to address the needs of the households located within that county.

(c) Be reviewed, and revised, if appropriate, at least every three years and revised where necessary to be consistent with state policy.

A report of the results of the plan review shall be submitted to the board and to the department beginning on the third anniversary of the date of board approval of the plan submitted pursuant to Section 66780 with subsequent reviews and reports at least every three years thereafter.

(d) Any amendment to the 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, except in those counties which have only two cities, in which case the amendment shall be approved by the city which contains a majority of the population of the incorporated area of the county. Each proposed amendment shall be submitted to each city within the county. Each city shall act upon the proposed amendment within 90 days after the city has received the amendment. If a city fails to act upon the proposed amendment within 90 days after receiving the amendment, the city shall be deemed to have approved the amendment as submitted. Each amendment shall be submitted to the board for approval as to its compliance with state policy.

(e) At the next revision of the plan occurring on or after January 1, 1987, the plan shall be revised to indicate the amount of asbestos waste generated in the county from asbestos removal projects and the sites or potential sites which have been designated to accept that waste. If it is concluded that the quantities of asbestos waste are not significant or that there are no sites located within the area covered by the county solid waste management plan where the asbestos waste could feasibly be disposed of, then the plan need not designate sites or potential sites for accepting such waste. If the plan does not designate sites or potential sites for accepting asbestos waste, then it shall identify measures which the county intends to take to secure the availability of sites for that purpose.

(f) In addition to the requirements of Section 66780.2, at the next revision of a solid waste management plan occurring on or after January 1, 1988, the plan shall be revised to include a plan by the county which establishes a goal of recycling 20 percent of the solid waste generated in the county, and actions the county will take to achieve this goal.

(g) When reviewing the county solid waste management plan pursuant to subdivision (c), the board may review and comment on the household hazardous waste plan or method, submitted pursuant to paragraph (1) or (2) of subdivision (b), and make recommendations to the local agency on revisions to the plan or method, as applicable. Each local agency shall certify to the board, on January 1, of each year following the submission of the plan or method, that the agency implemented its most recently submitted household hazardous waste plan or method.

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 county which has not submitted a plan or method, as applicable, to the board meeting the requirements of subdivisions (b) and (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. 3. The heading of Article 9 (commencing with Section

66798) of Chapter 3 of Title 7.3 of the Government Code is amended to read:

Article 9. Household Hazardous Waste Information and Collection

SEC. 4. Section 66798 of the Government Code is amended to read:

66798. (a) The Legislature finds and declares that, because hazardous substances are an integral part of daily life, it would benefit the public to have access to practical and consistent information concerning chemicals in daily life, products which contain hazardous substances, and proper procedures for the disposal of hazardous substances. This information would improve the ability of all Californians to assist in protecting the state's natural resources from environmental degradation.

(b) The Legislature also finds that the disposal of hazardous substances by households can be injurious to sanitation workers, the general public, and wildlife and domestic animals, and can pose a threat to the environment.

(c) The Legislature further finds and declares that each household in the state should have reasonable access to legal, convenient, and environmentally safe methods for the disposal of hazardous substances commonly found in and around homes.

(d) The Legislature, therefore, declares that the state should assist the efforts of local governments and other agencies to provide safer disposal methods for household hazardous waste and to provide public information on the proper disposal of hazardous substances commonly found in and around homes.

(e) For purposes of this article, "hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code, and "hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

SEC. 5. Section 66798.1 of the Government Code is amended to read:

66798.1. The board shall, in consultation with the advisory committee established pursuant to Section 66798.7, develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes. The program may include information, consistent with product labeling, on the proper use and storage of products which contain hazardous substances.

The public information program shall be designed to provide uniform responses to public inquiries about household hazardous substances, and to assist the efforts of counties required to provide household hazardous waste collection, recycling, and disposal programs pursuant to Section 66798.2, and local agencies authorized to provide these programs.

The public information program shall include the development of

pamphlets or other written materials which could be used by local agencies in conjunction with household hazardous waste collection or other programs which these agencies may or are required to offer. The written materials shall be prepared with the intent of promoting consistency in how these local programs define and handle household hazardous wastes.

SEC. 6. Section 66798.2 is added to the Government Code, to read:

66798.2. (a) After a county solid waste management plan has been revised pursuant to subdivision (b) of Section 66780.5, and the revision has been approved pursuant to subdivision (d) of Section 66780.5, the county shall implement that portion of the household hazardous waste collection, recycling, and disposal program identified in the plan which serves the population of the unincorporated area of the county, and the cities or other appropriate local agencies within the county shall implement, for their respective jurisdictions, that portion of the household hazardous waste collection, recycling, and disposal program identified in the plan which serves the population of the incorporated area of the county.

(b) Subdivision (a) does not prohibit a city or county from jointly implementing the household hazardous waste collection, recycling, and disposal program, or another local agency from implementing the program in the county pursuant to the mutual agreement of the local agencies involved in implementing the program.

SEC. 7. Section 66798.4 of the Government Code is amended to read:

66798.4. (a) The board shall prepare, in consultation with the department and the advisory committee established pursuant to Section 66798.7, guidelines and a state policy to guide the efforts of local agencies to provide household hazardous waste collection, recycling, and disposal programs pursuant to this article. The guidelines required by this section shall allow adequate flexibility to local agencies in meeting their individual needs, to the extent that the local agency's program does not conflict with the state policy prepared pursuant to this subdivision, and shall include all the following elements:

(1) Development of a model operation plan for community household hazardous waste collection, recycling, and disposal programs required to be identified pursuant to subdivision (b) of Section 66780.5. The model operation plan shall include a description of proper procedures for hazardous waste handling, storage, transportation, and personnel training.

(2) The establishment of guidelines on the generic types of household hazardous substances which should be disposed of as hazardous waste, and guidelines on the safe management of hazardous wastes generated by households which may be excluded from household hazardous waste collection programs but which may require some special handling. In establishing guidelines on which

products should be disposed of as hazardous waste, the board shall consider such factors as toxicity, concentration of toxic ingredients in a product, and other appropriate factors. The board shall also consider the appropriateness of excluding from any listing of household hazardous wastes specific categories of household products, such as products intended for human consumption, personal hygiene products, and other categories of household products intended for general consumer use.

(b) The guidelines and operation plan prepared pursuant to subdivision (a) shall, upon request, be made available to local agencies and the public. The board shall advise county health offices of the availability of these materials and of the informational materials developed pursuant to Section 66798.1.

(c) In developing the guidelines required by subdivision (a), the board shall, to the extent feasible, consult existing sources of information, including household hazardous waste collection programs which have been operated in the state and in other states, and industry and academia.

SEC. 8. Section 66798.5 of the Government Code is amended to read:

66798.5. Any city or county may, upon a vote of the governing body of the city or county, authorize an increase in solid waste collection fees to offset the cost to the city or county of establishing, publicizing, and maintaining a household hazardous waste collection, recycling, and disposal program implemented pursuant to this article. Any increase in garbage collection fees authorized by this section shall be set at a level to bring in revenues not higher than is necessary to fund the reasonable cost of the household hazardous waste collection, recycling, and disposal program. Where an appropriately licensed private entity is utilized by a city or county, under a permit or existing franchise, to undertake a household hazardous waste collection, recycling, and disposal program, the costs of handling, hauling, and disposing of household hazardous wastes shall be paid through fees or rates charged for service.

SEC. 9. Section 66798.7 of the Government Code is amended to read:

66798.7. (a) The board shall establish a 10-member advisory committee on household hazardous waste management to review and comment on the actions taken by the board to implement this article and subdivision (b) of Section 66780.5, to review and comment on the guidelines and state policy prepared by the board pursuant to Section 66798.4, to review and comment on the informational materials developed pursuant to Section 66798.1, to review and comment on the report required by Section 66798.6 prior to its submittal to the Legislature, and to perform other functions related to household hazardous waste management, as requested by the board.

(b) The membership of the advisory committee shall be as follows:

(1) A representative of county government, from a rural county, to be selected by the County Supervisors Association of California.

(2) A representative of city government, to be selected by the League of California Cities.

(3) A representative of a hazardous waste transfer station operation, to be selected by the department.

(4) A representative of public information programs, to be selected by the League of Women Voters of California.

(5) A representative of publicly owned municipal landfill operations, to be selected by the board.

(6) A representative of product manufacturers, to be selected by the Chemical Specialties Manufacturers Association.

(7) A representative of waste haulers, to be selected by the Southern California Refuse Council and the Northern California Refuse Council.

(8) A representative of environmental organizations, to be selected by the League of Women Voters of California.

(9) A representative of paint and coatings manufacturers, to be selected by the National Paint and Coatings Association.

(10) A representative of used oil recyclers, to be selected by the board.

(c) The organizations selecting advisory committee members shall select individuals with experience in, or knowledge of, household hazardous waste management programs.

(d) The board shall serve as staff to the advisory committee established pursuant to subdivision (a).

(e) If any of the appointing authorities for members of the advisory committee fails to make an appointment, the chairperson of the board shall make the appointment.

(f) The chairperson of the advisory committee shall be selected by the committee members. The committee shall meet at least twice a year. The chairperson shall call meetings of the committee after consultation with the board.

(g) Committee members shall serve without compensation, but shall be reimbursed for expenses incurred in attending advisory committee meetings.

SEC. 10. Section 66798.9 is added to the Government Code, to read:

66798.9. A city, county, or local agency operating a household hazardous waste collection, recycling, and disposal program in accordance with this article is not liable for any damage or injury caused by an action taken by the city, county, or local agency, or an employee or authorized agency of the city, county, or local agency, in the course of the operation of the program, unless the action is performed in bad faith or in a negligent manner. For purposes of this section, it shall be presumed that the action is performed in good faith and without negligence, and this presumption shall affect the burden of proof.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 810

An act to amend Section 11010.8 of the Business and Professions Code, relating to mobilehome parks.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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. (a) 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:

(1) 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.

(2) 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.

(3) A permit to issue securities under Section 25113 of the Corporations Code is obtained from the Department of Corporations.

(4) 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. The escrow also shall include funds of tenants which shall be available to the tenant's homeowners association nonprofit corporation for payment of any and all costs reasonably associated with the processing and conversion of the mobilehome park into condominium interests. Payment of these costs may be made from the funds deposited in escrow prior to the close of escrow upon the direction of the tenant's homeowners association nonprofit corporation.

(b) The funds described by paragraph (4) of subdivision (a), or any other funds subsequently received from tenants for purposes

other than the purchase of a separate subdivided interest in any portion of the mobilehome park, are not subject to the requirements of Section 11013.1, 11013.2, or 11013.4.

CHAPTER 811

An act to amend Section 1268.5 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 1268.5 of the Health and Safety Code is amended to read:

1268.5. (a) Notwithstanding the provisions of Section 1268 requiring full compliance with this chapter and the rules and regulations of the state department as a condition to the issuance of a license or special permit, the state department may issue a provisional license to a health facility except for a health facility defined in subdivisions (a) and (b) of Section 1250, if:

(1) The facility and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter.

(2) No violation of this chapter or regulations adopted pursuant to this chapter exists in the facility which jeopardizes the health or safety of patients.

(3) The applicant has adopted a plan for correction of any existing violations which is satisfactory to the state department.

(b) A provisional license issued under this section shall expire not later than six months after the date of issuance, or at an earlier time as determined by the state department at the time of issuance, and may not be renewed. At the end of the provisional license period under this section or Section 1437 the state department shall assess the facility's full compliance with licensure requirements. The state department may extend a provisional license for a period of no longer than six months from the time of the extension for one of the following purposes:

(1) Requiring the facility's full compliance with a plan of correction, which includes time frames, as specified by the state department.

(2) Allowing the provisional licensee to comply with Section 1336.2.

(3) Providing for a change of ownership.

(4) Instituting a receivership of the facility.

The length of the extension period shall be determined by the state department at the time of the issuance of the extension.

(c) The department shall not apply less stringent criteria when issuing a provisional license pursuant to this section than it applies when issuing a license pursuant to Section 1268.

It is the intent of the Legislature in enacting this section to additionally provide for continuity of reimbursement under the Medi-Cal Act, Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, whenever ownership of a skilled nursing facility or intermediate care facility is transferred.

CHAPTER 812

An act to add and repeal Section 14542.2 of the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgeny thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 14542.2 is added to the Public Resources Code, to read:

14542.2. (a) Commencing July 1, 1990, the department shall conduct a pilot program to evaluate and quantify mobile buyback programs. As used in this section, "mobile buyback program" is an operation consisting of vehicles which make prearranged stops at locations along a set route at specified times during the day to redeem beverage containers. The pilot program shall be conducted within the Counties of Solano, San Joaquin, San Luis Obispo, and Santa Barbara, in limited areas both inside and outside of convenience zones, as specified by the department. The department shall designate which mobile buyback programs may participate in the pilot program. Any mobile buyback program participating in the pilot program shall comply with all of the following requirements:

(1) The mobile buyback program shall be acknowledged in writing by the local government or governments within which it operates.

(2) The mobile buyback program shall comply with standards for operation, including, but not limited to, standards established under Section 14538 which the department determines to be necessary for the operation of mobile buyback programs.

(3) The program shall be certified, and this certification shall terminate January 1, 1992. This certification may be terminated by the department at any time prior to January 1, 1992, if the department determines that the mobile buyback program adversely affects the goals of this division. Mobile buyback programs receive

redemption values, redemption bonuses, and administrative fees while participating in the pilot program.

(4) The mobile buyback program shall accept and offer to redeem all types of beverage containers.

(5) The mobile buyback program shall follow all accounting procedures required by the department for certified recycling centers, including, but not limited to, the maintenance of receipts, logs, and shipping reports.

(6) The mobile buyback program shall use a route approved by the department, which may include convenience zones within which the mobile buyback program also operates stationary certified recycling centers. The route may include other convenience zones, if the mobile buyback program was in existence on or before January 1, 1989.

(b) On or before July 1, 1991, the department shall prepare and submit to the Governor and the Legislature a report on the pilot program described in subdivision (a). The report shall include, but not be limited to, all of the following:

(1) Information on the number and locations of mobile buyback programs which participated in the pilot program.

(2) Information on the redemption rates for mobile buyback programs, redemption rates for stationary certified recycling centers located in convenience zones within which the mobile buyback programs operated, and redemption rates for any other stationary recycling center which the department determines have been affected by the mobile buyback program.

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

SEC. 2. The sum of two hundred twenty-nine thousand dollars ($229,000) is hereby appropriated from the California Beverage Container Recycling Fund to the Department of Conservation to implement Section 14542.2 of the Public Resources Code.

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

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 further the goals of the California Beverage Container Recycling and Litter Reduction Act by increasing the services

provided by recycling centers at the earliest possible time to better protect the public health and safety by encouraging the recycling of beverage containers, it is necessary that this act take effect immediately.

CHAPTER 813

An act to amend Sections 9501, 9503, 9504, 9505, 9508, 9510, 9511, and 9722 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, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 9501 of the Welfare and Institutions Code is amended to read:

9501. (a) The department shall establish a three-year pilot service credit program, in at least four program sites, through which individuals may volunteer targeted services and in return earn service credits that may be subsequently exchanged for targeted services. To implement the program, the department shall develop a process for notifying potential sponsors of the availability of program grants, then awarding grants to those sponsors that best meet the objectives set forth in this chapter.

(b) (1) The department shall ensure that each sponsor maintains a register containing all of the following:

(A) The names of participating volunteers, services for which they are available, and any other personal information relevant to the program.

(B) An accounting system with the capacity to make available to the department, each volunteer, and to the sponsor a monthly balance of service credits earned and used.

(C) Any other data that may be needed to monitor and administer the program.

(2) Any sponsor that chooses to computerize its register shall first consult with the department to ensure that the intended computer hardware and software are compatible with the department's information needs and with existing or planned computerized registries used by other programs. The sponsor shall also consult with the Legislative Analyst to ensure that the information to be gathered is consistent with the information needed for the evaluation described in Section 9510.

(3) The register required by this subdivision shall be used solely to match volunteers with eligible persons and to accomplish other tasks consistent with the purposes of this chapter.

(c) The department shall require that any grantee of funds awarded pursuant to this chapter shall provide matching funds, or in-kind services of equal value, or a combination of both.

SEC. 2. Section 9503 of the Welfare and Institutions Code is amended to read:

9503. (a) The awarding of credits to eligible persons shall be commensurate with the availability of volunteers in that particular program.

(b) Volunteers who provide targeted services shall earn one service credit for each hour of targeted services provided.

(c) A volunteer who has service credits may transfer all or part of those credits, either directly or through a sponsor, to an eligible person in the same program. Credits thus transferred may not be retransferred.

(d) A volunteer with accrued service credits may transfer all or part of those credits to the sponsor.

(e) Except as otherwise provided by Section 9503 or the rules issued by the department under Section 9508, an eligible person may exchange service credits that he or she has earned, received by transfer, or been awarded for an equal number of hours of any targeted service. The sponsor shall determine whether a requested service is a targeted service and whether the requester is an eligible person.

SEC. 3. Section 9504 of the Welfare and Institutions Code is amended to read:

9504. (a) Before entering the program, every program volunteer and every eligible person requesting targeted services from the program shall read and sign a clearly written information sheet. This sheet shall include a notice that the program is part of a demonstration project that carries no guarantees of credits earned by program volunteers.

(b) To ensure that outstanding service credits can be honored when exchanged for targeted services, the sponsor shall engage in diligent volunteer recruitment.

(c) If the statewide program expires or is terminated, the department shall promptly give written notice to all sponsors and to all persons known to have outstanding credits. In the event the sponsor expects its program to end, the sponsor shall promptly give written notice of the program's expiration or termination to all other persons known to have outstanding credits.

SEC. 4. Section 9505 of the Welfare and Institutions Code is amended to read:

9505. (a) Each sponsor shall have an advisory committee that includes all of the following:

(1) Persons skilled in the provision of targeted services.

(2) Persons who represent or advocate the interests of eligible persons.

(3) Persons representing the interests of program volunteers. The advisory committee shall monitor the sponsor's compliance with

program requirements, make recommendations to the sponsor on program implementation, and carry out any other program-related tasks that the department deems appropriate.

(b) Members of the advisory committee serve in an informal capacity, and assume no legal responsibility for program actions or decisions.

SEC. 5. Section 9508 of the Welfare and Institutions Code is amended to read:

9508. The department shall develop guidelines necessary to carry out the purposes of this chapter. These guidelines shall include, but need not be limited to, standards and procedures with respect to the following:

(a) Volunteer qualifications, screening, preservice and in-service training, monitoring, and termination.

(b) Minimum liability and accident insurance for volunteers.

(c) Sponsor qualifications.

(d) The amount of funds and other resources that a potential program sponsor shall provide a match to state funds. The match requirement may be met by cash or in-kind contributions, or a combination thereof.

(e) The awarding of service credits.

(f) Weekly and annual limits on the number of service credits a volunteer may earn.

(g) Contingency planning and volunteer reserves.

(h) Program evaluation and the responsibilities of sponsor advisory committees.

SEC. 6. Section 9510 of the Welfare and Institutions Code is amended to read:

9510. (a) The Legislative Analyst shall report to the Legislature on or before January 1, 1993, on the net impact of the Senior Partners Service Credit Program, including, but not limited to, the following evaluative criteria:

(1) The increase in volunteer hours provided as a result of the program.

(2) The increase in the number of individuals served as a result of the program.

(3) The expansion of availability of targeted services by level, type, and recipient as a result of the program.

(4) The total costs of the program, including state grants and sponsor matching contributions.

(5) Estimated direct and indirect cost savings, to the extent information is available, resulting from both of the following:

(A) The provision of services through the program that would otherwise have been provided through the use of other state or local government funds.

(B) The avoidance or postponement of the need for more costly long-term care services for service recipients.

(6) Any other criteria that seem relevant to evaluating the overall impact of the program, including, but not limited to, the impact on

volunteer programs in the community, the quality of life of program volunteers and service recipients, benefits to the families and communities of the volunteers and benefits to the families and communities of the service recipients.

(b) The Legislative Analyst shall also investigate the feasibility of expanding the service credit concept to serve other geographical areas or populations in existing service areas, and shall include the results of that investigation in the report required by subdivision (a).

(c) The following outcome measures by the end of the pilot program shall constitute criteria for success:

(1) A significant increase in volunteer hours per program on average.

(2) A significant increase in the number of recipients per program on average.

(3) An increase in the type of service provided by the contracting agency.

SEC. 7. Section 9511 of the Welfare and Institutions Code is amended to read:

9511. This chapter 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. 8. Section 9722 of the Welfare and Institutions Code is amended to read:

9722. (a) Representatives of the office shall have the right of entry to long-term care facilities for the purpose of hearing, investigating, and resolving complaints by, or on behalf of, and rendering advice to, elderly individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the State Long-Term Care Ombudsman to effectively carry out the provisions of this chapter.

(b) Nothing in this chapter shall be construed to restrict, limit, or increase any existing right of any organizations or individuals not described in subdivision (a) to enter, or provide assistance to patients or residents of, long-term care facilities.

Nothing in this chapter restricts any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice.

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 provide for the timely revision of procedures for the administration of the pilot service credit program, it is necessary that this act take effect immediately.

CHAPTER 814

An act to amend Section 323 of the Public Utilities Code, relating to the Public Utilities Commission, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 323 of the Public Utilities Code is amended to read:

323. (a) Commencing January 1, 1989, the commission shall cause the complete text of each of its orders and decisions to be published within a reasonable time, not to exceed one year after issuance. The commission shall, on or before January 1, 1990, publish every significant decision or order issued, but not published, as of January 1, 1989.

(b) With respect to the order or decision in any proceeding not assigned to an administrative law judge pursuant to subdivision (b) of Section 311, the commission may comply with subdivision (a) by publishing the docket number or other identifying number used in its recordkeeping system, the name of the case, the parties to the case, and the ordering language in the case.

(c) If the commission participates in or uses an electronic means of publication of its orders and decisions, the commission shall assure reasonable public access to that system upon the payment of reasonable fees or charges.

SEC. 1.5. The sum of one hundred thirty-seven thousand dollars ($137,000) is hereby appropriated to the Public Utilities Commission to allow publication of its decisions in compliance with Chapter 784 of the Statutes of 1988, pursuant to the following schedule:

(a) From the Public Utilities Commission Utilities Reimbursement Account in the General Fund, ninety-six thousand dollars ($96,000).

(b) From the Public Utilities Commission Transportation Reimbursement Account in the General Fund, eight thousand dollars ($8,000).

(c) From the Transportation Rate Fund, thirty-three thousand dollars ($33,000).

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 immediately effect. The facts constituting the necessity are:

Following the enactment of Chapter 784 of the Statutes of 1988, the Public Utilities Commission encountered unanticipated expenses which require an additional one-time appropriation to allow

compliance with the requirement in that legislation that all previously unpublished decisions be published by January 1, 1990. In order for the commission to satisfy that deadline, it is necessary that this act take effect immediately.

CHAPTER 815

An act to add Section 409.9 to the Code of Civil Procedure, relating to lis pendens.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 409.9 is added to the Code of Civil Procedure, to read:

409.9. (a) Any person who has entered into a contract to transfer an interest in real property shall, upon receipt of a notice of the pendency of an action concerning that real property, notify all prospective transferees of the receipt of that notice.

(b) The notice required by subdivision (a) shall be given by mailing by certified mail, return receipt requested, or personal delivery, a copy of the notice of the pendency of an action within three days after receipt of the notice.

(c) No transfer subject to this section shall be invalidated solely because of the failure of any person to comply with its provisions. However, any person who willfully or negligently violates or fails to perform the duty prescribed by this section shall be liable in the amount of actual damages suffered by a transferee.

CHAPTER 816

An act to add Section 6012.6 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 6012.6 is added to the Revenue and Taxation Code, to read:

6012.6. (a) For the purposes of this part, "gross receipts" from the sale of a factory-built school building, and the "sales price" of a factory-built school building, sold or stored, used, or otherwise consumed in this state shall be 40 percent of the sales price of the

factory-built school building to the consumer.

(b) For purposes of this section, "factory-built school building" means any building designed or intended for use as a school building, as defined in Sections 39214 and 81165 of the Education Code, which is either wholly manufactured or is in substantial part manufactured at an offsite location in accordance with standards prescribed by the Department of General Services or the Department of Housing and Community Development, to be assembled, erected, or installed on a schoolsite.

(c) For purposes of this section, the place of sale or purchase of a factory-built school building is the place of business of the retailer of the factory-built school building as provided in Section 7205, regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

(d) If a purchaser certifies in writing to the retailer that the factory-built school building purchased will be consumed in a manner or for a purpose entitling the retailer to exclude 60 percent of the gross receipts or sales price from the measure of tax, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of tax measured by 60 percent of the sales price.

SEC. 2. 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. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 817

An act to add Chapter 20.1 (commencing with Section 9875) to Division 3 of the Business and Professions Code, relating to motor vehicle replacement parts.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. The purpose of this act is to regulate the use of aftermarket crash parts by requiring disclosure when any use is proposed of an aftermarket, nonoriginal equipment manufacturer's crash part, and by requiring that the manufacturers or distributors of such aftermarket crash parts be identified.

SEC. 2. Chapter 20.1 (commencing with Section 9875) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 20.1. MOTOR VEHICLE REPLACEMENT PARTS

9875. As used in this chapter, the following definitions shall apply:

(a) "Insurer" includes an insurance company and any person authorized to represent the insurer with respect to a claim.

(b) "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels.

(c) "Nonoriginal equipment manufacturer (Non-OEM) aftermarket crash part" means aftermarket crash parts not made for or by the manufacturer of the motor vehicle.

9875.1. No insurer shall require the use of nonoriginal equipment manufacturer aftermarket crash parts in the repair of an insured's motor vehicle, unless the consumer is advised in a written estimate of the use of nonoriginal equipment manufacturer aftermarket crash parts before repairs are made. In all instances where nonoriginal equipment manufacturer aftermarket crash parts are intended for use by an insurer:

(a) The written estimate shall clearly identify each such part with the name of its nonoriginal equipment manufacturer or distributor.

(b) A disclosure document containing the following information in 10-point type or larger type shall be attached to the insured's copy of the estimate: "This estimate has been prepared based on the use of crash parts supplied by a source other than the manufacturer of your motor vehicle. Any warranties applicable to these replacement parts are provided by the manufacturer or distributor of the parts, rather than by the original manufacturer of your vehicle."

9875.2. Any violation of this chapter shall be enforced by the penalties provided in Section 790.06 of the Insurance Code.

SEC. 3. If any section or portion of a section of this act, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this act, or the applicability of that provision with a person shall not be affected thereby.

CHAPTER 818

An act to amend Sections 12026, 12707, 12710, 12718, 12729, and 12733 of, to add Section 12710.5 to, and to repeal Section 12715.5 of, the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 12026 of the Business and Professions Code is amended to read:

12026. (a) Except as otherwise specifically provided, any person violating any of the provisions of this division is guilty of a misdemeanor.

(b) It is unlawful for any person to violate any of the rules, regulations, tolerances, specifications, or standards adopted under the provisions of this division.

SEC. 2. Section 12707 of the Business and Professions Code is amended to read:

12707. Each license required by this chapter shall be renewed annually, on or before the first day of the first month of the licensee's license year, by application to the director, accompanied by the annual license fee. An application and annual license fee sent by mail is not overdue if postmarked not later than the fifth day of the month in which it is due. To any fee not paid when due, there shall be added a penalty equal to 30 percent of the amount of the license fee, if it is paid within 30 days of becoming due. The penalty for a renewal fee more than 30 days after becoming due shall be 100 percent of the amount of the license fee. However, no penalty shall be applicable to the renewal of deputy weighmaster licenses.

SEC. 3. Section 12710 of the Business and Professions Code is amended to read:

12710. A weighmaster may employ or designate any person to act for the weighmaster as a deputy weighmaster and shall be responsible for all acts performed by that person. The weighmaster shall forward to the department the name of deputy weighmasters with the fees required by Section 12704.

SEC. 4. Section 12710.5 is added to the Business and Professions Code, to read:

12710.5. (a) At any time during the license year, any weighmaster may replace deputies without payment of additional fees by forwarding to the department the name of any replacement deputy and replaced deputy.

(b) Any weighmaster who does not furnish to the department a deputy name as required by this section is guilty of an infraction, and, upon conviction, may be punished by a fine of not more than one hundred dollars ($100).

(c) A weighmaster may increase the original number of deputies by submitting a new application accompanied by appropriate fees, for the additional number of deputy licenses requested, which shall expire on the date stated on the weighmaster license.

SEC. 5. Section 12715.5 of the Business and Professions Code is repealed.

SEC. 6. Section 12718 of the Business and Professions Code is amended to read:

12718. Any person who does any of the following acts is guilty of a misdemeanor:

(a) Requests any person to weigh, measure, or count any commodity falsely or incorrectly.

(b) Requests a false or incorrect weighmaster certificate.

(c) Furnishes or gives false information to a weighmaster for use in the completion of a weighmaster certificate.

(d) Knowingly presents for payment a false weighmaster certificate.

(e) Knowingly issues a weighmaster certificate giving thereon a false weight, measure, or count.

(f) Alters a weighmaster certificate resulting in giving thereon a false weight, measure, or count.

(g) Possesses unfilled or unused weighmaster certificate forms, if he or she is not a weighmaster.

(h) Issues a weighmaster certificate that contains alterations or omissions of gross or tare weights.

SEC. 7. Section 12729 of the Business and Professions Code is amended to read:

12729. (a) Except as otherwise provided in this section, any person who violates any provision of this chapter is guilty of a misdemeanor.

(b) A violation of Section 12722 by vehicles hauling bulk tomatoes that does not exceed 50 percent of the tolerance provided by regulations adopted pursuant to Section 12723, or a violation of Section 12714, 12714.5, or 12715 is an infraction.

(c) Every person convicted of an infraction pursuant to this chapter shall be punished as follows:

(1) For the first conviction, a fine not exceeding one hundred dollars ($100).

(2) For a second conviction within a period of one year, a fine not exceeding two hundred dollars ($200).

(3) For a third or subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500).

SEC. 8. Section 12733 of the Business and Professions Code is amended to read:

12733. In all cases where scrap metal and salvage materials are purchased or sold by dealers, brokers, or commission merchants on the basis of weight or measure, the quantity of the scrap metal and salvage material shall be determined by a weighmaster, and a weighmaster certificate shall be issued to the seller and buyer. Settlement for the materials shall be made on the quantity shown thereon. If the quantity indications are readily accessible and clearly readable to both the buyer and seller, at the time of determination, a weighmaster certificate is required to be issued only when requested by the buyer or seller.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 819

An act to add Section 43003 to, and to add Article 16 (commencing with Section 43100) to Chapter 2 of Division 17 to, the Food and Agricultural Code, relating to agricultural products.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 43003 is added to the Food and Agricultural Code, to read:

43003. (a) In lieu of civil prosecution, the director or the commissioner may levy a civil penalty against any person violating Section 43100 or any regulation adopted pursuant to its provisions of not more than five hundred dollars ($500) for each violation.

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

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement.

(5) The director shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the fine, or reverse the decision of the commissioner. A copy of the director's decision shall be delivered or mailed to the appellant and the comissioner.

(8) Review of the decision of the director may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 2. Article 16 (commencing with Section 43100) is added to Chapter 2 of Division 17 of the Food and Agricultural Code, to read:

Article 16. California-Grown Seal

43100. (a) A "California-grown seal" shall be used in the labeling or advertising of agricultural products as follows:

(1) A California-grown seal for agricultural products may be created, for marketing, advertising, or promotional purposes, only under the direction of the director and only to identify agricultural products that have been produced in the state.

(2) The director, and the commissioner of each county under the supervision and direction of the director, shall certify that agricultural products labeled with the California-grown seal meet the specifications necessary to be identified as having been produced in the state.

(3) The California-grown seal may not be used without the approval and certification by the director or a commissioner.

(4) Use of the California-grown seal for marketing, advertising, or promotional purposes by a producer or processor is voluntary. If a producer or processor wishes to use the California-grown seal, he or she shall apply for approval and certification by the director or a commissioner.

(5) The director or the board of supervisors of a county may establish a certification fee to be charged to those applying to use the California-grown seal for purposes of covering the costs of administering and enforcing this section.

(6) The director may, upon petition of a grower or processor of California agricultural products, adopt rules and regulations to provide methods of identifying and labeling agricultural products with the California-grown seal to prevent any misleading use of the seal, and as necessary or advisable to fully implement this section.

(b) A fraudulent use of the term "California-grown seal" or of the identifying label for the California-grown seal, or a deliberately misleading or unwarranted use of the term or identifying mark, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) or more than three thousand dollars ($3,000), or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 3. This act shall be known and may be cited as the Areias-Chandler-Ayala Agricultural Marketing Act of 1989.

CHAPTER 820

An act to amend Section 707 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

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

(8) Any offense specified in Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Assault with intent to murder or attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) If, subsequent to a finding that a minor is an unfit subject to be dealt with under the juvenile court law, the minor is convicted in a court of criminal jurisdiction of an offense listed in subdivision (b) of this section or listed in paragraph (24) of subdivision (c) of Section 1192.7 of the Penal Code, the finding of unfitness which preceded the conviction is applicable to the violation of any law or ordinance defining crime which is alleged to have been committed subsequent to the conviction if the violation would otherwise cause the minor to be a person described in Section 602 The probation officer shall not be required to investigate or submit a report regarding the fitness of a minor for any such subsequent charge. This subdivision shall not be construed to affect the right to appellate review of a finding of unfitness or the duration of the jurisdiction of the juvenile court as specified in Section 607.

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

CHAPTER 821

An act to add Chapter 8.75 (commencing with Section 14590) to Part 3 of Division 9 of the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Chapter 8.75 (commencing with Section 14590) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 8.75. LONG-TERM CARE DEMONSTRATION PROJECTS FOR ALL-INCLUSIVE CARE FOR THE ELDERLY

14590. The Legislature finds and declares that:

(1) Community-based services to the frail elderly are often uncoordinated, fragmented, inappropriate, or insufficient to meet the needs of frail elderly who are at risk of institutionalization, often resulting in unnecessary placement in nursing homes.

(2) Steadily increasing health care costs for the frail elderly provide incentive to develop programs providing quality services at reasonable costs.

(3) Capitated "risk-based" financing provides an alternative to the traditional fee-for-service payment system by providing a fixed, per capita monthly payment for a package of health care services and requiring the provider to assume financial responsibility for cost overruns.

(4) On Lok Senior Health Services began as a federal and state demonstration program in 1973 to test whether comprehensive community-based services could be provided to the frail elderly at no greater cost than nursing home care.

(5) Since 1983, On Lok Senior Health Services of San Francisco has successfully provided a comprehensive package of services and operated within a cost-effective, capitated risk-based financing system.

(6) Recognizing On Lok's success, Congress passed Legislation in 1986 and 1987 encouraging the expansion of capitated long-term care programs by permitting federal Medicare and Medicaid waivers to be granted indefinitely to On Lok and authorizing the Health Care Financing Administration to grant waivers in up to 10 new sites throughout the nation in order to replicate the On Lok model.

(7) In California, numerous agencies have expressed interest in developing programs similar to On Lok and will need the cooperation of the State Department of Health Services to successfully obtain the necessary available federal waivers to develop

risk-based capitated long-term care demonstration programs.

(8) Through the development of these demonstration programs, the viability of a cost-effective statewide program offering quality long-term care services can be evaluated.

(9) To achieve maximum cost effectiveness in demonstration projects under this chapter, an expedited contract process is necessary.

14591. The State Director of Health Services may establish the California Program of All-Inclusive Care for the Elderly, to promote the development of community-based, risk-based capitated, long-term care programs.

14592. (a) The director may contract with up to five demonstration projects to develop risk-based long-term care pilot programs modeled upon On Lok Senior Health Services in San Francisco. The department shall seek necessary federal waivers for each demonstration site pursuant to Section 1115 of the Social Security Act (42 U.S.C.A. Sec. 301 et seq.). The director shall not enter into contracts with any demonstration program unless necessary federal waivers are obtained.

(b) The demonstration sites shall be public or private nonprofit organizations providing or having the capacity to provide, as determined by the director, comprehensive health care services on a risk-based capitated basis to frail elderly persons certifiable for institutional care. Implementation of this section shall be in accordance with Section 4118(g)(1)(2) of the federal Omnibus Budget Reconciliation Act of 1987.

14593. (a) The director shall continue to request waivers pursuant to Section 1115 of the Social Security Act (42 U.S.C.A. Sec. 301 et seq.) for the On Lok Senior Health Services Program and other demonstration projects as long as the director determines they are cost-effective, they remain in compliance with the terms of their contract with the department, and the demonstration program is in compliance and acting in accordance with its waiver agreement.

(b) The department may grant the On Lok Senior Health Services permanent program status contingent upon the obtaining of federal waivers authorized under Section 9220 of Public Law 99-272. Until permanent status is granted, the On Lok Senior Health Services demonstration project shall continue as a demonstration program.

14594. Contracts under this chapter may be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts under this chapter shall have no force and effect unless approved by the Department of Finance.

SEC. 2. It is the intent of the Legislature to urge the State Department of Health Services to act expeditiously to establish five new risk-based capitated long-term care programs modeled after On Lok Senior Health Services.

SEC. 3. (a) The State Department of Health Services shall

report to the appropriate committees of the Legislature, on or before January 1, 1993, on the progress of the On Lok Senior Health Services replication effort, as provided for in this act.

(b) (1) The report required by subdivision (a) shall include a description of the objectives of the programs, an analysis of their progress, current status, effectiveness, efficiency, quality, and other information about the programs the department deems important.

(2) Within six months of the completion of the federal evaluation, the State Department of Health Services shall determine the feasibility and desirability of implementing risk-based capitated long-term care programs on a statewide basis, and report the findings to the appropriate committees of the Legislature.

SEC. 4. It is the intent of the Legislature that the purposes of this act be funded through annual Budget Act requests by the State Department of Health Services.

CHAPTER 822

An act to add Section 66477.5 to the Government Code, relating to land use.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 66477.5 is added to the Government Code, to read:

66477.5. (a) The local agency to which property is dedicated in fee for public purposes, or for making public improvements or constructing public facilities, other than for open space, parks, or schools, shall record a certificate with the county recorder in the county in which the property is located. The certificate shall be attached to the map and shall contain all of the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the local agency shall reconvey the property to the subdivider if the local agency makes a determination pursuant to this section that the same public purpose for which the property was dedicated does not exist, or the property or any portion thereof is not needed for public utilities, as specified in subdivision (c).

(b) The subdivider may request that the local agency make the determination that the same public purpose for which the dedication was required still exists, after payment of a fee which shall not exceed the amount reasonably required to make the determination. The determination may be made by reference to a capital improvement

plan as specified in Section 65403 or 66002, an applicable general or specific plan requirement, the subdivision map, or other public documents that identify the need for the dedication.

(c) If a local agency has determined that the same public purpose for which the dedication was required does not exist, it shall reconvey the property to the subdivider or the successor in interest, as specified in subdivision (a), except for all or any portion of the property that is required for that same public purpose or for public utilities.

(d) If a local agency decides to vacate, lease, sell, or otherwise dispose of the dedicated property the local agency shall give at least 60 days notice to the subdivider whose name appears on the certificate before vacating, leasing, selling, or otherwise disposing of the dedicated property. This notice is not required if the dedicated property will be used for the same public purpose for which it was dedicated.

(e) This section shall only apply to property required to be dedicated on or after January 1, 1990.

CHAPTER 823

An act to amend Sections 4010, 4010.1, 4010.8, 4013, 4024, 4026.3, 4026.5, 4028, 4029, 4031, 4032, 4036.5, and 4039 of, to amend and renumber Sections 4010.2, 4010.3, 4010.4, and 4019 of, to add Sections 4018, 4019, 4023, 4023.1, 4023.2, 4023.3, 4026.4, 4026.6, 4027.5, 4039.1, and 4039.6 to, to repeal and add Sections 4010.9, 4011, 4012, 4014, 4015, 4021, 4022, 4027, and 4030 of, to repeal Sections 4016, 4023.5, 4026, 4026.1, and 4026.2 of, to amend the heading of Chapter 7 (commencing with Section 4010) of, to amend the heading of Article 1 (commencing with Section 4010) of, to amend and renumber the headings of Article 3 (commencing with Section 4031), Article 4 (commencing with Section 4032), Article 4.5 (commencing with Section 4037), and Article 5 (commencing with Section 4037.5) of, to add the headings of Article 2 (commencing with Section 4011), Article 3 (commencing with Section 4020), Article 4 (commencing with Section 4027), and Article 5 (commencing with Section 4028) to, and to repeal the heading of Article 2 (commencing with Section 4023) of, Chapter 7 of, Part 1 of Division 5 of, the Health and Safety Code, relating to water.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. This act shall be known and may be cited as the Safe Drinking Water Act of 1989.

SEC. 2. The heading of Chapter 7 (commencing with Section

4010) of Part 1 of Division 5 of the Health and Safety Code is amended to read:

CHAPTER 7. CALIFORNIA SAFE DRINKING WATER ACT

SEC. 3. The heading of Article 1 (commencing with Section 4010) of Chapter 7 of Part 1 of Division 5 of the Health and Safety Code is amended to read:

Article 1. Public Water Systems

SEC. 4. Section 4010 of the Health and Safety Code is amended to read:

4010. The Legislature finds and declares all of the following:

(a) Every citizen of California has the right to pure and safe drinking water.

(b) Feasible and affordable technologies are available and shall be used to remove toxic contaminants from public water supplies.

(c) According to the State Department of Health Services, over 95 percent of all large public water systems in California are in compliance with health-based action levels established by the state department for various contaminants.

(d) It is the policy of the state to reduce to the lowest level feasible all concentrations of toxic chemicals which, when present in drinking water, may cause cancer, birth defects, and other chronic diseases.

(e) This chapter is intended to ensure that the water delivered by public water systems of this state shall at all times be pure, wholesome, and potable. The provisions of this chapter provide the means to accomplish this objective.

(f) It is the intent of the Legislature to improve laws governing drinking water quality to improve upon the minimum requirements of the federal Safe Drinking Water Act Amendments of 1986, to establish primary drinking water standards which are at least as stringent as those established under the federal Safe Drinking Water Act, and to establish a program under this chapter which is more protective of public health than the minimum federal requirements.

(g) It is the further intent of the Legislature to establish a drinking water regulatory program within the State Department of Health Services in order to provide for the orderly and efficient delivery of safe drinking water within the state and to give the establishment of drinking water standards and recommended public health levels greater emphasis and visibility within the state department.

SEC. 5. Section 4010.1 of the Health and Safety Code is amended to read:

4010.1. As used in this chapter:

(a) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(b) "Drinking water standards" means:

(1) Primary drinking water standards that specify maximum

levels of contaminants which, in the judgment of the department, may have an adverse effect on the health of persons.

(2) Secondary drinking water standards that specify maximum contaminant levels which, in the judgment of the department, are necessary to protect the public welfare. Secondary drinking water standards may apply to any contaminant in drinking water which may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or which may otherwise adversely affect the public welfare. Regulations establishing secondary drinking water standards may vary according to geographic and other circumstances and may apply to any contaminant in drinking water which adversely affects the taste, odor, or appearance of the water when the standards are necessary to assure a supply of pure, wholesome, and potable water.

(3) The monitoring and reporting requirements as specified in regulations adopted by the department which pertain to maximum contaminant levels.

(c) "Maximum contaminant level" means the maximum permissible level of a contaminant in water.

(d) "Person" means an individual, corporation, company, association, partnership, municipality, public utility, or other public body or institution.

(e) "Public water system" means a system for the provision of piped water to the public for human consumption which has five or more service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator which are used primarily in connection with the system.

(3) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(f) "Significant rise in the bacterial count of water" means a rise in the bacterial count of water which the department determines, by regulation, represents an immediate danger to the health of water users.

(g) "User" means any person using water for domestic purposes. User does not include any person processing, selling, or serving water or operating a public water system.

(h) "Waterworks standards" means regulations adopted by the department which take cognizance of the latest available "Standards of Minimum Requirements for Safe Practice in the Production and Delivery of Water for Domestic Use" adopted by the California section of the American Water Works Association.

SEC. 6. Section 4010.2 of the Health and Safety Code is amended and renumbered to read:

4010.3. This chapter does not apply to a public water system which meets all of the following conditions:

(a) Consists only of distribution and storage facilities and does not have any collection and treatment facilities.

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which this chapter applies.

(c) Does not sell water to any person or user, except for the sale of water to users pursuant to Section 2705.5 of the Public Utilities Code through a submetered service system if the water supply is obtained from a public water system to which this chapter applies.

By enacting this subdivision, it is not the intent of the Legislature to change existing law as to responsibility or liability for distribution systems beyond the mastermeter.

SEC. 7. Section 4010.3 of the Health and Safety Code is amended and renumbered to read:

4010.4. This chapter shall not apply to an irrigation canal system if the owner or operator of the system certifies to the department, and notifies each user, in writing, that the water is untreated and is being furnished or supplied solely for agricultural purposes to either of the following:

(a) A user where the user receives the water, by pipe or otherwise, directly from the irrigation canal system.

(b) A person who owns or operates an integrated pipe system where the person receives the water, by pipe or otherwise, directly from the irrigation canal system

"Irrigation canal system," as used in this section, means a system of water conveyance facilities, including pipes, tunnels, canals, conduits, pumping plants and related facilities operated to furnish or supply water for agricultural purposes where a substantial portion of the facilities is open to the atmosphere.

SEC. 8. Section 4010.4 of the Health and Safety Code is amended and renumbered to read:

4010.5. In areas where the water service rendered by a person is primarily agricultural, and domestic service is only incidental thereto, this chapter shall not apply except in specific areas in which the department has found its application to be necessary for the protection of the public health and has given written notice thereof to the person furnishing or supplying water in the area.

The department may prescribe reasonable and feasible action to be taken by those persons or the users to insure that their domestic water will not be injurious to health.

SEC. 9. Section 4010.8 of the Health and Safety Code is amended to read:

4010.8. For water systems with less than 200 service connections, except as provided in Section 4010.9, the local health officer shall be responsible for the enforcement of this chapter. For the purposes of this chapter, unless the context otherwise requires, and whenever

enforcement activities involve water systems with less than 200 service connections, the local health officer shall act for the department, except that variances and exemptions may only be granted or revoked by the local health officer following the procedures as provided in Sections 4027 and 4027.5 subject to the approval of the department.

Fees for the permits may be prescribed by the local governing body in accordance with Section 510 to pay the reasonable expenses of the local health officer in carrying out the provisions of this chapter and regulations adopted thereunder.

SEC. 10. Section 4010.9 of the Health and Safety Code is repealed.

SEC. 10.5. Section 4010.9 is added to the Health and Safety Code, to read:

4010.9. Notwithstanding Section 4010.8, this chapter shall be enforced directly by the department for all public water systems in any county which does not have a local health officer, or contracts with the department for environmental health services pursuant to Section 1157 and elects not to enforce this chapter.

The department shall absorb the costs of the enforcement.

SEC. 11. An article heading is added to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code immediately preceding Section 4011 thereof, to read:

Article 2. Permits

SEC. 12. Section 4011 of the Health and Safety Code is repealed.

SEC. 13. Section 4011 is added to the Health and Safety Code, to read:

4011. (a) No person shall operate a public water system unless he or she first submits an application to the department and receives a permit as provided in this chapter. A change in ownership of a public water system shall require the submission of a new application.

(b) The department may require a new application whenever a change in regulatory jurisdiction has occurred.

(c) The department may renew, reissue, revise, or amend any domestic water supply permit whenever the department deems it to be necessary for the protection of public health whether or not an application has been filed.

SEC. 14. Section 4012 of the Health and Safety Code is repealed.

SEC. 15. Section 4012 is added to the Health and Safety Code, to read:

4012. A public water system shall submit a technical report to the department as part of the permit application or when otherwise required by the department. This report may include, but not be limited to, detailed plans and specifications, water quality information, and physical descriptions of the existing or proposed system.

SEC. 16. Section 4013 of the Health and Safety Code is amended to read:

4013. Upon determination that an application submitted pursuant to this chapter is complete, the department shall make a thorough investigation of the proposed or existing plant, works, system, or water supply, and all other circumstances and conditions which it deems material.

SEC. 17. Section 4014 of the Health and Safety Code is repealed.

SEC. 18. Section 4014 is added to the Health and Safety Code, to read:

4014. Following completion of the investigation, the department shall issue or deny the permit. The department may impose such permit conditions, requirements for system improvements, and time schedules as it deems necessary to assure a reliable and adequate supply of water at all times which is pure, wholesome, potable, and does not endanger the health of consumers.

SEC. 19. Section 4015 of the Health and Safety Code is repealed.

SEC. 20. Section 4015 is added to the Health and Safety Code, to read:

4015. Prior to the issuance of any new, revised, renewed, or amended permit, or the denial of a permit, the department may conduct a public hearing to obtain additional public comment. Notice of the hearing shall be provided to the applicant and interested persons at least 30 days prior to the hearing. The department may require the applicant to distribute the notice of the hearing to affected consumers.

SEC. 21. Section 4016 of the Health and Safety Code is repealed.

SEC. 22. Section 4018 is added to the Health and Safety Code, to read:

4018. (a) The department shall develop and publish a list of all existing or proposed maximum contaminant levels which are set at a level substantially less stringent, as determined by the department, than their corresponding recommended public health levels due to limitations of technology or excessive costs.

(b) Public water systems which serve more than 10,000 service connections and which exceed, for organic contaminants on a running quarterly average basis, or for inorganic contaminants on a basis established by the department, a recommended public health level listed by the department pursuant to subdivision (a), shall do the following:

(1) The water system shall evaluate in writing all reasonable means of reducing the level of the contaminant to as close to the recommended public health level as feasible, and submit the written evaluation to the department at least once annually.

(2) After the written evaluation has been submitted and upon being notified by the department of the need to do so, the water system shall submit a water quality improvement plan to the department, based upon the evaluation. The water quality improvement plan shall identify all reasonable measures available to the water system to reduce the level of the contaminant, the costs to consumers and the water system of implementing the measures,

and a proposed schedule of actions to be undertaken by the water system to reduce the level of the contaminant. If the water system determines that it is unable to reduce the level of the contaminant due to technical or economic limitations, the basis for that determination shall be described in the plan.

(c) The department shall review the water quality improvement plan and may approve it as submitted or may require additional information from the water system. Upon approval of the plan, the department shall amend or revise the domestic water supply permit issued to the water system pursuant to this chapter to include a time schedule for implementation of those measures which are technically and economically feasible.

SEC. 23. Section 4019 of the Health and Safety Code is amended and renumbered to read:

4016. (a) No person operating a public water system shall modify, add to or change his or her source of supply or method of treatment of, or change his or her distribution system as authorized by a valid existing permit issued to him or her by the department unless the person first submits an application to the department and receives an amended permit as provided in this chapter authorizing the modification, addition, or change in his or her source of supply or method of treatment.

(b) Unless otherwise directed by the department, changes in distribution systems may be made without the submission of a permit application if the changes comply in all particulars with the waterworks standards.

SEC. 24. Section 4019 is added to the Health and Safety Code, to read:

4019. (a) Any public water system required to submit a water quality improvement plan to the department pursuant to Section 4018 shall pay a fee to the department to serve as reimbursement to the General Fund. The fee shall be paid to the department at the time the water quality improvement plan is submitted.

(b) The department shall adopt regulations establishing the amount of the fee and the method of payment. The fee shall be sufficient to cover the reasonable and necessary cost to the department to implement this article. In establishing the amount of the fee, the department shall take into consideration the amount of water purveyed and the number of service connections in the water system.

(c) A public water system, after payment of the fee pursuant to this section, shall be permitted to recover the fee from its customers.

SEC. 25. An article heading is added to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code immediately preceding Section 4020 thereof, to read:

Article 3. Drinking Water Program

SEC. 26. Section 4021 of the Health and Safety Code is repealed.

SEC. 27. Section 4021 is added to the Health and Safety Code, to read:

4021. (a) The department shall administer the provisions of this chapter and all other provisions relating to the regulation of drinking water to protect public health.

(b) The department shall also have the following responsibilities:

(1) Conduct research, studies, and demonstration projects relating to the provision of a dependable, safe supply of drinking water, including, but not limited to, all of the following:

(A) Improved methods to identify and measure the existence of contaminants in drinking water and to identify the source of the contaminants.

(B) Improved methods to identify, measure, and assess the potential adverse health effects of contaminants in drinking water.

(C) New methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove or reduce contaminants.

(D) Improved methods for providing a dependable, safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing health-related hazards.

(E) Improved methods of protecting the water sources of public water systems from contamination.

(F) Alternative disinfection technologies that minimize, reduce, or eliminate hazardous disinfection byproducts.

(2) Enforce provisions of the federal Safe Drinking Water Act and regulations adopted pursuant thereto.

(3) Adopt rules and regulations to implement this chapter.

(c) The department may conduct studies and investigations as it deems necessary to assess the quality of private domestic water wells.

SEC. 28. Section 4022 of the Health and Safety Code is repealed.

SEC. 29. Section 4022 is added to the Health and Safety Code, to read:

4022. (a) On or before July 1, 1991, the department shall submit to the Legislature a comprehensive Safe Drinking Water Plan for California.

(b) The Safe Drinking Water Plan shall include, but not be limited to, the following information:

(1) An analysis of the overall quality of California's drinking water and the identification of specific water quality problems.

(2) Types and levels of contaminants found in public drinking water systems which have less than 10,000 service connections. The discussion of these water systems shall include the following:

(A) Estimated costs of requiring these systems to meet primary drinking water standards and recommended public health levels.

(B) Recommendations for actions which could be taken by the Legislature, the department, and these systems to improve water

quality.

(3) A discussion and analysis of the known and potential health risks that may be associated with drinking water contamination in California.

(4) An evaluation of how existing water quality information systems currently maintained by local or state agencies can be more effectively used to protect drinking water.

(5) An evaluation of the research needed to develop inexpensive methods and instruments to ensure better screening and detection of water borne chemicals, and inexpensive detection methods which could be used by small utilities and consumers to detect harmful microbial agents in drinking water.

(6) An analysis of the technical and economic viability and the health benefits of various treatment techniques which can be used to reduce levels of trihalomethanes, lead, nitrates, synthetic organic chemicals, micro-organisms, and other contaminants in drinking water.

(7) A discussion of alternative methods of financing the construction, installation, and operation of new treatment technologies, including, but not limited to user charges, state or local taxes, state planning and construction grants, loans, and loan guarantees.

(8) A discussion of sources of revenue presently available, and projected to be available, to public water systems to meet current and future expenses.

(9) An analysis of the current cost of drinking water paid by residential, business, and industrial consumers based on a statewide survey of large, medium, and small public water systems.

(10) Specific recommendations, including recommendations developed pursuant to paragraph (6), to improve the quality of drinking water in California and a detailed five-year implementation program.

(c) (1) The department may levy a one-time fee on public water systems which serve more than 500 service connections for the exclusive purpose of covering its costs in preparing the safe drinking water plan.

(2) The fee shall be paid by water systems to the department at a rate of nine and fifteen one-hundredths cents ($0.0915) per service connection, up to a maximum amount of ten thousand dollars ($10,000).

(3) If a person, corporation, association, or private or public water utility owns or operates more than one water system, the fee required by paragraph (2) shall be based upon the aggregate number of service connections owned or operated by the person, corporation, association, or private or public utility.

(4) A public water system, after payment of the fee pursuant to this section, shall be permitted to recover the fee from its customers.

SEC. 30. The heading of Article 2 (commencing with Section 4023) of Chapter 7 of Part 1 of Division 5 of the Health and Safety

Code is repealed.

SEC. 31. Section 4023 is added to the Health and Safety Code, to read:

4023. The department shall establish recommended public health levels for contaminants in drinking water in accordance with all of the following criteria:

(a) Recommended public health levels, including those implementing the criteria set forth in subdivisions (b) to (h), inclusive, shall be set at a level which does not exceed the national primary drinking water standard adopted by the United States Environmental Protection Agency.

(b) Any recommended public health levels for an acutely toxic substance shall be set at a level at which scientific evidence indicates that no known or anticipated adverse effects on health will occur, plus an adequate margin of safety.

(c) Any recommended public health level established for a carcinogen or other substance which may cause chronic disease shall be based solely on health effects without regard to cost impacts or other factors, and shall be set at a level which the department has determined, based upon currently available data, does not pose any significant risk to health.

(d) To the extent the information is available, the department shall consider possible synergistic effects resulting from exposure to, or interaction by, two or more contaminants.

(e) The department shall consider the existence of groups or individuals in the population which are more susceptible to adverse effects of contaminants than a normal healthy adult.

(f) The department shall consider the contaminant exposure and body burden levels which alter physiological function or structure in a manner which may significantly increase the risk of illness.

(g) In cases of scientific ambiguity, the department shall use criteria most protective of public health and shall incorporate safety factors of noncarcinogenic substances for which generally accepted scientific research indicates there is a safe dose-response threshold.

(h) The department shall consider exposure to contaminants in media other than drinking water, including, but not limited to, exposures in food, in the ambient and indoor air, and the resulting body burden.

(i) Recommended public health levels established by the department shall be reviewed periodically and revised as necessary based upon the availability of new scientific data.

SEC. 32. Section 4023.1 is added to the Health and Safety Code, to read:

4023.1. (a) In addition to, and concurrent with, adoption of recommended public health levels established by the department pursuant to Section 4023, the department shall adopt primary drinking water standards for contaminants found in drinking water in accordance with the following criteria:

(1) Primary drinking water standards shall be set at a level which

is as close as practical to recommended public health levels placing primary emphasis on protection of public health.

(2) Primary drinking water standards shall be set using considerations of technical feasibility and economic costs of compliance to water purveyors and consumers.

(3) In no event shall primary drinking water standards be set at levels less stringent than primary drinking water standards set by the United States Environmental Protection Agency.

(b) At least once every five years after adoption, the department shall review primary drinking water standards, and, using the criteria set forth in subdivision (a), shall amend any standard if any of the following occur:

(1) Changes in technology or treatment techniques permit greater protection of public health or attainment of the recommended public health level.

(2) New scientific evidence indicates that a substance may present a substantially different risk to public health than was previously determined.

(3) The department determines that a primary standard no longer meets the requirements of this chapter.

(c) The department may, by regulation, require the use of a specified treatment technique in lieu of establishing a maximum contaminant level for a contaminant if the department determines that it is not economically or technologically feasible to ascertain the level of the contaminant.

SEC. 33. Section 4023.2 is added to the Health and Safety Code, to read:

4023.2. On or before January 1, 1992, the department shall propose, hold a public hearing, and promulgate a finding of the best available technology for each contaminant for which a recommended public health level and a primary drinking water standard have been adopted. Thereafter, the department shall promulgate a finding of best available technology for each contaminant for which a recommended public health level and a primary drinking water standard have been adopted at the time the levels and standards are adopted. The finding of the department shall take into consideration the costs and benefits of best available treatment technology that have been proven effective under full-scale field applications.

SEC 34. Section 4023.3 is added to the Health and Safety Code, to read:

4023.3. The department shall adopt rules and regulations it deems necessary to carry out the purposes of this chapter. The regulations shall include, but not be limited to, the following:

(a) The monitoring of contaminants including the type of contaminant, frequency and method of sampling and testing and the reporting of results.

(b) The monitoring of unregulated contaminants for which drinking water standards have not been established by the

department. The requirements shall be no less stringent than those promulgated pursuant to paragraph (2) of subsection (a) of Section 1445 of the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300j-4 (a)(2)). Until the time that the department adopts regulations regarding the monitoring of unregulated contaminants, the department may, by order, require any public water system which has been shown to contain detectable levels of any unregulated contaminants to conduct periodic water analyses in accordance with conditions specified by the department. The water analyses shall be reported on a quarterly basis unless the department finds that more or less frequent analysis is necessary.

(c) Requirements for the design, operation, and maintenance of public water systems, including, but not limited to, waterworks standards and the control of cross-connections, which the department determines are necessary to obtain, treat, and distribute a reliable and adequate supply of pure, wholesome, potable, and healthy water.

(d) Requirements for treatment, including disinfection of water supplies.

(e) Requirements for the filtration of surface water supplies at least as stringent as regulations promulgated pursuant to subparagraph (C) of paragraph (7) of subsection (b) of Section 1412 of the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-1 (b)(7)(C))

(f) Requirements for notifying the public of the quality of the water delivered to consumers.

SEC. 35. Section 4023.5 of the Health and Safety Code is repealed.

SEC. 36. Section 4024 of the Health and Safety Code is amended to read:

4024. Any person operating a public water system shall obtain and provide at that person's expense an analysis of the water to the department, in the form, covering those matters, and at such intervals as the department by regulation may prescribe. The analysis shall be performed by a laboratory duly certified by the department.

SEC. 37. Section 4026 of the Health and Safety Code is repealed.

SEC. 38. Section 4026.1 of the Health and Safety Code is repealed.

SEC. 39. Section 4026.2 of the Health and Safety Code is repealed.

SEC. 40. Section 4026.3 of the Health and Safety Code is amended to read.

4026.3. (a) The Legislature finds and declares all of the following:

(1) The large water system testing program has discovered chemical contamination of the state's drinking water with increasing frequency.

(2) A significant number of California residents rely on the state's small water systems to provide their water.

(3) The small systems, because they tend to be located in outlying rural areas where pesticide use is prevalent, and because they draw

their water from shallow aquifers, face a serious threat of contamination.

(4) Unchecked water sources that may be contaminated pose a potentially serious threat to the health of the citizens of California, particularly those living in outlying rural areas.

(5) It is in the interest of all Californians that a testing program for small public water systems be implemented and carried out as expeditiously as possible.

(b) For purposes of this section, "small public water system" means a system with 200 connections or less, and is one of the following:

(1) A community water system which serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents.

(2) A state small water system.

(3) A noncommunity water system such as a school, labor camp, institution, or place of employment, as designated by the department.

(c) The department shall conduct training workshops to assist health officers in evaluation of small public water systems for organic chemical contamination, and in sampling and testing procedures. The department shall, at a minimum, provide health officers with guidelines for evaluating systems and instructions for sampling.

(d) The department shall develop a schedule for conduct of the programs by the local health officers. The schedule shall establish a program to address first those systems with the most serious potential for contamination. The department shall enter into agreements with the local health agencies to conduct the necessary work to be performed pursuant to the schedule. The department shall begin the program no later than three months after September 19, 1985. All local health officers shall complete the evaluation, sampling, testing, review of sampling results, and notification to the public water systems within their jurisdiction in accordance with the agreements entered into with the department and within the schedule established by the department. All work required by this section shall be completed within three years after September 19, 1985.

(e) In consultation with the department, the local health officer shall conduct an evaluation of all small public water systems under their jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals. The evaluation shall include, but not be limited to:

(1) A review of the historical water quality data of each system to determine possible evidence of degradation.

(2) A review, to be coordinated with the State Water Resources Control Board, and the California regional water quality control boards, of past and present waste disposal practices that may potentially affect the respective well water supply.

(3) A review of other organic chemicals used in the water supply area which have potential health risks and which may have the

potential for contaminating drinking water supplies because of environmental persistence or resistance to natural degradation under conditions existing in California.

(f) Based upon the evaluation of each system, the local health officers shall develop a sampling plan for each system within their jurisdiction. The health officer shall collect samples in accordance with the plan and shall submit the samples for analysis to a certified laboratory designated by the department. When applicable, the laboratory shall test water samples using the Environmental Protection Agency's 13 approved analytical techniques established under subdivision (h) of Section 304 of the Clean Water Act to qualitatively identify the complete range of contaminants in the same class as the specific contaminant or class of contaminants being analyzed.

(g) Within 10 days of the receipt from the laboratory of the testing results, the local health officer shall notify the small public water system, the department and the California regional water quality control board for that region of the results.

(h) Following a review of the testing results, the local health officer may order the public water system to conduct a periodic water sampling and analysis program in accordance with conditions specified by the local health officer. The department shall provide ongoing advice and assistance to local health officers in interpreting test results and determining appropriate notification and followup activities in those instances where contaminants are found.

(i) This section shall be operative during any fiscal year only if the Legislature appropriates sufficient funds to pay for all state-mandated costs to be incurred by local agencies pursuant to this section during that year.

SEC. 40.5. Section 4026.4 is added to the Health and Safety Code, to read:

4026.4. If the department determines that a public water system is subject to potential contamination, the department may, by order, require the public water system to conduct a periodic water analysis in accordance with conditions specified by the department. The water analysis shall be reported on a quarterly basis, unless the department finds that reasonable action requires either more or less frequent analysis.

SEC. 41. Section 4026.5 of the Health and Safety Code is amended to read:

4026.5. (a) In counties with a population not exceeding 500,000 persons as shown by the 1970 federal decennial census, any public water system supplying both domestic and untreated irrigation water in separate pressurized systems which were in existence prior to January 1, 1990, and which is operated by an incorporated or unincorporated association of users, shall not require protection against backflow into the domestic water system from premises receiving both such water services and having available no other source of water, except where interconnection between such

systems has taken place. It shall be a misdemeanor for any person to knowingly interconnect such water services on a user's premises without installing a backflow protection device approved by the state department.

(b) Regulations of the state department requiring the installation of backflow protection shall not be continued to require the installation of such protection in any public water system described in subdivision (a), except as provided in that subdivision.

SEC. 42. Section 4026.6 is added to the Health and Safety Code, to read:

4026.6. The department shall establish a water quality technical advisory committee which shall advise the department on matters relating to regulations, policies, programs, and the development of the Safe Drinking Water Plan. The advisory committee shall be composed of knowledgeable persons representing consumers, local health agencies, water utilities, and consulting engineers. The members of the advisory committee shall be appointed by, and shall serve at the pleasure of, the director. The advisory committee shall meet at least once quarterly. Members of the advisory committee shall be reimbursed for all travel expenses incurred in connection with official activities of the advisory committee.

SEC. 43. Section 4027 of the Health and Safety Code is repealed.

SEC. 44. An article heading is added to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code immediately preceding Section 4027 thereof, to read:

Article 4. Exemptions and Variances

SEC. 45. Section 4027 is added to the Health and Safety Code, to read:

4027. (a) The department may exempt any public water system from any maximum contaminant level or treatment technique requirement if it finds all the following:

(1) The public water system was in operation, or had applied for a permit to operate, on the effective date of the maximum contaminant level or treatment technique requirement.

(2) Due to compelling factors, which may include economic factors, the public water system is unable to comply with the maximum contaminant level or treatment technique requirement.

(3) The granting of the exemption will not result in an unreasonable risk to health.

(b) If the department grants a public water system an exemption for a primary drinking water standard under subdivision (a), the department shall prescribe, at the time an exemption is granted, a schedule for both of the following:

(1) Compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted.

(2) Implementation by the public water system of interim control

measures the department may require for each contaminant or treatment technique requirement for which the exemption was granted.

(c) Any schedule prescribed by the department pursuant to this section shall require compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted within 12 months from the granting of the exemption.

(d) The final date for compliance with any schedule issued pursuant to this section may be extended by the department for a period not to exceed three years from the date of the granting of the exemption if the department finds all of the following:

(1) The system cannot meet the standard without capital improvements which cannot be completed within the period of the exemption.

(2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain the financial assistance or the system has entered into an enforceable agreement to become part of a regional public water system.

(3) The system is taking all practicable steps to meet the standard.

(e) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted pursuant to paragraph (2) of subdivision (d) may be renewed for one or more additional two-year periods if the system establishes that it is taking all practicable steps to meet the requirements of subdivision (d).

(f) Prior to the granting of an exemption pursuant to this section, the department shall provide notice and an opportunity for a public hearing. Notice of any public hearing held pursuant to this section shall be given by the department in writing to the public water system seeking the exemption and to the public as provided in Section 6061 of the Government Code.

SEC. 46. Section 4027.5 is added to the Health and Safety Code, to read:

4027.5. (a) The department may grant a variance or variances from primary drinking water standards to a public water system. Any variance granted pursuant to this section shall conform to the requirements established under the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-4).

(b) At the request of the Board of Directors of Big Bear City Community Services District or the Twentynine Palms Water District, the department shall grant a variance from the primary maximum contaminant level for fluoride contained in Title 22 of the California Code of Regulations unless the department, after a public hearing, determines that there is substantial community opposition to the variance. A variance granted under this subdivision shall prohibit fluoride levels in excess of 75 percent of the federal Environmental Protection Agency standard or three milligrams per

liter, whichever is higher, shall be valid for a period up to 30 years, and shall provide that the variance may be withdrawn upon reasonable notice by the department if the department determines that the community no longer accepts the fluoride level authorized in the variance. If substantial community concerns arise, the board of directors of the district which has jurisdiction shall conduct public hearings, determine the fluoride level which is acceptable to the community, and apply to the department for appropriate changes in the variance.

SEC. 47. An article heading is added to Chapter 7 (commencing with Section 4010) of Part 1 of Division 5 of the Health and Safety Code immediately preceding Section 4028 thereof, to read:

Article 5. Public Notification

SEC. 48. Section 4028 of the Health and Safety Code is amended to read:

4028. (a) When any primary drinking water standard specified in the department's regulations is not complied with, when a monitoring requirement specified in the department's regulations is not performed, or when a water purveyor fails to comply with the conditions of any variance or exemption, the person operating the public water system shall notify the department and shall give notice to the users of that fact in the manner prescribed by the department. When a variance or an exemption is granted, the person operating the public water system shall give notice to the users of that fact.

(b) When a person operating a public water system determines that a significant rise in the bacterial count of water has occurred in water he or she supplies, the person shall provide, at his or her expense, a report on the rise in bacterial count of the water, together with the results of an analysis of the water, within 24 hours to the department and, where appropriate, to the county health officer.

(c) When the department receives the information described in subdivision (b) and determines that it constitutes an immediate danger to health, the department shall immediately notify the person operating the public water system to implement the emergency notification plan required by this chapter.

(d) In the case of a failure to comply with any primary drinking water standard which represents an imminent danger to the health of water users, the operator shall notify each of his or her customers as provided in the approved emergency notification plan.

(e) In addition, the same notification requirement shall be required in any instance in which the department or the county health department recommends to the operator that it notify its customers to avoid internal consumption of the water supply and to use bottled water due to a chemical contamination problem which may pose a health risk.

(f) The content of the notices required by this section shall be approved by the department. Notice shall be repeated at intervals,

as required by the department, until the department concludes that there is compliance with its standards or requirements. Notices may be given by the department.

In any case where public notification is required by this section because a contaminant is present in drinking water at a level in excess of a primary drinking water standard, the notification shall include identification of the contaminant, information on possible effects of the contaminant on human health, and information on specific measures which should be taken by persons or populations who might be more acutely affected than the general population.

(g) Whenever a school or school system, the owner or operator of residential rental property, or the owner or operator of a business property receives a notification from a person operating a public water system under any provision of this section, the school or school system shall notify school employees, students and parents if the students are minors, the owner or operator of a residential rental property shall notify tenants, and the owner or operator of business property shall notify employees of businesses located on the property.

(1) The operator shall provide the customer with a sample notification form which may be used by the customer in complying with this subdivision and which shall indicate the nature of the problem with the water supply and the most appropriate methods for notification which may include, but is not limited to, the sending of a letter to each water user and the posting of a notice at each site where drinking water is dispensed.

(2) The notice required by this subdivision shall be given within 10 days of receipt of notification from the person operating the public water system.

(3) Any person failing to give notice as required by this subdivision shall be civilly liable in an amount not to exceed one thousand dollars ($1,000) for each day of failure to give notice.

(4) If the operator has evidence of noncompliance with this subdivision the operator shall report this information to the county health department and the department.

SEC. 49. Section 4029 of the Health and Safety Code is amended to read:

4029. No person shall operate a public water system without an emergency notification plan which has been submitted to and approved by the department. The emergency notification plan shall provide for immediate notice to the customers of the public water system of any significant rise in the bacterial count of water or other failure to comply with any primary drinking water standard which represents an imminent danger to the health of the water users.

No permit, variance, or exemption may be issued or amended under this chapter until an emergency notification plan has been approved by the department.

The department shall adopt rules and regulations to implement the provisions of this section. The rules and regulations may provide

for the exclusion of public water systems from the requirements of this section when, in the judgment of the department, the exclusion will best serve the public interest.

SEC. 50. Section 4030 of the Health and Safety Code is repealed.

SEC. 51. Section 4030 is added to the Health and Safety Code, to read:

4030. The department shall require every public water system, as a condition of operation, to report at least once annually to water consumers on the level of contaminants in drinking water which pose a potential risk to human health. The report shall include, but not be limited to, information on source, content, and quality of water purveyed, a comparison between levels of contaminants and recommended public health levels; and information on compliance with primary drinking water standards.

SEC. 52. The heading of Article 3 (commencing with Section 4031) of Chapter 7 of Part 1 of Division 5 of the Health and Safety Code is amended and renumbered to read:

Article 6. Violations

SEC. 53. Section 4031 of the Health and Safety Code is amended to read:

4031. (a) The department, after a hearing noticed and conducted as provided in Section 11500 of the Government Code, may suspend or revoke any permit issued pursuant to this chapter if the department determines pursuant to the hearing that the permittee is not complying with the permit, this chapter, or any regulation, standard, or order issued or adopted thereunder, or that the permittee has made a false statement or representation on any application, record, or report maintained or submitted for purposes of compliance with this chapter.

(b) The permittee may file with the superior court a petition for a writ of mandate for review of any decision of the department made pursuant to subdivision (a). Failure to file a petition shall not preclude a party from challenging the reasonableness or validity of a decision of the department in any judicial proceeding to enforce the decision or from pursuing any remedy authorized by this chapter.

(c) The department may temporarily suspend any permit issued pursuant to this chapter prior to any hearing when the action is necessary to prevent an imminent or substantial danger to health. The director shall notify the permittee of the temporary suspension and the effective date thereof and, at the same time, notify the permittee that a hearing has been scheduled. The hearing shall be held as soon as possible, but not later than 15 days after the effective date of the temporary suspension. The temporary suspension shall remain in effect until the hearing is completed and the director has made a final determination on the merits, which in any event shall be made within 15 days after the completion of the hearing. If the

determination is not transmitted within 15 days after the hearing is completed, the temporary suspension shall be of no further effect.

SEC. 54. The heading of Article 4 (commencing with Section 4032) of Chapter 7 of Part 1 of Division 5 of the Health and Safety Code is amended and renumbered to read:

Article 7. Remedies

SEC. 55. Section 4032 of the Health and Safety Code is amended to read:

4032. (a) If the department determines that a public water system is in violation of this chapter or any regulation, permit, standard, or order issued or adopted thereunder, the department may issue a citation to the public water system. The citation shall be served upon the public water system personally or by registered mail.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, order, or regulation alleged to have been violated.

(c) For continuing violations, the citation shall fix the earliest feasible time for elimination or correction of the condition constituting the violation where appropriate. If the public water system fails to correct a violation within the time specified in the citation, the department may assess a civil penalty as specified in subdivision (e).

(d) For a noncontinuing violation of primary drinking standards, other than turbidity, the department may assess in the citation a civil penalty as specified in subdivision (e).

(e) Citations issued pursuant to this section shall be classified according to the nature of the violation or the failure to comply. The department shall specify the classification in the citation and may assess civil penalties for each classification as follows:

(1) For violation of a primary drinking standard, other than turbidity, an amount not to exceed one thousand dollars ($1,000) for each day that the violation occurred for noncontinuing violations or for each day that the violation continues beyond the date specified for correction in the citation.

(2) For failure to comply with any citation or order issued for failure of the primary drinking water standard for turbidity or for violation of a secondary drinking water standard which the director determines may have a direct or immediate relationship to the welfare of the users, an amount not to exceed two hundred fifty dollars ($250) for each day that the violation continues beyond the date specified for correction in the citation.

(3) For failure to comply with any citation or order issued for noncompliance with any department regulation or order, other than a primary or secondary drinking water standard, an amount not to exceed two hundred dollars ($200) per day for each day the violation

continues beyond the date specified for correction in the citation.

SEC. 56. Section 4036.5 of the Health and Safety Code is amended to read:

4036.5. Notwithstanding Sections 4010.8 and 4010.9, the department may, after consultation with the local health officer, take any action authorized by this chapter against a public water system with less than 200 service connections if any of the following occur:

(a) The public water system has been in violation of any provision of this chapter or the regulations adopted hereunder, including any violation of compliance with drinking water standards or waterworks standards, for a period of at least 90 days within the previous year.

(b) A contaminant is present in, or likely to enter, a public water system and presents an imminent and substantial danger to the health of the users of the system.

SEC. 57. The heading of Article 4.5 (commencing with Section 4037) of Chapter 7 of Part 1 of Division 5 of the Health and Safety Code is amended and renumbered to read:

Article 8. Judicial Review

SEC. 58. The heading of Article 5 (commencing with Section 4037.5) of Chapter 7 of Part 1 of Division 5 of the Health and Safety Code is amended and renumbered to read:

Article 9. Crimes and Penalties

SEC. 59. Section 4039 of the Health and Safety Code is amended to read:

4039. (a) In order to carry out the purposes of this chapter, any duly authorized representative of the department may, at any reasonable hour of the day, do any of the following:

(1) Enter and inspect any public water system or any place where the public water system records are stored, kept, or maintained.

(2) Inspect and copy any records, reports, test results, or other information required to carry out this chapter.

(3) Set up and maintain monitoring equipment for purposes of assessing compliance with this chapter.

(4) Obtain samples of the water supply.

(5) Photograph any portion of the system, any activity, or any sample taken.

(b) The department shall inspect each public water system at least annually, and shall provide an opportunity for a representative of the public water system to accompany the representative of the department during the inspection of the water system.

(c) It shall be a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way any duly authorized representative of the department from undertaking the activities authorized by subdivision (a).

SEC. 60. Section 4039.1 is added to the Health and Safety Code,

to read:

4039.1. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Attorney General or the district attorney shall recover the amount for which the person is liable in the superior court. In this action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

SEC. 61. Section 4039.6 is added to the Health and Safety Code, to read:

4039.6. (a) Any person who tampers with a public water system is guilty of a felony and shall be punished by imprisonment in the state prison for three, four, or five years, subject to a fine not to exceed thirty thousand dollars ($30.000), or both.

(b) Any person who tampers with or makes a threat to tamper with a public water system is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, two, or three years, subject to a fine not to exceed twenty thousand dollars ($20,000), or both.

(c) For purposes of this section, the term "tamper" means either of the following:

(1) To introduce a contaminant into a public water system with the intention of harming persons.

(2) To otherwise interfere with the operation of a public water system with the intention of harming persons.

SEC. 62. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 824

An act to amend Sections 799.01, 799.02, 799.03, 799.06, and 799.09 of, and to add Section 799.10 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 799.01 of the Insurance Code is amended to read:

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 blood 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.

SEC. 1.5. Section 799.02 of the Insurance Code is amended to read:

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 by or at the direction of the insurer on the same specimen of the applicant's blood.

This authorization applies only to policies, certificates, and applications for coverage (a) that is issued, delivered, or received on

or after the effective date of the urgency statute amending this section enacted during the 1989 portion of the 1989–90 Regular Session and (b) the issuance or granting of which is otherwise contingent upon medical review for other diseases or medical conditions to be effective.

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.

SEC. 2. Section 799.03 of the Insurance Code is amended to read:

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 article and Article 6.6 (commencing with Section 791). Notwithstanding any other provision of law, this constitutes the exclusive requirements for counseling, informed consent, and privacy protection for that testing.

(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.

SEC. 3. Section 799.06 of the Insurance Code is amended to read:

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). On and after January 1, 1990, no application or enrollment request for life or disability income insurance shall contain a question pertaining to prior testing for HIV antibodies, unless the question is limited in scope to prior testing for the purpose of obtaining insurance.

SEC. 4. Section 799.09 of the Insurance Code is amended to read:

799.09. No life or disability income insurer shall require an HIV antibody test if the results of the test would be used exclusively or nonexclusively for the purpose of determining eligibility for hospital, medical, or surgical insurance coverage or eligibility for coverage under a nonprofit hospital service plan or health care service plan.

SEC. 5. Section 799.10 is added to the Insurance Code, to read:

799.10. (a) This section shall apply to the disclosure of the results of HIV antibody tests requested by an insurer pursuant to this article and, notwithstanding the provisions of Section 199.21 of the Health and Safety Code, Section 199.21 of the Health and Safety Code does not apply to the disclosure of the results of HIV antibody tests conducted pursuant to this article.

(b) Any person who negligently discloses results of an HIV antibody 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 this article or in Section 1603.1 or 1603.3 of the Health and Safety Code, 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.

(c) Any person who willfully discloses the results of an HIV antibody 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 this article or in Section 1603.1 or 1603.3 of the Health and Safety Code, 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.

(d) Any person who willfully or negligently discloses the results of an HIV antibody 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 this article or in Section 1603.1 or 1603.3 of the Health and Safety Code, 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, by a fine of not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(e) Any person who commits any act described in subdivision (b) or (c) 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.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(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.

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

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 provisions of Chapter 1279 of the Statutes of 1988 and to thereby avoid confusion, without delay, it is necessary that this act take effect immediately.

CHAPTER 825

An act to add Article 5.5 (commencing with Section 1558) to Chapter 3 of Division 2 of, Article 5.5 (commencing with Section 1569.58) to Chapter 3.3 of Division 2 of, and Article 4.5 (commencing with Section 1596.8897) to Chapter 3.4 of Division 2 of, the Health and Safety Code, relating to care facilities.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Article 5.5 (commencing with Section 1558) is added to Chapter 3 of Division 2 of the Health and Safety Code, to read:

Article 5.5. Employee Actions

1558. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee or prospective employee who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations

promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The employee or prospective employee, the facility, and the licensee shall be given written notice of the basis of the department's action and of the employee's or prospective employee's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the employee or prospective employee may file with the department a written request for a hearing. If the employee or prospective employee fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) The department may require that an employee or prospective employee not work or be present in a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(d) Upon receipt by the department of a written request for a hearing, a hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(e) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1550.

SEC. 2. Article 5.5 (commencing with Section 1569.58) is added to Chapter 3.3 of Division 2 of the Health and Safety Code, to read:

Article 5.5. Employee Actions

1569.58. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee or prospective employee who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a

facility, when that person has been convicted of a crime as defined in Section 1569.17.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The employee or prospective employee, the facility, and the licensee shall be given written notice of the basis of the department's action and of the employee's or prospective employee's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the employee or prospective employee may file with the department a written request for a hearing. If the employee or prospective employee fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) The department may require that an employee or prospective employee not work or be present in a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(d) Upon receipt by the department of a written request for a hearing, a hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(e) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1569.50.

SEC. 3. Article 4.5 (commencing with Section 1596.8897) is added to Chapter 3.4 of Division 2 of the Health and Safety Code, to read:

Article 4.5. Employee Actions

1596.8897. (a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee or prospective employee who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(b) The employee or prospective employee, the facility, and the licensee shall be given written notice of the basis of the department's action and of the employee's or prospective employee's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the employee or prospective employee may file with the department a written request for a hearing. If the empoyee or prospective employee fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) The department may require that an employee or prospective employee not work or be present in a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(d) Upon receipt by the department of a written request for a hearing, a hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(e) A licensee's failure to comply with the department's prohibition of employment or presence in the facility shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1599.886.

CHAPTER 826

An act to amend Sections 7145, 12002.1, and 12002.2 of, and to add Section 1054.2 to, the Fish and Game Code, relating to fish and game.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 1054.2 is added to the Fish and Game Code, to read:

1054.2. Every person while engaged in taking any bird, mammal, fish, amphibian, or reptile shall have on his or her person or in his or her immediate possession, or where otherwise specifically required by law to be kept, any license, license tag, license stamp, or permit that is required in order to take the bird, mammal, fish, amphibian, or reptile. In the case of a person diving from a boat, the license or permit may be kept on the boat, or in the case of a person diving from shore, the license or permit may be kept within 500 yards on the shore.

SEC. 2. Section 7145 of the Fish and Game Code is amended to

read:

7145. Except as otherwise provided in this article, every person over the age of 16 years who takes any fish, reptile, or amphibia for any purpose other than profit shall first obtain a license for that purpose and shall have that license on his or her person or in his or her immediate possession or where otherwise specifically required by law to be kept when engaged in carrying out any activity authorized by the license. In the case of a person diving from a boat, the license may be kept in the boat, or in the case of a person diving from the shore, the license may be kept within 500 yards on the shore.

SEC. 3. Section 12002.1 of the Fish and Game Code is amended to read:

12002.1. (a) Notwithstanding Section 12002, the punishment for taking a mammal or bird for which a hunting license issued pursuant to Section 3031 is required or a license tag or license stamp is required, without having in one's possession the required, valid license, or without having in one's possession any required license tag or license stamp, or when the taking of that mammal or bird is prohibited by allowable season, limit, time, or area, is punishable by a fine of not more than two thousand dollars ($2,000), or imprisonment in the county jail for not more than one year, or both that fine and imprisonment, or by any greater punishment prescribed by this code.

(b) If a person is convicted of an offense described in subdivision (a) and produces in court a license, license tag, or license stamp, issued to the person and valid at the time of the person's arrest and if the taking was otherwise lawful with respect to season, limit, time, and area, the court may reduce the fine imposed for the violation to fifty dollars ($50).

SEC. 4. Section 12002.2 of the Fish and Game Code is amended to read:

12002.2. (a) Notwithstanding any other provision of law, a violation of Section 7145 is an infraction and not a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500). If a person is convicted of a violation of Section 7145 within five years of a separate offense resulting in a conviction of a violation of Section 7145, that person shall be punished by a fine of not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500). If a person convicted of a violation of Section 7145 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or 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 7145 and produces in court a license issued pursuant to Section 7146 and valid at the time of the person's arrest, and if the taking was otherwise lawful with respect to season, limit, time, and area, the court may reduce the fine imposed for the violation of Section 7145 to fifty

dollars ($50).

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

CHAPTER 827

An act to add Section 3716.5 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 3716.5 is added to the Labor Code, to read:

3716.5. In the payment of workers' compensation benefits from the Uninsured Employers Fund, the director shall do the following:

(a) Designate the job classifications of employees who are paid compensation from the fund.

(b) Compile data on the job classifications of employees paid compensation from the fund and report this data to the Legislature by November 1, 1990, and annually thereafter.

CHAPTER 828

An act to amend Sections 7260, 7261, 7262, 7263, 7264, 7264.5, 7265, 7267.1, 7267.7, 7267.8, and 7276 of, to add Section 7260.5 to, and to repeal Section 7261.6 of, the Government Code, relating to relocation assistance.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 7260 of the Government Code is amended to read:

7260. As used in this chapter:

(a) "Public entity" includes the state, the Regents of the

University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property, or any interest therein, in any city or county for public use and any person who has the authority to acquire property by eminent domain under state law.

(b) "Person" means any individual, partnership, corporation, or association.

(c) "Displaced person" means both of the following:

(1) Any person who moves from real property, or who moves his or her personal property from real property, either:

(A) As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with or acting on behalf of a public entity.

(B) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

(2) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(A) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a public entity.

(B) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

This definition shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use. Except persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing which was made available to them on a permanent basis by a public agency and who are required to move from the housing, a "displaced" person shall not include any of the following:

(1) Any person who has been determined to be in unlawful occupancy of the displacement dwellings.

(2) Any person whose right of possession at the time of moving arose after the date of the public entity's acquisition of the real

property.

(3) Any person who has occupied the real property for the purpose of obtaining assistance under this chapter.

(4) In any case in which the public entity acquires property for a program or project (other than a person who was an occupant of the property at the time it was acquired), any person who occupies the property for a period subject to termination when the property is needed for the program or project.

(d) "Business" means any lawful activity, except a farm operation, conducted for any of the following:

(1) Primarily for the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property.

(2) Primarily for the sale of services to the public.

(3) Primarily by a nonprofit organization.

(4) Solely for the purpose of Section 7262 for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted.

(e) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(f) "Affected property" means any real property which actually declines in fair market value because of acquisition by a public entity for public use of other real property and a change in the use of the real property acquired by the public entity.

(g) "Public use" means a use for which real property may be acquired by eminent domain.

(h) "Mortgage" means classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(i) "Comparable replacement dwelling" means any dwelling that is all of the following:

(1) Decent, safe, and sanitary.

(2) Adequate in size to accommodate the occupants.

(3) In the case of a displaced person who is a renter, within the financial means of the displaced person. A comparable replacement dwelling is within the financial means of a displaced person if the monthly rental cost of the dwelling minus any replacement housing payment available to the person does not exceed 25 percent of the person's average monthly income.

(4) Comparable with respect to the number of rooms, habitable space, and type and quality of construction. Comparability under this paragraph shall not require strict adherence to a detailed, feature-by-feature comparison. While a comparable replacement

dwelling need not possess every feature of the displacement dwelling, the principal features shall be present.

(5) In an area not subject to unreasonable adverse environmental conditions.

(6) In a location generally not less desirable than the location of the displaced persons dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(j) "Displacing agency" means any public entity or person carrying out a program or project which causes a person to be a displaced person for a public project.

(k) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(*l*) "Small business" means a business as defined in Part 24 of Title 49 of the Code of Federal Regulations.

(m) "Lead agency" means the Department of Housing and Community Development.

SEC. 2. Section 7260.5 is added to the Government Code, to read:

7260.5. (a) The Legislature finds and declares the following:

(1) Displacement as a direct result of programs or projects undertaken by a public entity is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition.

(2) Relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons.

(3) The displacement of businesses often results in their closure.

(4) Minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities.

(5) Implementation of this chapter has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which may be improved by establishing a lead agency.

(b) This chapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a public entity. The primary purpose of this chapter is to ensure that these persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on these persons.

(c) The Legislature intends all of the following:

(1) Public entities shall carry out this chapter in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs.

(2) Uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this chapter.

(3) The improvement of housing conditions of economically disadvantaged persons under this chapter shall be undertaken, to the maximum extent feasible, in coordination with existing federal, state, and local government programs for accomplishing these goals.

(4) The policies and procedures of this chapter shall be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under Title VIII of that act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964.

SEC. 3. Section 7261 of the Government Code is amended to read:

7261. (a) Programs or projects undertaken by a public entity shall be planned in a manner that (1) recognizes, at an early stage in the planning of the programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of these problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion. The head of the displacing agency shall ensure the relocation assistance advisory services described in subdivision (c) are made available to all persons displaced by the public entity. If the agency determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency may make the advisory services available to the person.

(b) In giving this assistance, the public entity may establish local relocation advisory assistance offices to assist in obtaining replacement facilities for persons, businesses, and farm operations which find that it is necessary to relocate because of the acquisition of real property by the public entity.

(c) This advisory assistance shall include those measures, facilities, or services which are necessary or appropriate to do all of the following:

(1) Determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance.

(2) Provide current and continuing information on the availability, sales prices, and rentals of comparable replacement dwellings for displaced homeowners and tenants, and suitable locations for businesses and farm operations.

(3) Assure that, within a reasonable time period prior to displacement, to the extent that it can be reasonably accomplished, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of displaced families and individuals, decent, safe, and sanitary dwellings, sufficient in number to meet the needs of, and available to, those displaced persons requiring those dwellings and reasonably accessible to their places of

employment, except that, in the case of a federally funded project, a waiver may be obtained from the federal government.

(4) Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of any of the following:

(A) A major disaster as defined in Section 102(2) of the federal Disaster Relief Act of 1974.

(B) A state of emergency declared by the President or Governor.

(C) Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of the dwelling by the person constitutes a substantial danger to the health or safety of the person.

(5) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.

(6) Supply information concerning other federal and state programs which may be of assistance to those persons in applying for assistance under the program.

(7) Provide other advisory services to displaced persons in order to minimize hardships to those persons.

(d) The head of the displacing agency shall coordinate its relocation assistance program with the project work necessitating the displacement and with other planned or proposed activities of other public entities in the community or nearby areas which may affect the implementation of its relocation assistance program.

(e) Notwithstanding subdivision (c) of Section 7260, in any case in which a displacing agency acquires property for a program or project, any person who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project, shall be eligible for advisory services to the extent determined by the displacing agency.

SEC. 4. Section 7261 6 of the Government Code is repealed.

SEC. 5. Section 7262 of the Government Code is amended to read:

7262. (a) Whenever a program or project to be undertaken by a public entity will result in the displacement of any person, the displaced person is entitled to payment for actual moving and related expenses as the public entity determines to be reasonable and necessary, including expenses for all of the following:

(1) Actual and reasonable expenses in moving himself or herself, his or her family, business, or farm operation, or his or her, or his or her family's, personal property.

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the public entity.

(3) Actual and reasonable expenses in searching for a

replacement business or farm, not to exceed one thousand dollars ($1,000).

(4) Actual and reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed ten thousand dollars ($10,000).

(b) Any displaced person eligible for payments under subdivision (a) who is displaced from a dwelling and who elects to accept the payments authorized by this subdivision in lieu of the payments authorized by subdivision (a) shall receive a moving expense and dislocation allowance which shall be determined according to a schedule established by the head of the lead agency. The schedule shall be consistent with the Residential Moving Expense and Dislocation Allowance Payment Schedule established by Part 24 of Title 49 of the Code of Federal Regulations.

(c) Any displaced person who moves or discontinues his or her business or farm operation and elects to accept the payment authorized by this subdivision in lieu of the payment authorized by subdivision (a), shall receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment shall not be less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000). In the case of a business, no payment shall be made under this subdivision, unless the public entity is satisfied that the business cannot be relocated without substantial loss of patronage and is not part of a commercial enterprise having at least one other establishment not being acquired, engaged in the same or similar business. For purposes of this subdivision, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation before federal, state, and local income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property being acquired, or during any other period as the public entity determines to be more equitable for establishing earnings, and includes any compensation paid by the business or farm operation to the owner, his or her spouse, or his or her dependents during the two-year or other period. To be eligible for the payment authorized by this subdivision, the business or farm operation shall make available its state income tax records, financial statements, and accounting records, for confidential use pursuant to an audit to determine the payment pursuant to this subdivision. In regard to an outdoor advertising display, payment pursuant to this subdivision shall be limited to the amount necessary to physically move, or replace that display. Any displaced person eligible for payments under subdivision (a) who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the public entity, may elect to accept a fixed payment in lieu of the payment authorized by subdivision (a). The fixed payment shall not be less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000). A person whose sole

business at the displacement dwelling is the rental of the property to others shall not qualify for a payment under this subdivision.

(d) Whenever the acquisition of real property used for a business or farm operation causes the person conducting the business or farm operation to move from other real property, or to move his or her personal property from other real property, the person shall receive payments for moving and related expenses under subdivision (a) or (b) and relocation advisory assistance under Section 7261 for moving from the other property.

(e) Whenever a public entity must pay the cost of moving a displaced person under paragraph (1) of subdivision (a), or subdivision (d):

(1) The costs of the move shall be exempt from regulation by the Public Utilities Commission.

(2) The public entity may solicit competitive bids from qualified bidders for performance of the work. Bids submitted in response to the solicitations shall be exempt from regulation by the Public Utilities Commission.

SEC. 6. Section 7263 of the Government Code is amended to read:

7263. (a) In addition to the payments required by Section 7262, the public entity, as a part of the cost of acquisition, shall make a payment to the owner of real property acquired for public use which is improved with a dwelling actually owned and occupied by the owner as a permanent or customary and usual place of abode for not less than 180 days prior to the initiation of negotiation for the acquisition of that property.

(b) The payment, not to exceed twenty-two thousand five hundred dollars ($22,500), shall be based on the following factors:

(1) The amount, if any, which, when added to the acquisition cost of the dwelling acquired by the public entity equals the reasonable cost of a comparable replacement dwelling.

(2) The amount, if any, which will compensate the displaced owner for any increased interest costs which the owner is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of the dwelling. All of the mortgages on the acquired dwelling shall be used to compute the payment. The amount shall be computed using the lesser of the principal balance of the mortgage on the replacement dwelling or the outstanding principal balance of the mortgage on the acquired dwelling and the lesser of the remaining term on the acquired dwelling or the actual term of the new mortgage. The present value of the increased interest costs shall be computed based on the lesser of the prevailing interest rate or the actual interest rate on the replacement property. The amount shall also include other reasonable debt service costs incurred by the

displaced owner.

For the purposes of this subdivision, if the replacement dwelling is a mobilehome, the term "mortgage," as defined in subdivision (h) of Section 7260, shall include those liens as are commonly given to secure advances on, or the unpaid purchase price of, mobilehomes, together with the credit instruments, if any, secured thereby.

(3) Reasonable expenses incurred by the displaced owner for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(c) The additional payment authorized by this section shall be made only to a displaced owner who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year from the later of the following:

(1) The date the displaced person receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of estimated just compensation is deposited in court.

(2) The date the displacing agency fulfulls its obligation to make available at least one comparable replacement dwelling to the displaced person.

However, the displacing agency may extend the period for good cause. Also, the displaced owner and the public entity may agree in writing that the displaced owner may remain in occupancy of the acquired dwelling as a tenant of the public entity on the conditions that the displaced owner shall only be entitled to the payment authorized by this section on the date on which the owner moves from the acquired dwelling and that the payment shall be in an amount equal to that to which the owner would have been entitled if the owner had purchased and occupied a replacement dwelling one year subsequent to the date on which final payment was received for the acquired dwelling from the public entity.

(d) In implementing this chapter, it is the intent of the Legislature that special consideration be given to the financing and location of a comparable replacement dwelling for displaced persons 62 years of age or older.

SEC. 7. Section 7264 of the Government Code is amended to read:

7264. (a) In addition to the payments required by Section 7262, as a part of the cost of acquisition, the public entity shall make a payment to any displaced person displaced from any dwelling not eligible to receive a payment under Section 7263 which was actually and lawfully occupied by the person as a permanent or customary and usual place of abode for not less than 90 days prior to the initiation of negotiation by the public entity for the acquisition of the dwelling, or in any case in which displacement is not a direct result of acquisition, or any other event which the public entity shall prescribe.

(b) The payment, not to exceed five thousand two hundred fifty dollars ($5,250), shall be the additional amount which is necessary to

enable the person to lease or rent a comparable replacement dwelling for a period not to exceed 48 months. However, publicly funded transportation projects shall make payments enabling the person to lease or rent a comparable replacement dwelling for a period not to exceed 42 months, including compensation for utilities, as provided in subdivision (b) of Section 24.402 of Part 24 of Title 49 of the Code of Federal Regulations. Payments up to the maximum of five thousand two hundred fifty dollars ($5,250) shall be made in a lump sum. Should an agency pay pursuant to Section 7264.5 an amount exceeding the maximum amount, payment may be made periodically. Computation of a payment under this subdivision to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income.

(c) Any person eligible for a payment under subdivision (a) may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. The person may, at the discretion of the public entity, be eligible under this subdivision for the maximum payment allowed under subdivision (b), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment shall not exceed the payment which the person would otherwise have received under subdivision (b) of Section 7263 had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of the negotiations.

(d) In implementing this chapter, it is the intent of the Legislature that special consideration shall be given to assisting any displaced person 62 years of age or older to locate or lease or rent a comparable replacement dwelling.

SEC. 8. Section 7264.5 of the Government Code is amended to read:

7264.5. (a) If a program or project undertaken by the public entity cannot proceed on a timely basis because comparable replacement housing is not available and the public entity determines that comparable replacement housing cannot otherwise be made available, the public entity shall take any action necessary or appropriate to provide the dwellings by use of funds authorized for the project. This section shall be construed to authorize the public entity to exceed the maximum amounts which may be paid under Sections 7263 and 7264 on a case-by-case basis for good cause as determined in accordance with rules and regulations adopted by the public entity. Where a displacing agency is undertaking a project with funds administered by a state agency or board, and where the displacing agency has adopted rules and regulations in accordance with Section 7267.8 for the implementation of this chapter, the determination of payments to be made pursuant to this subdivision shall be pursuant to those rules and regulations.

(b) No person shall be required to move from his or her dwelling because of its acquisition by a public entity, unless comparable replacement housing is available to the person.

(c) For purposes of determining the applicability of subdivision (a), the public entity is hereby designated as a duly authorized administrative body of the state for the purposes of subdivision (c) of Section 408 of the Revenue and Taxation Code.

(d) Subdivision (b) shall not apply to a displaced owner who agrees in writing with the public entity to remain in occupancy of the acquired dwelling as provided in subdivision (c) of Section 7263.

SEC. 9. Section 7265 of the Government Code is amended to read:

7265. (a) In addition to the payments required by Section 7262, as a cost of acquisition, the public entity shall make a payment to any affected property owner meeting the requirements of this section.

(b) The affected property shall be immediately contiguous to property acquired for airport purposes and the owner shall have owned the property affected by acquisition by the public entity not less than 180 days prior to the initiation of negotiation for acquisition of the acquired property.

(c) The payment, not to exceed twenty-two thousand five hundred dollars ($22,500), shall be the amount, if any, which equals the actual decline in the fair market value of the property of the affected property owner caused by the acquisition by the public entity for airport purposes of other real property and a change in the use of the property.

(d) The amount, if any, of actual decline in fair market value of affected property shall be determined according to rules and regulations adopted by the public entity pursuant to this chapter. The rules and regulations shall limit payment under this section only to those circumstances in which the decline in fair market value of affected property is reasonably related to objective physical change in the use of acquired property.

SEC. 10. Section 7267.1 of the Government Code is amended to read:

7267.1. (a) The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during his or her inspection of the property. However, the public entity may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

SEC. 11. Section 7267.7 of the Government Code is amended to read:

7267.7. (a) If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the public entity shall offer to

acquire the entire property if the owner so desires.

(b) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of his or her right to receive just compensation for the property, donate the property, any part thereof, any interest therein, or any compensation paid therefor to a public entity determined by the person.

SEC. 12. Section 7267.8 of the Government Code is amended to read:

7267.8. (a) All public entities shall adopt rules and regulations to implement payments and to administer relocation assistance under this chapter. These rules and regulations shall be in accordance with the rules and regulations adopted by the Department of Housing and Community Development.

(b) Notwithstanding subdivision (a), with respect to a federally funded project, a public entity shall make relocation assistance payments and provide relocation advisory assistance as required under federal law.

SEC. 13. Section 7276 of the Government Code is amended to read:

7276. (a) If a resolution is adopted under Section 1245.330 of the Code of Civil Procedure consenting to the acquisition of property by eminent domain and the person authorized by the resolution to acquire the property by eminent domain acquires the property by purchase, eminent domain, or otherwise, that person shall provide relocation advisory assistance and shall make any of the payments required to be made by public entities pursuant to the provisions of this chapter in conformity with this chapter and the guidelines adopted by the Commission of Housing and Community Development pursuant to Section 7268.

(b) This section does not apply to public utilities which are subject to the provisions of Article 6 (commencing with Section 600) of Chapter 3 of Part 1 of Division 1 of the Public Utilities Code or to public entities which are subject to this chapter.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because any costs incurred by a local government pursuant to this act will result only as a consequence of its discretionary decision to acquire property. In addition, whenever any property acquisition involves federal funds, those costs would be costs mandated by a federal law or regulation. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 829

An act to add and repeal Chapter 2 (commencing with Section 2500) of Part 9 of Division 2 of the Labor Code, relating to employee health care coverage.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Chapter 2 (commencing with Section 2500) is added to Part 9 of Division 2 of the Labor Code, to read:

CHAPTER 2. EMPLOYEE HEALTH CARE COVERAGE

Article 1. Findings and Purposes

2500. This chapter shall be known and may be cited as the Tucker Health Care Coverage Act of 1989.

2501. The Legislature hereby finds and declares as follows:

(a) While a significant majority of Californians receive health care coverage through their employers as a result of employment, fewer employers in California provide this coverage than the nationwide average.

(b) In the last 10 years, the total number of uninsured in California has grown by more than 25 percent as a result of decreased employer coverage and more restrictive public program eligibility.

(c) State and local governments have provided, and continue to provide, a medical care system to serve indigent and low-income persons. However, because of public revenue constraints at both the state and local levels, the ability of that system to meet the needs of the uninsured is wholly inadequate.

(d) According to recent studies conducted by the University of California at Los Angeles and the Rand Corporation, the competitive pricing system in California has generated lower health care cost increases than in those states with traditional pricing mechanisms. Competitive pricing, however, has made it more difficult to pass on the cost of treatment for uninsured persons to payers for insured persons.

(e) To a large extent, those employers who provide for their employees' health care are also absorbing the costs of the uninsured. If economic competition is to be fair and equitable, all employers should absorb these costs equally.

(f) The uninsured comprise over 20 percent of California's population. Approximately two-thirds of the uninsured are employed or are dependents of employed persons. Uniform employer coverage would substantially reduce the number of Californians without health care coverage.

2502. It is the purpose of this chapter to ensure that nearly all employed persons in California are provided basic health care coverage to assist them in meeting the reasonable costs of medically necessary health care services. Further, it is intended that employer-sponsored health care programs offer employees coverage for dependents, the costs of which would be determined through employer-employee agreements.

2503. This chapter shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that are more favorable to the employees than the basic benefits required by this chapter.

Article 2. Definitions

2510. Unless the context requires otherwise, the definitions set forth in this article shall govern the construction and meaning of the terms and phrases used in this chapter.

2512. "Carrier" means any disability insurer, health care service plan, nonprofit hospital service plan, self-funded employer-sponsored plan, or Taft-Hartley Trust as defined by federal law, authorized to pay for health care services in this state, or any other entity which writes, administers, reinsures, provides stop-loss coverage for or otherwise provides health care coverage in this state.

2514. "Dependent" means the spouse, minor child, or permanently disabled child of a covered employee.

2516. (a) Except as provided in subdivision (b), "employee" means any person who works at least 125 hours per month for any single employer.

(b) "Employee" does not include any registered student in a postsecondary educational institution working for that institution and who is eligible for institutionally sponsored student health services.

2518. "Employer" means any person, partnership, corporation, association, or public or private agency employing for wages or salary five or more persons to work in this state who qualifies for, and elects to receive, a tax credit under Section 17053.20 or 23615 of the Revenue and Taxation Code by complying with this chapter.

2519. "Out-of-pocket expense" means those medical expenses which a subscriber or an insured is required to pay because they are not covered under the group or individual contract.

2520. "Principal employer" means the employer for whom any employee works the largest number of hours in any month.

2522. "Wages" means all remuneration for services from whatever source, including commissions, bonuses, and tips and gratuities paid directly to any individual by a customer or his or her employer.

2523. "Employer-sponsored health care coverage" means a program of group health care coverage arranged, and contracted for, by a principal employer in which the employer is responsible for at

least 75 percent of the gross premium per covered employee.

Article 3. Coverage

2530. Every employer may provide health care coverage to each employee pursuant to this chapter.

2532. Every employer who elects to provide health care coverage pursuant to this chapter may select that coverage from any carrier. Employers may also provide coverage through self-funded employer-sponsored plans.

2533. For purposes of this chapter, an employer may select health care coverage required to be provided by purchasing coverage authorized by any statute, including Section 12724 of the Insurance Code.

2534. Every employer who elects to provide coverage shall be responsible for at least 75 percent of the cost of health care coverage. However, where coverage exceeds the minimum benefits required by this chapter, or where coverage includes an employee's dependents, the payment for that coverage shall be consistent with established practices. To the extent that the employee is responsible for paying all or a part of these costs, an employer shall withhold those amounts from the employee's salary and wages.

2536. (a) Every employer who elects to provide coverage shall provide health care coverage to every employee who has been employed for six calendar months by the employer, at the earliest time thereafter at which coverage can be provided.

(b) Notwithstanding subdivision (a), no employer who elects to provide coverage shall be required to provide health care coverage to any employee under this chapter until three months following the second anniversary of the date the employer first received an employer tax identification number from the Employment Development Department.

2538. An employer who elects to provide coverage shall continue payments for health care coverage for any employee who is hospitalized or otherwise prevented by sickness or injury from working and earning wages, and for whom sick leave benefits are exhausted. This obligation shall continue for three calendar months following the month during which the employee became hospitalized or disabled from working, or the month the employee becomes eligible for other public or private coverage, whichever occurs first.

2540. An employer who elects to provide coverage shall not be required to provide health care coverage pursuant to this chapter with respect to any employee if any of the following occur:

(a) The employer is not the principal employer of the employee in terms of monthly hours worked.

(b) The employee is covered as a dependent under a plan which has benefits meeting the requirements of this chapter.

(c) When dependent coverage has been agreed upon between an

employer and an employee, an employer need not provide health care coverage for minor or permanently disabled children of the employee if the other parent has a birthday earlier in the year than the employee's birthday and that other parent is an employee of another employer subject to this chapter or is located outside the state and is otherwise making available health care coverage for the children and the other parent.

2544. Employers who elect to provide coverage may form associations for the purpose of providing health care coverage under this chapter. These associations may pool their employees in order to obtain group, rather than small-group or individual, rates and coverage, and these associations may also provide for self-funded employer-sponsored health care coverage. These associations shall remain fully the responsibility of, and under the control of, the employers which form them.

2548. Nothing in this chapter shall compel a carrier to insure or renew any policy or contract of health care coverage.

Article 4. Health Care Benefits

2550. Health care benefits provided in accordance with this chapter shall include all of the following, when medically necessary:

(a) Hospital inpatient care, including all of the following:

(1) Room accommodations.

(2) Regular and special diets.

(3) General nursing services.

(4) Use of operating rooms, surgical supplies, anesthesia services, and supplies.

(5) Drugs, dressing, oxygen, antibiotics, and blood transfusion services.

(b) Hospital outpatient care, including all of the following:

(1) Hospital outpatient services.

(2) Facilities for surgical procedures or health care of an emergency nature.

(c) Surgical benefits, including all of the following:

(1) Surgical services performed by a licensed physician and surgeon.

(2) Aftercare visits for a reasonable period.

(3) Anesthesia services.

(d) Medical benefits, including all of the following:

(1) Necessary home, office, and hospital visits by a licensed physician and surgeon.

(2) Intensive medical care while hospitalized.

(3) Medical or surgical consultation.

(e) Diagnostic laboratory services, X-ray, and radio-therapeutic services necessary for diagnosis or treatment of injury or disease.

(f) Maternity benefits.

(g) Mental health benefits, not attributed to substance abuse, including all of the following:

(1) Inpatient care or acute residential care for a period of at least 20 days in each calendar year.

(2) At least 25 outpatient visits in each calendar year, subject to 50 percent copayment.

(h) Supplies, care, and services provided by a sanitorium as included in the definition of "hospital" in Section 1395x of Title 42 of the United States Code and treatment and care compatible with those services.

2552. Health care coverage for employees may include, but are not required to include, provisions for cost sharing in the form of deductibles and copayments, subject to all of the following limitations:

(a) The total annual out-of-pocket expenses by an employee shall not exceed 50 percent of the total annual premium for that employee.

(b) The maximum annual deductible amount shall not exceed two hundred dollars ($200). However, for each year following January 1, 1992, the maximum deductible amount may be increased to an amount not exceeding the Consumer Price Index as determined annually by the United States Department of Labor.

(c) The maximum copayment for a specific health care service shall not exceed 25 percent.

(d) This section shall not apply to copayment and deductible provisions of health care coverage plans in force in California on January 1, 1992. All provisions of those plans shall be valid for the term of the contract of which they are a part.

(e) This section shall not apply to copayment and deductible provisions of health care coverage plans negotiated and approved through the collective bargaining process or meeting and conferring in good faith pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code.

2553. The total lifetime cost of benefits to one individual for benefits provided under coverage subject to this chapter is limited to one million dollars ($1,000,000).

2554. Employers who elect to provide health care coverage pursuant to this chapter shall not be required to pay for benefits when the beneficiary is entitled to receive these benefits under any workers' compensation or employers' liability law for the injury or illness.

Article 5. Operative Date

2560. This chapter shall become operative on January 1, 1992.

2564. This chapter shall become operative only if Sections 17053.20 and 23615 of the Revenue and Taxation Code are amended by Senate Bill 1207 of the 1989–90 Regular Session of the Legislature, or by another bill during the 1989–90 Regular Session of the Legislature for substantially the same purpose as contained in Senate Bill 1207 as amended September 14, 1989, and shall remain operative

only until both are repealed, and shall remain in effect only until January 1 of the first year commencing after the repeal of those two sections, 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. (a) Notwithstanding any other provision of law, including, but not limited to, Sections 17053.20 and 23615 of the Revenue and Taxation Code, neither the program under Chapter 2 (commencing with Section 2500) of Part 9 of Division 2 of the Labor Code nor the tax credits available under Sections 17053.20 and 23615 of the Revenue and Taxation Code shall be implemented unless the report required by subdivision (b) is prepared and submitted to the Governor and the Legislature.

(b) The Governor shall designate a state agency or department or a nonstatutory advisory body created for that purpose to research and report on the following:

(1) The number of people in California who lack health insurance coverage, the impact of the lack of health insurance on California employers and those businesses providing health insurance, and the impact of Proposition 99 funds on the problem of uncompensated care in California.

(2) Fiscal incentives, other than those contained in Chapter 2 (commencing with Section 2500) of Part 9 of Division 2 of the Labor Code or provided for in Sections 17053.20 and 23615 of the Revenue and Taxation Code, which might further encourage businesses to provide health insurance coverage to their workers.

(3) Recommendations of how the current system of underwriting the cost of health insurance might be improved by:

(A) Consolidation and grouping of geographical areas.

(B) Consolidation and grouping of age and sex factors.

(C) Elimination of current individual and small business group rating practices for determining premium cost.

(D) Potential cost savings which might be achieved in consolidating health benefits covered under workers' compensation with benefits provided by employer-sponsored health care coverage.

(4) An analysis of, and recommendation for, the fiscal responsibility of those employers who do not provide basic health care coverage to their employees in order to insure the cost of uncompensated care to both the public and private sector is shared as equally as possible.

(c) The report shall be submitted to the Governor and the Legislature by March 1, 1990.

CHAPTER 830

An act to amend Item 6110-121-001 of Section 2.00 of the Budget Act of 1989 (Chapter 93 of the Statutes of 1989), relating to education.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Item 6110-121-001 of Section 2.00 of the Budget Act of 1989 (Chapter 93 of the Statutes of 1989) is amended to read:

6110-121-001—For local assistance, Department of Education, Program 10.30.070 Economic Impact Aid .. 196,952,000

CHAPTER 831

An act to amend Section 66428 of the Government Code, relating to subdivision maps.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 66428 of the Government Code is amended to read:

66428. (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for: (1) subdivisions of a portion of the operating right-of-way of a railroad corporation defined by Section 230 of the Public Utilities Code, which are created by short-term leases (terminable by either party on not more than 30 days' notice in writing), or (2) land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map.

A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for

a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with such requirements as may have been established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to provisions of this section, a tentative map may be required by local ordinance.

If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the option of submitting a tentative map or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

(b) When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to tenant-owned, condominium ownership interest, the requirement for a parcel map or a tentative and final map specified by Section 66426, shall be waived unless any of the following exist:

(1) There are significant design or improvement requirements necessitated by health or safety concerns.

(2) There is a need to perform field surveys on the exterior boundaries of the parcel or parcels appearing on the face of the map.

(3) The existing lot or lots were not created by a recorded parcel or final map.

(4) The conversion would result in the creation of additional parcels.

After the waiver application is deemed complete pursuant to Section 65943, the local agency shall approve or deny the application within 60 days. The applicant shall have the right to appeal that decision to the governing body of the local agency.

If a tentative or parcel map is required, the local agency shall not impose any onsite or offsite design or improvement requirements unless necessary to mitigate an existing health or safety condition. No other dedications, improvements, or in-lieu fees shall be required by the local agency. In no case shall the mitigation of a health or safety condition have the effect of reducing the number or changing the location of existing mobilehome spaces.

If the local agency imposes requirements on an applicant to mitigate a health or safety condition, the applicant and the local agency shall enter into an unsecured improvement agreement. The local agency shall not require bonds or other security devices pursuant to Chapter 5 (commencing with Section 66499) for the performance of that agreement. The applicant shall have a period of one year from the date the agreement was executed to complete

those improvements.

CHAPTER 832

An act to amend Section 451 of the Penal Code, relating to crime.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 451 of the Penal Code is amended to read:

451. A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of, any structure, forest land or property.

(a) Arson that causes great bodily injury is a felony punishable by imprisonment in the state prison for five, seven, or nine years.

(b) Arson that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for three, five, or eight years.

(c) Arson of a structure or forest land is a felony punishable by imprisonment in the state prison for two, four, or six years. However, in lieu of any enhancement imposed pursuant to subdivision (b) of Section 667.5, if the person was previously convicted of arson of a structure or forest land and the prior conviction is charged in the accustory pleading and admitted by the defendant or found to be true by the trier of fact, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted the person shall be punished by an additional term of imprisonment in the state prison for one, two, or three years.

(d) Arson of property is a felony punishable by imprisonment in the state prison for 16 months, two, or three years. For purposes of this paragraph arson of property does not include one burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's structure, forest land or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

CHAPTER 833

An act to add Section 37222.5 to the Education Code, and to add Section 6714 to the Government Code, relating to John Muir Day.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 37222.5 is added to the Education Code, to read:

37222.5. All public schools and educational institutions, on April 21st of each year, which is the anniversary of the birth of John Muir, are encouraged to hold suitable exercises that stress the importance that an ecologically sound natural environment plays in the quality of life for all of us, and to emphasize John Muir's significant contributions to the fostering of that awareness and the indelible mark he left on the State of California.

SEC. 2. Section 6714 is added to the Government Code, to read:

6714. The Governor annually shall proclaim April 21st to be "John Muir Day."

CHAPTER 834

An act to amend Sections 14281, 14291, and 14293 of, and to add Sections 14363, 14364, and 14365 to, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 14281 of the Food and Agricultural Code is amended to read:

14281. A person shall not sell any livestock drug in this state prior to receipt of a registration certificate pursuant to this chapter.

SEC. 2. Section 14291 of the Food and Agricultural Code is amended to read:

14291. (a) The fee for a two-year registration certificate for a livestock drug is one hundred eighty dollars ($180). The certificate period shall commence beginning January 1 of each even-numbered year and expire on December 31 of the next odd-numbered year.

(b) The fee for a registration certificate submitted during an odd-numbered year shall be ninety dollars ($90), and the certificate shall remain in effect until December 31 of that year.

(c) The fee shall accompany the application for registration. The

fee is not refundable if the registration is refused.

SEC. 3. Section 14293 of the Food and Agricultural Code is amended to read:

14293. The fee for application for renewal of registration is one hundred eighty dollars ($180) for a two-year period. It is payable on or before January 31st of each year. If it is not so paid, a penalty of fifty dollars ($50) shall be added to the fee.

SEC. 4. Section 14363 is added to the Food and Agricultural Code, to read:

14363. (a) It is unlawful for any livestock owner or agent to sell or dispose of any livestock or livestock carcasses which within 48 hours after the buyer takes possession have drug residues in excess of allowable federal or state tolerances. In addition to any other penalties imposed by this chapter, any livestock owner or agent violating this section shall be liable to the buyer for an amount equal to three times the purchase price of any livestock or livestock carcasses with drug residues in excess of allowable federal or state tolerances so long as the liability does not conflict with the federal Packers and Stockyards Act, shall be liable for attorney's fees, and shall be liable for a civil penalty of not more than one hundred dollars ($100) for each head of livestock or livestock carcass disposed of or sold. In addition, the livestock owner or agent shall be liable for any attorney's fees.

(b) In addition to the penalties imposed by this chapter, the sale or disposition of any livestock or livestock carcass which, within 48 hours after the buyer takes possession, has drug residue in excess of allowable federal or state tolerances, is punishable by an administrative fine, levied by the director, in the amount of two hundred fifty dollars ($250) per head for a second or subsequent violation within a 12-month period.

(c) In lieu of assessing the administrative fine, the director may authorize a violator to attend an educational program on livestock drug residue avoidance which has been approved by the director. The violator shall successfully complete the program and provide proof to the director within 90 days from the occurrence of the violation.

(d) The provisions of this section shall not be construed to affect any rights or obligations under any contract between a livestock owner or agent, buyer, or any other party.

(e) Any additional funds collected as administrative fines pursuant to this section shall be deposited in the General Fund.

SEC. 5. Section 14364 is added to the Food and Agricultural Code, to read:

14364. (a) It is unlawful to sell or dispose of a bob veal calf for the purposes of slaughter without first affixing to the animal an ear tag with a producer identification number approved by the director.

(b) For purposes of this chapter, "bob veal calf" means a bovine animal 21 days of age or less or weighing 150 pounds or less, or as specified in Food Safety Inspection Service regulations of the United

States Department of Agriculture.

(c) Bob veal calves that are identified as provided in Division 10 (commencing with Section 20001) are exempt from this section.

SEC. 6. Section 14365 is added to the Food and Agricultural Code, to read:

14365. (a) It is unlawful to sell or dispose of a dairy cull cow without first affixing to the animal an ear tag with a producer identification number issued by the director.

(b) For purposes of this chapter, "cull cow" means a female bovine animal 21 days of age or more, which is sold or disposed of for the purpose of slaughter.

(c) Cull cows that are identified as provided in Division 10 (commencing with Section 20001) are exempt from this section.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 835

An act to add Section 54182 to the Food and Agricultural Code, relating to agricultural products.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to make it clear that neither Section 55461 nor Section 56161 of the Food and Agricultural Code is intended to prevent or otherwise prohibit a qualified association of producers from asserting all the rights of a producer under either Chapter 6 (commencing with Section 55401) or Chapter 7 (commencing with Section 56101) of Division 20 of that code in connection with any product produced by its members.

SEC. 2. Section 54182 is added to the Food and Agricultural Code, to read:

54182. (a) Any association organized and operating pursuant to this chapter or pursuant to similar laws of any other state, the District of Columbia, or the United States, which acts for its members as a producer marketing or bargaining association in its dealings with a

person licensed pursuant to Chapter 6 (commencing with Section 55401) or Chapter 7 (commencing with Section 56101) in connection with any product produced by its members, may, either in its own name or in the name of its members, assert all the rights of a producer under either of these chapters with respect to any of those products.

(b) Subdivision (a) does not apply to any late charges claimed under Section 55881 on any agricultural products delivered or scheduled to be delivered prior to January 1, 1986.

CHAPTER 836

An act to amend Section 69614 of the Education Code, relating to education.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

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

(a) The Legislature hereby finds that there is a growing shortage of classroom teachers and that ethnic minorities are particularly underrepresented in the teaching profession. The teacher shortage is most serious in minority teachers, partly due to the shortage of minority students who are encouraged and who enter the teaching profession. The Legislature also finds that many school districts in the past have not hired or recruited ethnic minorities, but currently have nondiscrimination policies. Further, the Legislature finds that many school districts do have active programs to recruit ethnic minority teachers, however, many express difficulty recruiting minority teachers for pupils with special needs and for schools serving large populations of students from low-income and linguistic minority families.

(b) The Legislature finds that the state has a compelling governmental interest to encourage underrepresented ethnic minorities to enter the teaching profession and that there is convincing evidence that financial assistance is the remedial action that is necessary to eliminate barriers for ethnic minorities to enter the teaching profession.

(c) 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 barrier and consideration in a student's decision to pursue a postsecondary education. The availability of financial aid and loan repayment assistance is often a particularly necessary consideration for students from underrepresented ethnic minority populations in making their

education decisions.

(d) The State of California can encourage ethnic minorities to enter the teaching profession by providing loan repayment assistance.

SEC. 2. Section 69614 of the Education Code is amended to read:

69614. (a) The Student Aid Commission shall distribute student applications to participate in the loan assumption program to postsecondary institutions eligible to participate in state and federal financial aid programs and having a program of professional preparation that has been approved by the Commission on Teacher Credentialing. Each eligible institution shall receive at least one application, and the remainder shall be distributed to eligible institutions proportionate to the number of teaching candidates from each institution who were fully credentialed during the previous year.

(b) Each participating institution shall sign an institutional agreement with the commission, certifying its intent to administer the loan assumption program according to all applicable published rules, regulations, and guidelines, and to make special efforts to notify students regarding the availability of the program, particularly those students who are members of populations underrepresented in the teaching profession.

(c) To the extent feasible, each participating institution shall coordinate the loan assumption program with other existing programs designed to recruit or encourage students to enter the teaching profession. These programs may include, but need not be limited to, student internships in school districts, courses that provide early exploratory or field work experience in elementary or secondary schools, and work-study employment in elementary or secondary schools.

(d) Each participating institution shall strive, through its recruitment and retention efforts, to achieve participation by ethnic minority students in at least the same proportion as the minority pupil population enrolled in the California public school system as certified by the State Department of Education.

CHAPTER 837

An act to amend Section 263.5 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 263.5 of the Streets and Highways Code is amended to read:

263.5. The state scenic highway system shall also include:

Route 78 from Route 79 near Santa Ysabel to Route 86 passing near Julian.

Route 79 from:

(a) Route 8 near Descanso to Route 78 near Julian.

(b) Route 78 near Santa Ysabel to Route 371 near Aguanga.

Route 80 from:

(a) Route 280 near First Street in San Francisco to Route 61 in Oakland.

(b) Route 20 near Emigrant Gap to the Nevada state line near Verdi, Nevada.

Route 84 from Route 238 to Route 680 near Sunol.

Route 88 from Route 49 in Jackson to the Nevada state line via Pine Grove, Silver Lake, and Kirkwood.

Route 91 from Route 55 near Santa Ana Canyon to Route 15 near Corona.

Route 92 from Route 1 near Half Moon Bay to Route 280 near Crystal Springs Lake.

Route 94 from Route 125 near Spring Valley to Route 8 west of Jacumba.

SEC. 2. The inclusion of Route 84 from Route 238 to Route 680 near Sunol in the state scenic highways system pursuant to Section 263.5 of the Streets and Highways Code does not prohibit the use of railroad rights-of-way located in that scenic corridor for transportation purposes.

CHAPTER 838

An act to amend Section 41601 of the Education Code, relating to school finance.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 41601 of the Education Code is amended to read:

41601. For the purposes of this chapter, the governing board of each school district shall report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of the district for all full school months during (1) the period between July 1st and December 31st, inclusive, to be known as the "first period" report for the first principal apportionment, and (2) the period between July 1st and April 15th, inclusive, to be known as the "second period" report for the second principal apportionment. The county superintendent of schools shall report the average daily attendance for the schools and classes maintained by him or her and

the average daily attendance for the county school tuition fund.

Each report shall be prepared in accordance with instructions on forms prescribed and furnished by the Superintendent of Public Instruction. Average daily attendance shall be computed in the following manner:

(a) The average daily attendance in the regular elementary, junior high, and high schools, including continuation schools and classes and opportunity schools and classes, maintained by the school districts shall be determined by dividing the total number of days of attendance allowed in all full school months in each period, by the number of days the schools are actually taught in all full school months in each period, exclusive of Saturdays or Sundays and exclusive of weekend makeup classes pursuant to Section 37228.

(b) The attendance for schools and classes maintained by the county superintendent of schools and the county school tuition fund shall be reported in the same manner as reported by school districts. The average daily attendance of the school shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 70, in the second period by 135 and at annual time by 175. For attendance in special classes and centers pursuant to Section 56364, the average daily attendance shall be reported by the county superintendents, but credited for revenue limit purposes to the district in which the pupil resides.

(c) The days of attendance in classes for adults and regional occupational centers programs shall be reported in the same manner as all other attendance under subdivision (a). The average daily attendance in those schools and classes shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 85 in the second period by 135 and at annual time by 175.

(d) For purposes of determining the incentive funding pursuant to Sections 46200.5 and 46201.5, the days of attendance in special education classes operated by county offices of education shall be determined in the same manner as all other attendance under subdivision (a).

CHAPTER 839

An act to amend Sections 9891.21, 9891.22, 9891.23, 9891.34, 9891.37, 9891.39, and 9891.42 of the Business and Professions Code, relating to tax preparers.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 9891.21 of the Business and Professions Code is amended to read:

9891.21. (a) Any person engaged in the activity of a tax preparer, or tax interviewer, as defined in this chapter, and not exempted from this chapter under Section 9891.2, shall be required to register with the administrator of the program and pay fees as designated by the administrator under authority of Article 6 (commencing with Section 9891.40).

(b) Any person eligible for exemption from this chapter under Section 9891.2 may voluntarily register by application to the administrator and payment of appropriate fees. Those voluntary registrants shall be required to comply with all requirements as pertain to nonvoluntary registrants.

SEC. 2. Section 9891.22 of the Business and Professions Code is amended to read:

9891.22. Any person who is registered as a tax preparer pursuant to this chapter shall:

(a) Pay the renewal fee specified in Section 9891.42 and billed to registrant at his or her last known address by the administrator on or before the last day of the birth month of the registrant during the second year of a two-year term.

(b) Furnish to the administrator proof that surety bond or equivalent coverage as required for the ensuing two years has been acquired.

(c) Furnish to the administrator proof that continuing education requirements as required have been met.

(d) Notify the administrator within 30 days of any change in business address.

Upon receipt of the form properly filled out, and receipt of the required fee, and receipt of proof of deposit of the bond required by this chapter, if the administrator determines that the applicant is eligible, he or she shall validate the registration and send a proof of valid registration to the tax preparer.

SEC. 3. Section 9891.23 of the Business and Professions Code is amended to read:

9891.23. (a) Every registration shall cease to be valid on the last day of the birth month of the registrant during the second year of a two-year term, unless the tax preparer has paid the renewal fee required by this chapter.

(b) The administrator shall establish by regulation procedures for the administration of a birthdate renewal program, including, but not limited to, the establishment of a system of staggered registration expiration dates and a pro rata formula for compliance with the continuing education and fee requirements specified in Sections 9891.39 and 9891.42 by registrants affected by the implementation of the program.

(c) Persons who obtain an initial registration or renew a

delinquent registration for the 1989-90 registration year shall pay the applicable registration or renewal and delinquency fees in effect for that registration period and, if applicable, submit proof that the continuing education requirement in effect for that registration period has been met. Registrations issued or renewed for the 1989–90 registration year shall expire on October 31, 1990. Thereafter, those registrations shall expire in accordance with subdivisions (a) and (b).

SEC. 4. Section 9891.34 of the Business and Professions Code is amended to read:

9891.34. (a) Any registrant otherwise in good standing may exempt himself or herself from subsequent bonding and registration fee and continuing education requirements by notifying the administrator of the desire for that status by the last day of the birth month of the registrant during the second year of a two-year term.

(b) No registrant in inactive status shall engage in activities of a tax preparer, or tax interviewer unless he or she is qualified for exemption from this chapter under Section 9891.2.

(c) Any registrant in inactive status may be returned to active status by complying with applicable bonding fees and continuing education requirements for the period in which registration to active status is desired, as well as other requirements as may be specified by the administrator.

SEC. 5. Section 9891.37 of the Business and Professions Code is amended to read:

9891.37. The administrator shall issue certificates of registration to registrants on the following basis:

(a) For an initial period which shall last no later than the last day of the birth month of the registrant during the second year of a two-year term, after the date of initial registration upon a showing by the registrant of compliance with bonding requirements, satisfactory fulfillment of minimum registration requirements as listed in subdivision (c) of Section 9891.20, and the payment of required fees.

(b) For subsequent two-year periods upon showing of continued compliance with bonding requirements, payment of required fees, and compliance with continuing education requirements.

(c) A tax interviewer certificate under sponsorship and supervision of a tax preparer, which certificate shall be valid as long as all of the following requirements are met:

(1) The sponsorship of the tax interviewer is continued by the tax preparer and the administrator shall have approved of the tax interviewer's compliance with minimum registration requirements as listed in subdivision (c) of Section 9891.20.

(2) Registration of the tax preparer remain valid.

(3) Continuing education and fee requirements as specified in Sections 9891.39 and 9891.42 are met.

(4) No contrary action has been taken by the administrator.

SEC. 6. Section 9891.39 of the Business and Professions Code is amended to read:

9891.39. (a) Commencing January 31, 1983, the administrator of the program shall evaluate and consider, with the advice of the State Tax Preparer Advisory Committee, courses and activities eligible for continuing education credit related to the tax preparation field submitted to him or her for approval and shall either endorse or decline to endorse those programs within 90 days of submission. A listing of approved courses and activities shall be made available upon request to registrants and shall be updated monthly.

(b) Commencing November 1, 1986, registrants under the program shall be required to establish that they have successfully completed at least 40 hours of continuing education in courses approved for continuing education by the administrator.

SEC. 7. Section 9891.42 of the Business and Professions Code is amended to read:

9891.42. The fees prescribed by this chapter shall be set by the administrator in an amount estimated to provide for the administration of this chapter within the limits of the following schedule:

(a) The tax preparer registration fee for tax preparers and tax interviewers shall be established by the administrator at a sum not more than one hundred dollars ($100) per registrant. However, no single tax preparer shall be required to pay registrant fees on behalf of itself and associated tax interviewers in excess of three thousand dollars ($3,000) for a two-year term.

(b) If a tax preparer maintains more than one tax preparer location within this state, an additional fee shall be established by the administrator at a sum not more than fifty dollars ($50) for each additional location.

(c) The renewal fees for a tax preparer registration shall be established by the administrator at amounts not to exceed the schedule for registration fees, if the registration is renewed prior to its expiration date.

(d) The penalty fee for renewal of a registration that is not renewed prior to its expiration date shall be the lesser of fifty dollars ($50) or 50 percent of the renewal fee required for a registration renewal prior to its expiration date.

CHAPTER 840

An act to amend Section 4010.8 of, and to repeal and add Section 4010.9 of, the Health and Safety Code, relating to water.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 4010.8 of the Health and Safety Code is amended to read:

4010.8. For water systems with less than 200 service connections, except as provided in Section 4010.9, the local health officer shall be responsible for the enforcement of this chapter. For the purposes of this chapter, unless the context otherwise requires, and whenever enforcement activities involve water systems with less than 200 service connections, the local health officer shall act for the department, except that variances and exemptions may only be granted or revoked by the local health officer following the procedures as provided in Sections 4021 and 4022 subject to the approval of the department.

Fees for the permits may be prescribed by the local governing body in accord with Section 510 to pay the reasonable expenses of the local health officer in carrying out the provisions of this chapter and regulations adopted thereunder.

SEC. 2. Section 4010.9 of the Health and Safety Code is repealed.

SEC. 3. Section 4010.9 is added to the Health and Safety Code, to read:

4010.9. Notwithstanding Section 4010.8, this chapter shall be enforced directly by the department for all public water systems in any county which does not have a local health officer, or contracts with the department for environmental health services pursuant to Section 1157 and elects not to enforce this chapter.

The department shall absorb the costs of the enforcement.

CHAPTER 841

An act to add Section 12021.5 to the Penal Code, relating to crimes.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 12021.5 is added to the Penal Code, to read:

12021.5. Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or

attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon the conviction of any such felony or attempted felony of which he or she is convicted, be punished by an additional term of imprisonment in the state prison for one, two, or three years in the court's discretion. The court shall impose 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 sentence.

CHAPTER 842

An act to amend Sections 65913.4, 65915, and 65917 of the Government Code, relating to housing.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. The Legislature finds and declares that the need for lower income housing is increasing throughout the state. The Legislature further declares that local governments and the private sector must work together to produce the necessary affordable housing; and in so doing, the local governments must offer the private sector incentives for the development of affordable housing to ensure adequate housing for all Californians.

SEC. 2. Section 65913.4 of the Government Code is amended to read:

65913.4. (a) If a developer agrees to construct a housing development with 20 percent or more of the units reserved for occupancy by lower income households, as defined by Section 50079.5 of the Health and Safety Code, including elderly persons and families, as defined by Section 50067 of the Health and Safety Code, who meet the criteria for lower income households, a city, county, or city and county issuing permits for the housing development shall, unless it makes a written finding described in subdivision (b), provide a density bonus, and at least one or more, of the following regulatory concessions or incentives to ensure that the housing development will be produced at a reduced cost:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing

project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county or the waiver of fees or dedication requirements.

(b) After evaluating the regulatory concessions or incentives which could result in the housing development being produced at a reduced cost pursuant to subdivision (a), a city, county, or city and county may make a written finding that the additional concession or incentive is not required in order for rents for the targeted units to be set pursuant to subdivision (c) of Section 65915.

(c) This section applies to any housing development containing five or more units, including, but not limited to, those developments that receive federal, state, or local construction or mortgage financing assistance, mortgage insurance, or rent subsidies. Except for units financed under Sections 1472 and 1490a of Title 42 of the United States Code, the units for lower income households specified in subdivision (a) shall be reserved for a period of 30 years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

SEC. 3. Section 65915 of the Government Code is amended to read:

65915. (a) When a developer of housing proposes a housing development within the jurisdiction of the local government, the city, county, or city and county shall provide the developer incentives for the production of lower income housing units within the development if the developer meets the requirements set forth in subdivisions (b) and (c). The city, county, or city and county shall adopt an ordinance which shall specify the method of providing developer incentives.

(b) When a developer of housing agrees or proposes to construct at least (1) 20 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (2) 10 percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.2 of the Civil Code, a city, county, or city and county shall either (1) grant a density bonus and at least one of the concessions or incentives identified in Section 65913.4 unless the city, county, or city and county makes a written finding that the additional

concession or incentive is not required in order for rents for the targeted units to be set as specified in subdivision (c), or (2) provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

(c) A developer shall agree to and the city, county, or city and county shall ensure continued affordability of all lower income density bonus units for 30 years. Those units targeted for persons and families with incomes at or below 80 percent of area median income shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for persons and families with incomes at or below 50 percent of area median income shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. If a city, county, or city and county does not grant at least one concession or incentive pursuant to paragraph (1) of subdivision (b), the developer shall agree to and the city, county, or city and county shall ensure continued affordability for 10 years of all lower income housing units receiving a density bonus.

(d) A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the procedures under which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards which would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) The housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(f) For the purposes of this chapter, "density bonus" means a density increase of at least 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the city, county, or city and county. The density bonus shall not be included when determining the number of housing units which is equal to 10 or 25 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(g) "Housing development" as used in this section means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For

purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(h) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 4. Section 65917 of the Government Code is amended to read:

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65913.5 or 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. Sections 1 to 5, inclusive, of this act, unless otherwise specified, shall apply to charter cities.

CHAPTER 843

An act to amend Sections 12996, 12997, and 12999.5 of, and to add Section 12999.4 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 12996 of the Food and Agricultural Code is amended to read:

12996. (a) Every person who violates any provision of this division relating to pesticides, or any regulation issued pursuant to a

provision of this division relating to pesticides, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment of not more than six months, or by both fine and imprisonment. Upon a second or subsequent conviction of the same provision of this division relating to pesticides, a person shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or by imprisonment of not more than six months or by both fine and imprisonment. Each violation constitutes a separate offense.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the offense involves an intentional or negligent violation which created or reasonably could have created a hazard to human health or the environment, the convicted person shall be punished by imprisonment in the county jail not exceeding one year or in the state prison or by fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000), or by both the fine and imprisonment.

SEC. 2. Section 12997 of the Food and Agricultural Code is amended to read:

12997. In lieu of seeking prosecution of any violation of this division as a misdemeanor, and the penalty prescribed in Section 12996, the director may prosecute civilly pursuant to Sections 12998 and 12999, or may levy civil penalties pursuant to Section 12999.4 or the commissioner may levy civil penalties pursuant to Section 12999.5.

SEC. 3. Section 12999.4 is added to the Food and Agricultural Code, to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Section 12671 or Section 12993 of not more than five thousand dollars ($5,000) for each violation.

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

(c) Review of the decision of the director may be sought by the person against whom the penalty was levied pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Any money recovered under this section shall be paid into the Department of Food and Agriculture Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 4. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10

(commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation.

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

(c) The person fined may appeal to the director within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal and shall include a copy of the commissioner's decision. The applicant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present written evidence and a written argument to the director.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may sustain, modify by reducing the amount of the fine levied, or reverse the decision of the commissioner. A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

CHAPTER 844

An act relating to water districts, and in this connection, to create the Mono County Tri-Valley Groundwater Management District, prescribing its boundaries, operation, management, financing, and other powers and duties.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. This act shall be known and may be cited as the Mono County Tri-Valley Groundwater Management District Act.

Article 1 Legislative Findings

SEC. 102. The Legislature finds and declares as follows:

(a) The groundwater basins which are the subject of this act provide water for domestic, agricultural, and other commercial needs in the eastern portions of Mono County.

(b) Those groundwater basins are or may become overdrafted, thereby depleting supplies for domestic uses, curtailing reasonable growth, endangering the economic viability of agriculture, and otherwise adversely affecting the environment and economy of the area.

(c) Although it is not certain what adverse effects would result, or whether there is or may be excess water, there are pressures to export groundwater from the basins to other areas of the state.

(d) It is necessary, and in the best interests of the persons and property dependent upon and served by the groundwaters of the basins, that the Legislature create a locally controlled water district for the purpose of preserving the waters of the basins and, to the extent there becomes a surplus of groundwater, approving the terms and conditions of any sale of the surplus and equitably allocating the proceeds of that sale.

(e) The creation of the district will assure the carrying out of functions of statewide importance

Article 2. Creation and Boundaries

SEC. 201. The Mono County Tri-Valley Groundwater Management District is hereby created. The district, acting by and through its governing board, shall have jurisdiction over groundwaters within the boundaries of the district, and shall have the powers provided by this act or any other provision of law.

SEC. 202. The district shall consist of those areas of eastern Mono County commonly known and referred to as Benton Valley, Hamill Valley, and Chalfant Valley, and portions of the watersheds

thereof. The district is more particularly described as follows:

Beginning at the point where U.S. Highway 6 crosses the California-Nevada state line, thence along the state line in a southeasterly direction to the national forest boundary; thence along the national forest boundary in a southerly direction to the Mono-Inyo county line; thence along the Mono-Inyo county line west to Fish Slough Road; thence along Fish Slough Road in a northerly direction to its intersection with the northern boundary of Range 32 East, Township 5 South; thence west to the national forest boundary; thence along the national forest boundary north to the southwest corner of Section 14, Range 31 East, Township 2 South; thence north to the southwest corner of Section 11, Range 31 East, Township 1 South; thence along the national forest boundary in a northeasterly direction to the California-Nevada state line; thence along the state line in a southeasterly direction to the point where U.S. Highway 6 crosses the California-Nevada state line.

Article 3. Definitions

SEC. 301. Unless otherwise indicated by their context, the terms defined in this article govern the interpretation of this act.

SEC. 302. "Advisory board" means the Groundwater Advisory Board appointed pursuant to Section 403.

SEC. 302.5. "Available supply" means the quantity of groundwater which can be withdrawn annually from the groundwater basin without resulting in or aggravating conditions of overdraft, subsidence, or groundwater quality degredation. Available supply of the groundwater basin includes the average annual natural water supply, imported water or other water which has been spread to the basin or otherwise added to the basin, and return flows to the basin attributable to these sources reaching the groundwater in the course of use.

SEC. 303. "Board" means the Board of Directors of the Mono County Tri-Valley Groundwater Management District.

SEC. 304. "County" means the County of Mono.

SEC. 305. "District" means the Mono County Tri-Valley Groundwater Management District.

SEC. 306. "District off-basin user" means a person extracting groundwater for use on land within the district which does not overlie the groundwater basin.

SEC. 307. "Export" means groundwater extracted for use outside the boundaries of the district.

SEC. 308. "Extraction" means the act of obtaining groundwater by pumping or other controlled means.

SEC. 309. "Extraction facility" means any device or method for the extraction of groundwater within the groundwater basin.

SEC. 310. "Groundwater" means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water. "Groundwater" does not include

any water which, on the effective date of this act, is subject to appropriation under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

SEC. 311. "Groundwater basins" means the groundwater basins within the boundaries of the district.

SEC. 312. "Groundwater rights adjudication" means the determination of substantially all rights in the groundwater basin or the area subject to the adjudication.

SEC. 313. "Operator" means the person who operates an extraction facility. "Operator" also means the person to whom the extraction facility is assessed by the county assessor or, if not separately assessed, the person who owns the land upon which an extraction facility is located.

SEC. 314. "Overdraft" means the conditions of the groundwater basin where the average annual amount of water extracted exceeds the average annual supply of water to the basin, plus any temporary surplus.

SEC. 315. "Person" includes any state or local governmental agency, private corporation, firm, partnership, individual, group of individuals, or, to the extent authorized by law, any federal agency.

SEC. 316. "Program" means a groundwater management program prepared by the district pursuant to this act.

SEC. 317. "Replenishment" means spreading water over a permeable area for the purpose of allowing it to percolate to the groundwater basin, or otherwise adding water to the groundwater basin which without such effort would not augment the groundwater supply.

SEC. 318. "Supplemental water" means surface water or groundwater imported from outside the watershed or watersheds of the groundwater basin and flood waters that are conserved and saved within the watershed or watersheds which would otherwise have been lost or would not have reached the groundwater basin.

SEC. 319. "Temporary surplus" means the amount of water that can be extracted from the groundwater basin, without adversely affecting the available supply of the groundwater basin, to provide storage space for natural recharge that would be lost during wet years if it could not be stored in the groundwater basin.

SEC. 320. "Water year" means the period from October 1 of one calendar year to September 30 of the following calendar year.

SEC. 321. "Well interference" means a substantial water level decline in a short time period in a localized area caused by pumping from extraction facilities.

SEC. 322. "Zone of benefit" means an area, including, but not limited to, subbasins, within the district which will benefit from planning, studies, or any management program undertaken by the district in a manner different from other areas or subbasins within the district.

Article 4. Board of Directors

401. (a) The board of directors of the district shall consist of seven members as follows:

(1) One member shall be a county supervisor appointed by the board of supervisors.

(2) Three members shall be residents of the district who are the owners of record of real property located within the district. These members shall be elected at large from the district.

(3) Three members shall be residents of the district who are the owners of record of real property located within the district, and on which property there are extraction facilities capable of pumping at least 100 gallons per minute exclusive of domestic use. These members shall be elected at large from the district. Any member so elected may designate another person to sit on the board in place of the person so elected, with full voting privileges.

(b) A quorum of the board of directors shall be four members. Four affirmative votes of the board shall be required to take an action.

(c) Of the six members of the board elected at large, three shall serve initial terms of two years. These members shall be determined by lot at the first meeting of the board. All other terms of office shall be four years. Members of the board of directors may be reelected.

(d) Except as otherwise provided in this act, the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code) shall apply to elections within the district.

(e) Except for the board member who is a supervisor, vacancies on the board shall be filled by appointment by a majority of remaining directors as provided in Section 1780 of the Government Code. An appointment to fill a vacancy on the board shall be for the unexpired portion of the term of the office in which the vacancy occurs.

SEC. 402. The board shall adopt rules for the carrying out of its business. The board shall exercise the powers of the district as set forth in this act.

SEC. 403. The board shall appoint a Groundwater Advisory Board consisting of 15 persons who are eligible to vote and who reside within the boundaries of the district. A quorum of the advisory board shall be nine persons. Five members of the advisory board shall reside in each of the Valleys of Benton, Chalfant, and Hamill.

SEC. 404. (a) The advisory board shall meet at least once each quarter at a location within the district and shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(b) The advisory board shall adopt procedural rules for the conduct of its business.

SEC. 405. The advisory board shall exercise the following powers:

(a) Advise the board on all matters included within the purposes and provisions of this act.

(b) Independently comment on projects or other matters which may affect the district, whether in the context of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other relevant proceeding.

(c) Hold public hearings on matters affecting the district for the purpose of gathering evidence and making recommendations to the board.

(d) Comment or initiate on rules and regulations affecting the district which may be adopted by the board.

SEC. 406. The board shall not act on any matter within its jurisdiction under this act without first having given the advisory board an opportunity to comment. Each agenda of the board shall reserve a time for comments of the advisory board and its members.

Article 5. General Provisions

SEC. 501. The board may establish civil penalties for violations of district ordinances in addition to the remedies specified in this act.

SEC. 502. Any ordinance adopted pursuant to this act shall become effective within 30 days of adoption. Within 10 days after its adoption, the ordinance shall be published pursuant to Section 6061 of the Government Code. From and after the publication, any person who does not comply with the ordinance may be liable civilly for a sum not to exceed one thousand dollars ($1,000) for each day the ordinance is not complied with, in addition to any penalties established pursuant to Section 501.

SEC. 503. The board may exclude from any of the requirements of this act any operator who extracts a minimum amount of groundwater as specified in an ordinance adopted by the board after notice and hearing.

SEC. 504. Within 60 days after publication of any ordinance or resolution establishing or in furtherance of a groundwater management program, any interested party may file with the superior court a petition for writ of mandate for the review thereof. Failure to file such an action shall not preclude a party from challenging the validity of the ordinance or resolution in any judicial proceedings brought to enforce the ordinance or resolution or for other civil remedies, including the imposition of civil penalties. The right to seek judicial review shall not be affected by any failure to seek reconsideration from the board.

SEC. 505. The board may reconsider all or part of a decision on petition of any person affected by the decision. Any such petition shall be filed with the board within 15 days after adoption of the decision by the board. The board shall decide whether to reconsider its decision within 60 days after the petition is filed.

SEC. 506. After notice and a public hearing, the board, by ordinance, shall adopt a schedule of fees to be imposed on each water export permit. The fees shall be based on the amount of water to be

exported by the permittee.

Article 6. Studies and Investigations

SEC. 601. The board may carry on technical and other necessary investigations of all kinds and collect data necessary to carry out this act. The board and its authorized agents shall have the right of access to all properties within the district to the extent permitted by the United States Constitution and the California Constitution.

SEC. 602. The board may cooperate and contract with federal, state, and local governmental agencies in the conduct and performance of all investigations, studies, and data collection.

SEC. 603. The board shall prepare annually a report on groundwater supplies and conditions in the district, including groundwater management objectives and a plan of implementation of those objectives, following a determination that groundwater management activities may be necessary.

Article 7. Groundwater Management Activities

SEC. 701. If, upon receipt of the recommendations of its engineers, consultants, and staff, or any of them, the board determines that groundwater management activities may be necessary, the board shall, after compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), give notice of and hold a hearing to receive evidence and make findings on the need for such a program and on the form and scope of the management activities required. The requirement to comply with the California Environmental Quality Act does not, and shall not be construed to, limit compliance with that act for other discretionary actions by the board.

SEC. 702. If the board determines that groundwater management activities are necessary, the board may, by ordinance, exercise any of the following powers:

(a) Store water in and recapture water from surface reservoirs or groundwater basins within the district.

(b) Acquire water and water rights within or outside of the district.

(c) Purchase and import water into the district.

(d) Buy and sell water and water rights at rates determined by the board.

(e) Exchange water and water rights.

(f) Store and recapture water in the groundwater basins.

(g) Commence and prosecute actions to enjoin unreasonable uses or methods of use of water within the district or outside of the district to the extent those uses or methods of use affect the groundwater supplies within the district.

SEC. 703. The board may impose spacing requirements on new

extraction facility construction to minimize well interference.

SEC. 705. (a) The board may, at the request of a water user, and after notice to all affected persons, convene a hearing to ascertain if the legal rights of the complaining water user have been infringed through well interference by the extractions of any other operator within the district. At any hearing, the burden is on the complaining water user to produce evidence that his or her legal rights have been infringed by the extractions of another operator within the district.

(b) If, on the basis of the hearing record, the board determines that the legal rights of the complaining water user have been infringed, the board may make such orders as are necessary to provide the complaining water user with an adequate remedy to the well interference.

(c) The board may petition the appropriate superior court for enforcement of its order.

SEC. 706. (a) No groundwater shall be exported from the district unless the exporter has applied for and obtained a permit from the board which establishes the quantity of water which may be exported and the conditions on that export. Notwithstanding any conditions specified in the permit, exporters shall be subject to the provisions of Section 707.

(b) The board shall not issue any permit to export water from the district unless the applicant has established that there is an available supply in excess of the amount currently required for reasonable and beneficial uses within the district, and the board determines that the export, if permitted, would not adversely affect the rights of groundwater users within the district. The board shall issue permits for export for such time periods and under such terms and conditions as it deems appropriate. All permits shall state that they are subject to the right of the district to reduce or suspend exports as provided for in this act.

SEC. 707. The district shall, after published notice and a hearing which discloses evidence of overdraft, or threat of overdraft, reduce or suspend extractions by exporters regardless of whether a permit to export has been granted pursuant to this act.

SEC. 708. If the evidence produced at the hearing specified in Section 707 or in any subsequent hearing, tends to show that reduction or suspension of extraction by exporters will be insufficient to eliminate existing or threatened conditions of overdraft, the district may limit or suspend extraction by district users. Any such limitation or suspension of extraction shall be done in the manner described in Section 709.

SEC. 709. In the event that the board limits or suspends extraction by district users in order to eliminate existing or threatened conditions of overdraft, rights to the use of the available supply of groundwater shall be allocated primarily on the basis of the number of acres overlying the basin or subbasin that a user owns or leases in proportion to the total number of acres overlying the basin or subbasin. The board shall adjust any figure so arrived at up or

down for any of the following factors:

(a) The number of acres actually irrigated compared to the number of acres owned or leased.

(b) Crop type.

(c) Wasteful or inefficient use.

(d) Reasonable need.

(e) Water conservation activities.

(f) Any other factors that the board reasonably determines it should consider in order to reach an equitable distribution within the entire district.

SEC. 710. (a) The Legislature, in enacting this act, intends to establish and grant to overlying groundwater users and to district off-basin groundwater users a prior right to groundwater in the district and to thereby relegate exports from the district to a junior priority to the water users, irrespective of the time the export uses are commenced. By adopting district boundaries which contain the watershed of the groundwater basin within the district, the Legislature adopts the watershed and basin as the scope of the area granted prior right to groundwater.

(b) It is further the Legislature's intent to recognize that, in general, overlying users have a prior right to groundwater within the district, but to grant the board the authority to consider other factors and the reasonable needs of district off-basin users in allocating the available groundwater supply and to permit the district to make groundwater available to district off-basin users based on factors which indicate that the use is necessary for the equitable distribution of the groundwater resource.

SEC. 711. If the board has imposed reductions on district users, no operator may extract groundwater from a new, enlarged, or reactivated extraction facility for use within the district until the operator has applied for and received a permit from the board.

SEC. 712. (a) The board shall grant the permit referred to in Section 711 upon determining the operator's share of the available supply from the groundwater basin or subbasin in the manner described in Section 709 and may limit the operator's right to extract groundwater to that share. To the extent necessary, the board shall adjust the authorized extractions by other district users.

(b) The board may postpone the effective date of any increase authorized in subdivision (a) to the start of the next water year. The board may also establish a date by which any application shall be submitted in order to be effective at the start of the next water year.

SEC. 713. In order to preserve and manage the groundwater resources of the district, the board may participate, in any capacity, in proceedings involving the district, including, but not limited to, groundwater rights adjudications.

Article 8. Zones of Benefit and Assessment Districts

SEC. 801. The board may use 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), or the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code) for the construction of any facilities authorized to be constructed by the district under this act.

SEC. 802. (a) The board may establish zones of benefit within the district. Resolution of the board shall describe the boundaries of the zones of benefit.

(b) The board may amend zone of benefit boundaries by annexing property to or by withdrawing property from a zone, or may divide a zone into two or more zones. Resolutions of the board shall describe the boundaries of the amended or divided zones. Zones of benefit created by annexation shall not include lands outside the boundaries of the district.

Article 9. Enforcement Powers

SEC. 901. The right to proceed for injunctive relief is an additional right to those which may be provided elsewhere in this act or otherwise allowed by law. The board shall not be required to provide an undertaking or bond as a condition of a grant of injunctive relief.

SEC. 902. In any action brought pursuant to this act in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without those allegations and without that proof.

SEC. 903. The district may petition the superior court to recover any sums due to the district pursuant to this act. The board shall make that request only after a hearing with due notice of the hearing given to all affected persons.

SEC. 904. Remedies under this article are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

SEC. 905. All moneys collected by the district pursuant to this act shall be placed in an account and shall be available without regard to fiscal year for expenditure by the board in carrying out district functions pursuant to this act.

SEC. 906. The Legislature finds and declares that this act, which is applicable only to the Mono County Tri-Valley Groundwater Management District is necessary because of the unique and special

groundwater management problems in the area included in the district. It is, therefore, hereby declared that a general law cannot be made applicable to the district and that the enactment of this special law is necessary for the conservation, development, control, and use of that water for the public good and for the protection of life and property therein.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 845

An act to amend Sections 1352, 1367.3, 1382, and 1399 of, to add Section 1396 to, and to add Article 8.5 (commencing with Section 1394.5) to Chapter 2.2 of Division 2 of, the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1352 of the Health and Safety Code is amended to read:

1352. (a) A licensed plan shall, within 30 days after any change in the information contained in its application, other than financial or statistical information, file an amendment thereto in the manner the commissioner may by rule prescribe setting forth the changed information. However, the addition of any association, partnership, or corporation in a controlling, controlled, or affiliated status relative to the plan shall necessitate filing, within a 30-day period of an authorization for disclosure to the commissioner of financial records of the person pursuant to Section 7473 of the Government Code.

(b) Prior to any material modification of its plan or operations, a plan shall give notice thereof to the commissioner, who shall, within 20 business days or such additional time as the plan may specify, by order approve, disapprove, suspend, or postpone the effectiveness of any such change, subject to Section 1354.

(c) A plan shall, within five days, give written notice to the commissioner in the form as by rule may be prescribed, of any change in the officers, directors, partners, controlling shareholders, principal creditors, or persons occupying similar positions or performing similar functions, of the plan and of any management

company of the plan, and of any parent company of the plan or management company. The commissioner may by rule define the positions, duties, and relationships which are referred to in this subdivision.

(d) The fee for filing a notice of major modification pursuant to subdivision (b) shall be the actual cost to the commissioner of processing the notice, including overhead, but shall not exceed seven hundred fifty dollars ($750).

SEC. 2. Section 1367.3 of the Health and Safety Code is amended to read:

1367.3. (a) On and after January 1, 1980, every health care service plan that covers hospital, medical, or surgical expenses on a group basis shall offer benefits for the comprehensive preventive care of children. Every plan shall communicate the availability of these benefits to all group contract holders and to all prospective group contract holders with whom they are negotiating. This section shall apply to a plan which, by rule or order of the commissioner, has been exempted from subdivision (i) of Section 1367, insofar as that section and the rules thereunder relate to the provision of the preventive health care services described herein.

(b) For purposes of this section, benefits for the comprehensive preventive care of children shall be consistent with the Recommendations for Preventive Pediatric Health Care, as adopted by the American Academy of Pediatrics in September 1987, and provide for the following:

(1) Physician services for routine physical examinations.

(2) Immunizations.

(3) Laboratory services in connection with routine physical examinations.

SEC. 3. Section 1382 of the Health and Safety Code is amended to read:

1382. (a) The commissioner shall conduct an examination of the fiscal and administrative affairs of any plan, and each person with whom the plan has made arrangements for administrative, management, or financial services, as often as deemed necessary to protect the interest of subscribers or enrollees, but not less frequently than once every five years.

(b) The expense of conducting any examinations pursuant to this section, and the expense of conducting any medical surveys pursuant to Section 1380 shall be charged against the plan being examined or surveyed. The amount shall include the actual salaries or compensation paid to the persons making the examination or survey, the expenses incurred in the course thereof, and overhead costs in connection therewith as fixed by the commissioner. In determining the cost of examinations or surveys, the commissioner may use the estimated average hourly cost for all persons performing examinations or surveys of plans for the fiscal year. The amount charged shall be remitted by the plan to the commissioner. If recovery of these costs cannot be made from the plan, these costs

may be added to, but subject to the limitation of, the assessment provided for in subdivision (b) of Section 1356.

(c) Reports of all examinations shall be open to public inspection, except that no examination shall be made public, unless the plan has had an opportunity to review the examination report and file a statement or response within 30 days, to be attached to the report. Deficiencies shall not be made public if they are corrected within 30 days of the date that the plan was notified of the deficiency.

SEC. 4. Article 8.5 (commencing with Section 1394.5) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 8.5. Service of Process

1394.5. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule, regulation, or order adopted hereunder, whether or not the person has filed a power of attorney under subdivision (j) of Section 1351, and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the appointment of the commissioner or the commissioner's successor in office to be the attorney in fact to receive any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which arises out of that conduct and which is brought under this chapter or any rule, regulation, or order adopted hereunder, with the same force and validity as if personally served. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff or petitioner, who may be the commissioner in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and in a court action, an affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. In the case of administrative orders issued by the commissioner, the affidavit of compliance need not be filed with the administrative tribunal unless the respondent requests a hearing.

SEC. 5. Section 1396 is added to the Health and Safety Code, to read:

1396. It is unlawful for any person willfully to make any untrue statement of material fact in any application, notice, amendment, report, or other submission filed with the commissioner under this chapter or the regulations adopted thereunder, or willfully to omit to state in any application, notice, or report any material fact which is required to be stated therein.

SEC. 6. Section 1399 of the Health and Safety Code is amended to read:

1399. (a) Surrender of a license as a health plan becomes

effective 30 days after receipt of an application to surrender the license or within a shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If such a proceeding is pending or instituted, surrender becomes effective at the time and upon the conditions as the commissioner by order determines.

(b) If the commissioner finds that any plan is no longer in existence, or has ceased to do business or has failed to initiate business activity as a licensee within six months after licensure, or cannot be located after reasonable search, the commissioner may by order summarily revoke the license of the plan.

(c) The commissioner may summarily suspend or revoke the license of a plan upon (1) failure to pay any fee required by this chapter within 15 days after notice by the commissioner that the fee is due and unpaid, or (2) failure to file any amendment or report required under this chapter within 15 days after notice by the commissioner that the report is due, or (3) failure to maintain any bond or insurance pursuant to Section 1376.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 846

An act to add Section 13369 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 13369 is added to the Vehicle Code, to read:

13369. (a) The department shall deny or revoke a schoolbus, school pupil activity bus, youth bus, or general public paratransit driver certificate of an applicant or a holder of a certificate for any of the following causes:

(1) The certificate applicant or holder has been convicted of any sex offense as defined in Section 44010 of the Education Code.

(2) The certificate applicant has, within the three years preceding the application date, either been convicted of a violation of Section 20001, 23103, 23104, 23152, or 23153, or has his or her driving privilege suspended, revoked, or placed on probation by the department for a cause involving the safe operation of a motor vehicle.

(3) The certificate applicant has, within the two years preceding the application date, been convicted of any offense specified in Section 11361.5 of the Health and Safety Code.

(4) The certificate applicant has failed to meet the prescribed testing requirements for issuance of the certificate.

(b) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

CHAPTER 847

An act to amend Sections 65950, 65952.1, 66412, 66436, 66452.1, 66452.2, 66456.2, 66463, 66474.2 of, to repeal Section 65950 of, and to add Section 66474.10 to, the Government Code, relating to subdivisions.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 65950 of the Government Code, as amended by Section 2 of Chapter 990 of the Statutes of 1984, is amended to read:

65950. Any public agency which is the lead agency for a development project for which an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code shall approve or disapprove the project within one year from the date on which an application requesting approval of the project has been received and accepted as complete by that agency. If a negative declaration is adopted or if the project is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code, the development project shall be approved or disapproved within six months from the date on which an application requesting approval of the project has been received and accepted as being complete by that agency, unless the project proponent requests an extension of the time limit. As specified in Sections 21100.2 and 21151.5 of the Public Resources Code, the period specified in those sections shall also begin on that date.

SEC. 2. Section 65950 of the Government Code, as added by

Section 2 of Chapter 823 of the Statutes of 1983, is repealed.

SEC. 3. Section 65952.1 of the Government Code is amended to read:

65952.1. (a) Except as otherwise provided in subdivision (b), where a development project consists of a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), the time limits established by Sections 65950 and 65952 shall apply to the approval or disapproval of the tentative map, or the parcel map for which a tentative map is not required.

(b) The time limits specified in Sections 66452.1, 66452.2, and 66463 for tentative maps and parcel maps for which a tentative map is not required, shall continue to apply and are not extended by the time limits specified in subdivision (a).

SEC. 4. Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local zoning and building ordinances, or except to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 11004 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

SEC. 5. Section 66436 of the Government Code is amended to read:

66436. (a) A statement, signed and acknowledged by all parties having any record title interest in the subdivided real property, consenting to the preparation and recordation of the final map is required, except in the following circumstances:

(1) A lien for state, county, municipal, or local taxes or special assessments, a trust interest under bond indentures, or mechanics' liens do not constitute a record title interest in land for the purpose of this chapter or any local ordinance.

(2) The signature of either the holder of beneficial interests under trust deeds or the trustee under the trust deeds, but not both, may be omitted. The signature of either shall constitute a full and complete subordination of the lien of the deed of trust to the map

and any interest created by the map.

(3) Signatures of parties owning the following types of interests may be omitted if their names and the nature of their respective interests are stated on the final map:

(A) (i) Rights-of-way, easements or other interests which cannot ripen into a fee, except those owned by a public entity, public utility, or subsidiary of a public utility for conveyance to the public utility for rights-of-way. If, however, the legislative body or advisory agency determines that division and development of the property in the manner set forth on the approved or conditionally approved tentative map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement, the signature of the public entity or public utility may be omitted. Where that determination is made, the subdivider shall send, by certified mail, a sketch of the proposed final map, together with a copy of this section, to any public entity or public utility which has previously acquired a right-of-way or easement.

(ii) If the public entity or utility objects to either recording the final map without its signature or the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the full and complete exercise of its right-of-way or easement, it shall so notify the subdivider and the legislative body or advisory agency within 30 days after receipt of the materials from the subdivider.

(iii) If the public entity or utility objects to recording the final map without its signature, the public entity or utility so objecting may affix its signature to the final map within 30 days of filing its objection with the legislative body or advisory agency.

(iv) If the public entity or utility either does not file an objection with the legislative body or advisory agency or fails to affix its signature within 30 days of filing its objection to recording the map without its signature, the local agency may record the final map without the signature.

(v) If the public entity or utility files an objection to the determination of the legislative body or advisory agency that the division and development of the property will not unreasonably interfere with the exercise of its right-of-way or easement, the legislative body or advisory agency shall set the matter for public hearing to be held not less than 10 nor more than 30 days of receipt of the objection. At the hearing, the public entity or public utility shall present evidence in support of its position that the division and development of the property will unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement.

(vi) If the legislative body or advisory agency finds, following the hearing, that the development and division will in fact unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, it shall set forth those conditions whereby the unreasonable interference will be eliminated and upon

compliance with those conditions by the subdivider, the final map may be recorded with or without the signature of the objector. If the legislative body or advisory agency finds that the development and division will in fact not unreasonably interfere with the free and complete exercise of the objector's right-of-way or easement, the final map may be recorded without the signature of the objector, notwithstanding the objections.

(vii) Failure of the public entity or public utility to file an objection pursuant to this section shall in no way affect its rights under a right-of-way or easement.

(viii) No fee shall be charged by a public entity, public utility, subsidiary of a public utility, or objector for signing, omitting a signature, or objecting pursuant to this section.

(B) Rights-of-way, easements, or reversions, which by reason of changed conditions, long disuse, or laches appear to be no longer of practical use or value and signatures are impossible or impractical to obtain. A statement of the circumstances preventing the procurement of the signatures shall also be stated on the map.

(C) Interests in, or rights to, minerals, including but not limited to, oil, gas, or other hydrocarbon substances.

(4) Real property originally patented by the United States or by the State of California, which original patent reserved interest to either or both of those entities, may be included in the final map without the consent of the United States or the State of California to the map or to dedications made by it.

(b) No monetary liability shall be incurred by, and no cause of action shall arise against, a local agency, a party, the subdivider, the subdivider's agent, or the engineer or land surveyor who prepared the map, on account of the omission of any signature, which omission is authorized by this section.

(c) A notary acknowledgment shall be deemed complete for recording without the official seal of the notary, so long as the name of the notary, the county of the notary's principal place of business, and the notary's commission expiration date are typed or printed below or immediately adjacent to the notary's signature in the acknowledgment.

SEC. 6. Section 66452.1 of the Government Code is amended to read:

66452.1. (a) If the advisory agency is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, it shall make its written report on the tentative map to the legislative body within 50 days after the filing thereof with its clerk.

(b) If the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, it shall take that action within 50 days after the filing thereof with its clerk and report its action to the subdivider.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods

specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 7. Section 66452.2 of the Government Code is amended to read:

66452.2. (a) If there is an advisory agency which is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, at the next regular meeting of the legislative body following the filing of the advisory agency's report with it, the legislative body shall fix the meeting date at which the tentative map will be considered by it, which date shall be within 30 days thereafter and the legislative body shall approve, conditionally approve, or disapprove the tentative map within that 30-day period.

(b) If there is no advisory agency, the clerk of the legislative body shall submit the tentative map to the legislative body at its next regular meeting which shall approve, conditionally approve or disapprove that map within 50 days thereafter.

(c) The local agency shall comply with the time periods referred to in Section 21151.5 of the Public Resources Code. The time periods specified in subdivisions (a) and (b) shall commence after certification of the environmental impact report, adoption of a negative declaration, or a determination by the local agency that the project is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 8. Section 66456.2 of the Government Code is amended to read:

66456.2. (a) An improvement plan being processed in conjunction with either an approved tentative, parcel, or final map shall be prepared by a registered civil engineer and acted on within 60 working days of its submittal, except that at least 15 working days shall be provided for processing any resubmitted improvement plan. The 60 working day period shall not include any days during which the improvement plan has been returned to the applicant for correction, has been subject to review by other than the local agency or, following that review, has been returned to the applicant for correction.

(b) The time limits specified in this section for acting on improvement plans may be extended by mutual consent of the subdivider and the advisory agency or legislative body required to act. However, no advisory agency or legislative body may require a routine waiver of time limits as a condition of accepting the improvement plan. A routine waiver may be obtained for the purpose of permitting concurrent processing of other requirements related to the improvement plan or map.

(c) If, at the time of submittal or resubmittal, the local agency or designee determines it is unable to meet the time limits of this section, the local agency or designee shall, upon request of the

subdivider and for purposes of meeting the time limits, contract or employ a private entity or persons on a temporary basis to perform services necessary to permit the agency or designee to meet the time limits. However, a local agency or designee need not enter into a contract or employ those persons if it determines either of the following:

(1) No entities or persons are available or qualified to perform the services.

(2) The local agency or designee would be able to perform services in a more rapid fashion by modifying its own work schedule than would any available and qualified persons or entities.

A local agency may charge the subdivider fees in an amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(d) "Improvement plan" means the plan for public improvement as described in Sections 66418 and 66419.

SEC. 9. Section 66463 of the Government Code is amended to read:

66463. (a) Except as otherwise provided for in this code, the procedure for processing, approval, conditional approval, or disapproval and filing of parcel maps and modifications thereof shall be as provided by local ordinance. The provisions of Sections 66477.1, 66477.2, and 66477.3 relating to dedications and offers of dedication on final maps, shall apply to dedications and offers of dedications on parcel maps.

(b) Whenever a local agency provides, by ordinance, for the approval, conditional approval, or disapproval of parcel maps by the county engineer, surveyor, or other designated official, the local agency may also, by ordinance, provide that the officer may accept or reject dedications and offers of dedication that are made by a statement on the map.

(c) Whenever a local agency provides, by ordinance, for the approval of parcel maps by the legislative body, the parcel maps shall be filed pursuant to the procedure for final maps as prescribed by Sections 66457 and 66458.

(d) The time limits for action or approval of a tentative map and parcel map for which a tentative map is not required shall be no longer than the time limits contained in Sections 66452.1 and 66452.2.

SEC. 10. Section 66474.2 of the Government Code is amended to read:

66474.2. (a) Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.

(b) Subdivision (a) shall not apply to a local agency which, before it has determined an application for a tentative map to be complete

pursuant to Section 65943, has done both of the following:

(1) Initiated proceedings by way of ordinance, resolution, or motion.

(2) Published notice in the manner prescribed in subdivision (a) of Section 65090 containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans, or zoning or subdivision ordinances.

A local agency which has complied with this subdivision may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map.

(c) If the subdivision applicant requests changes in applicable ordinances, policies or standards in connection with the same development project, any ordinances, policies or standards adopted pursuant to the applicant's request shall apply.

SEC. 11. Section 66474.10 is added to the Government Code, to read:

66474.10. If the legislative body or advisory agency determines that engineering or land surveying conditions are to be imposed on a tentative map or a parcel map for which a tentative map was not required, those conditions shall be reviewed by the city engineer, city surveyor, county engineer or county surveyor, as appropriate, to determine compliance with generally accepted engineering or surveying practices.

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.

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

CHAPTER 848

An act to amend Section 65962 of the Government Code, relating to development.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 65962 of the Government Code is amended to read:

65962. (a) As used in this section, "local agency" means a city, county, city and county, a school district, and special district.

(b) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in subdivision (a) of Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 54992 and shall be effective no sooner than 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(c) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 54992, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote.

(d) The amendments made to this section by the Statutes of 1989 shall not apply to any action to adopt or increase a fee or charge which is commenced on or before December 31, 1989.

CHAPTER 849

An act to add Section 2924j to the Civil Code, relating to mortgages and deeds of trust.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 2924j is added to the Civil Code, to read:

2924j. (a) If, within 30 days of the execution of the trustee's deed, the trustee has notice that there are conflicting claims to the proceeds of a sale conducted pursuant to a power of sale in a deed of trust or mortgage, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale and those entitled to notice pursuant to paragraph (2) of subdivision (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (e).

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) Before the trustee can act, the noticed person shall submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principle, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice must be sent pursuant to subdivision (a).

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior court of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed. The declaration shall specify the date of the trustee's sale, a description of the property,

the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the superior court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the superior court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

A deposit with the superior court may be in lieu of those applications specified in subdivision (e) that cannot be distributed after due diligence. The clerk shall deposit the amount with the county treasurer subject to order of the superior court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Article 2 (commencing with Section 26820) of Division 2 of Title 3 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that if they are not satisfied by a distribution of sale proceeds, they must file a claim for the funds with the superior court within 30 days from the date of the notice, providing the address of the superior court in which the funds were deposited, and a phone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustees' declaration at the addresses specified therein. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) The trustee or the clerk of the superior court upon court order shall distribute the proceeds of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

(1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (f) of this section.

(2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the

event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

(f) A trustee may charge costs and expenses incurred for such items as mailing and a reasonable fee for services rendered in connection with the distribution of the proceeds from a trustee's sale including, but not limited to, the investigation of priority and validity of claims and the disbursement of funds. If the fee charged for services rendered pursuant to this subdivision does not exceed one hundred dollars ($100), the fee is conclusively presumed to be reasonable.

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

CHAPTER 850

An act to amend Section 546 of the Code of Civil Procedure, and to amend Sections 12028.5 and 13519 of the Penal Code, relating to domestic violence.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order

is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer or a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the endangered person resides.

(4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more

permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the next day of judicial business following the day of its issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 1.5. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has

a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer or a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the endangered person resides.

(4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application."

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

(c) A judge, commissioner, or referee designated pursuant to subdivision (b) may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, based upon an allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders authorized in Section 213.5 of the Welfare and Institutions Code, and may include provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or legal guardian of the endangered child who is not a restrained party. The order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the endangered child resides.

(4) The following statement: "This order will last only until the

date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney may be sought in connection with the application for a more permanent restraining order."

The parent or legal guardian of the endangered child who is not a restrained party, or any person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to any parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to any person having temporary custody of the endangered child. A copy also shall be filed with the court as soon as practicable after issuance.

The availability of an emergency protective order shall not be affected by the endangered child's leaving the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 2. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (d) of Section 830.2, a member of a California State University Police Department, as

defined in subdivision (e) of Section 830.2, and a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars ($1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, or by a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 2.5. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy

marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, and a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars ($1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, or by a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 3. Section 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic

violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office or any peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, report writing, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission. This training shall be completed no later than January 1, 1989; except for peace officers of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2, whose training shall be completed no later than January 1, 1992.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and

training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 546 of the Code of Civil Procedure proposed by both this bill and SB 221. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 546 of the Code of Civil Procedure, and (3) this bill is enacted after SB 221, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and SB 353. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after SB 353, in which case Section 2 of this bill shall not become operative.

CHAPTER 851

An act to add Sections 2441 and 2499.8 to the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 2441 is added to the Business and Professions Code, to read:

2441. Any licensee who demonstrates to the satisfaction of the board that he or she is unable to practice medicine due to a disability may request a waiver of the license renewal fee. The granting of a waiver shall be at the discretion of the board and may be terminated at any time. Waivers shall be based on the inability of a licensee to practice medicine. A licensee whose renewal fee has been waived pursuant to this section shall not engage in the practice of medicine unless and until the licensee pays the current renewal fee.

SEC. 2. Section 2499.8 is added to the Business and Professions Code, to read:

2499.8. Any licensee who demonstrates to the satisfaction of the board that he or she is unable to practice podiatry due to a disability may request a waiver of the license renewal fee. The granting of a waiver shall be at the discretion of the board and may be terminated at any time. Waivers shall be based on the inability of a licensee to practice podiatry. A licensee whose renewal fee has been waived pursuant to this section shall not engage in the practice of podiatry unless and until the licensee pays the current renewal fee.

CHAPTER 852

An act to amend Sections 987.603, 987.61, and 987.65 of the Military and Veterans Code, relating to veterans' farm and home purchases.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 987.603 of the Military and Veterans Code is amended to read:

987.603. The department may acquire an assignment of an Indian veteran's beneficial interest in trust land held by the United States for that veteran or a leasehold interest in trust land acquired by the Indian veteran from an Indian beneficiary and contract with an Indian veteran as provided in Sections 987.601 and 987.602 upon the

terms agreed if all of the following conditions are met:

(a) The department is satisfied of the desirability of the property submitted.

(b) The Indian veteran has agreed with the department that the veteran, or members of the veteran's immediate family, will actually reside on the property within 60 days from the date of acquisition by the department, or if the residence on the property is not complete on the date of acquisition, within 60 days after the residence is completed.

(c) The sum to be expended by the department pursuant to a contract for the acquisition of a home or the construction of a dwelling house and other improvements does not exceed one hundred twenty-five thousand dollars ($125,000).

(d) The Indian veteran has paid a reasonable fee set by the department to cover the cost of preliminary service of the department that may be necessary to process the application.

(e) The Indian veteran has filed with the department adequate plans and specifications for the improvements to be constructed upon the real property, together with a contract executed by a contractor licensed by the State of California or by an Indian contractor approved by the department for the construction of the improvements, in accordance with the plans and specifications, within eight months after the assignment of the Indian veteran's beneficial interest or acquisition of the Indian veteran's leasehold interest in the real property by the department, and a bond executed by the contractor providing for compliance with the terms of the contract and for the payment of persons furnishing material or labor on the job, executed by a surety company, authorized to do business in the State of California.

(f) The plans, specifications, contract, and bond are approved by the department.

(g) The Indian veteran has placed in escrow all sums of money to be advanced by the veteran where the cost is in excess of the maximum that may be expended by the department.

SEC. 2. Section 987.61 of the Military and Veterans Code is amended to read:

987.61. The department may purchase property, subject to a participation contract providing for a loan term of not less than 23 years. The purchase price plus the participation contract shall not exceed the lower of the following:

(a) One hundred twenty-five thousand dollars ($125,000).

(b) Ninety-five percent of the market value of the property, as determined by department appraisal.

SEC. 3. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, shall not exceed one hundred twenty-five thousand dollars

($125,000).

(b) The purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code shall not exceed ninety thousand dollars ($90,000).

(c) The purchase price of a mobilehome which is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall not exceed seventy thousand dollars ($70,000).

(d) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department is required, under Section 987.69, to add to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(e) The purchase price of a farm to the department shall not exceed two hundred thousand dollars ($200,000). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount which the department is required, under Section 987.69, to add to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

CHAPTER 853

An act to amend Section 46001 of the Education Code, relating to education.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 46601 of the Education Code is amended to read:

46601. If, within 30 calendar days after the person having legal custody of a pupil has so requested, the governing board of either school district fails to approve interdistrict attendance in the current term, or, in the absence of an agreement between the districts, fails or refuses to enter into an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

If, within 14 calendar days after the commencement of instruction in a new term in each of the school districts, respectively, when the

person having legal custody of a pupil has so requested separately of each district not later than 30 calendar days prior to the commencement of instruction in that term in that district, the governing board of either district fails to approve interdistrict attendance in that term, or, in the absence of an agreement between the districts to permit that attendance, fails or refuses to enter an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

Notifying districts shall also, in all instances, advise persons making unsuccessful requests for interdistrict attendance of all of the following:

(a) The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal. An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. If new evidence or grounds for the request are introduced, the county board may remand the matter for further consideration by the district or districts. In all other cases, the appeal shall be granted or denied on its merits.

(b) The county board of education shall, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which he desires to attend and the applicable period of time. In the event that compliance by the county board within the time requirement for determining whether the pupil should be permitted to attend in the district in which he or she desires to attend is impractical, the county board or the county superintendent of schools, for good cause, may extend the time period for up to an additional five school days. The county shall provide adequate notice to all parties of the date and time of any hearing scheduled and of the opportunity to submit written statements and documentation and to be heard on the matter pursuant to rules and regulations adopted by the county board of education. The county board rules may provide for the granting of continuances upon a showing of good cause.

(c) The county supervisor of attendance, or other designee of the county superintendent of schools, shall investigate to determine whether local remedies in the matter have been exhausted and to provide any additional information deemed useful to the county board in reaching a decision.

(d) If the interdistrict attendance involves school districts located in different counties, the county board of education having jurisdiction over the district denying a permit, or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall

have jurisdiction for purposes of an appeal. If both districts deny a permit, or refuse or fail to enter into an agreement to allow for the issuance of a permit, the county board having jurisdiction over the district of residence shall have jurisdiction for purposes of an appeal and, upon granting a pupil's appeal, shall seek concurrence in the decision by the county board of the other county which shall provide adequate opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the pupil's appeal shall be denied.

(e) Students who are under consideration for expulsion or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

CHAPTER 854

An act to amend Sections 74691, 74827, 74837, 74922, 74926, 74954, 74956, and 74991 of, to add Sections 74651.5, 74824.1, 74828.1, 74835.5, 74861.1, 74861.2, 74871.1, 74922.1, 74923.1, 74926.1, 74927.1, 74928.1, 74951.1, and 74952.7 to, to repeal Section 74952 of, and to repeal and add Sections 74927 and 74952.5 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 74651.5 is added to the Food and Agricultural Code, to read:

74651.5. Prior to the beginning of each marketing season, the commission may establish a voluntary minimum assessment rate applicable to vintners who process winegrapes in the marketing season in a quantity of 100 tons or less and who are exempt from paying the assessment established pursuant to Section 74651. Notwithstanding any other provisions of this chapter, any vintner who voluntarily pays the minimum assessment shall be granted the same rights and privileges as vintners processing over 100 tons in that marketing season.

SEC. 1.2. Section 74691 of the Food and Agricultural Code is amended to read:

74691. (a) On or before June 30, 1990, the commission shall cause a referendum to be conducted among vintners in the manner specified in Section 74622 to determine whether this chapter shall be reapproved and continued in effect. In determining whether this chapter is reapproved, the director shall find that at least 40 percent of the total number of vintners from the list established by the director participated in the referendum, and that either one of the

following has occurred:

(1) Sixty-five percent or more of the vintners who voted in the referendum voted in favor of this chapter, and the vintners so voting processed a majority of the volume of winegrapes in the preceding marketing season by all the vintners who voted in the referendum.

(2) A majority of the vintners who voted in the referendum voted in favor of this chapter, and the vintners so voting processed 65 percent or more of the volume of the winegrapes in the preceding marketing season by all the vintners who voted in the referendum.

(b) If the director finds that a favorable vote has been given to continue the commission, he or she shall so certify and this chapter or the appropriate portions thereof shall remain in effect. If the director finds that a favorable vote has not been given, he or she shall so certify and declare the operations of this chapter suspended upon expiration of the marketing season. No bond or security shall be required for any such referendum.

SEC. 1.5. Section 74824.1 is added to the Food and Agricultural Code, to read:

74824.1. "Local commission" means any local commission created pursuant to this chapter.

SEC. 2. Section 74827 of the Food and Agricultural Code is amended to read:

74827. "Producer" and "grower" are synonymous and mean any person who produced winegrapes in a marketing season in a quantity of more than 25 tons. Unless otherwise exempted, producer also includes any person who receives winegrapes as payment for the use of his or her property in the production of winegrapes.

SEC. 3. Section 74828.1 is added to the Food and Agricultural Code, to read:

74828.1. "Producer region," for the purpose of establishing and operating a local commission, shall consist of one or more grape crush report districts.

SEC. 3.5. Section 74835.5 is added to the Food and Agricultural Code, to read:

74835.5. "Processing" means any processing of winegrapes for the purpose of making must, grape juice, grape concentrate, wine, winegrape products, or products thereof, including high proof brandy.

SEC. 4. Section 74837 of the Food and Agricultural Code is amended to read:

74837. "Vintner" means a winegrower, as defined in Section 23013 of the Business and Professions Code, who holds a winegrower's license issued by the Department of Alcoholic Beverage Control pursuant to Chapter 3 (commencing with Section 23300) of Division 9 of the Business and Professions Code, and who is engaged in producing must, grape juice, grape concentrate, wine, or products thereof, including high proof and brandy by processing winegrapes or field crushed must. A vintner who processes winegrapes in the preceding marketing season in a quantity of 100

tons or less is not subject to the assessment collection and reporting requirements of this chapter.

SEC. 4.5. Section 74861.1 is added to the Food and Agricultural Code, to read:

74861.1. There are, in state government, local commissions for producer regions. The producers in any producer region of this state may, pursuant to this chapter, establish a local commission composed of not less than five and not more than 10 producers and may include one public member. The provisions of this chapter that are applicable to the commission, except Sections 74828, 74861, 74862, 74867, 74871, 74922, 74923, 74926, 74927, 74928, and 74951, shall apply to any local commission established and certified as operative pursuant to this chapter regardless of the certification of the commission.

(a) A producer member who produces more than 25 tons of winegrapes in a producer region shall be eligible to serve on the local commission in that producer region.

(b) A public member may be appointed to the local commission by the director from nominees recommended by the local commission.

(c) The director, and other appropriate individuals as determined by the local commission, shall be ex officio members of the local commission.

(d) There may be an alternate member for each member of the local commission.

The name of a local commission shall contain the words "local commission" and shall identify the producer region represented by the local commission. No local commission shall use the term "California Winegrape Growers Commission" as part of its name.

SEC. 5. Section 74861.2 is added to the Food and Agricultural Code, to read:

74861.2. (a) The provisions of this chapter relating to local commissions shall be inapplicable to any producer who is a member of a nonprofit agricultural cooperative association engaged in processing winegrapes except as follows:

(1) The cooperative association, prior to formation of the local commission, petitions the director to be subject to the provisions of this chapter, including, but not limited to, the right to vote in the implementation referendum.

(2) The cooperative association petitions the local commission subsequent to its formation to be subject to this chapter.

(b) The provisions of this chapter relating to local commissions shall be applicable to any producer who is a member of a nonprofit agricultural cooperative association engaged in marketing winegrapes.

SEC. 6. Section 74871.1 is added to the Food and Agricultural Code, to read:

74871.1. Not less than one-half of the producer members of any local commission, including alternate members when acting in the

place of the members, shall constitute a quorum of the local commission.

SEC. 7. Section 74922 of the Food and Agricultural Code is amended to read:

74922. (a) Upon receipt of a petition that the director determines is acceptable, the director shall establish a list of producers who are eligible to vote to establish the commission. In establishing the lists, the director may require producers, vintners, county agricultural commissioners, and others to submit the names and mailing addresses of all producers. The director also may require that the information provided include the quantity of winegrapes sold to vintners and the quantity of winegrapes processed by vintners or, in the alternative, may establish procedures for receiving the information at the time of the referendum. The request for this information shall be in writing. The information required by the director shall be filed within 30 days following receipt of the written notice.

(b) Any producer whose name does not appear on the director's lists may have his or her name included on the appropriate list by filing with the director a signed statement identifying himself or herself as a producer. Failure to be on the appropriate list does not exempt any producer from paying assessments under this chapter.

SEC. 8. Section 74922.1 is added to the Food and Agricultural Code, to read:

74922.1. (a) Upon petition of at least three producers from any one producer region of this state, the director shall establish a list of producers who are eligible to vote in a referendum to establish a local commission in that producer region. In establishing the lists, the director may require the producers signing the petition and producers, vintners, county agricultural commissioners, and others to submit the names and mailing addresses of all producers in that producer region. The director also may require that the information provided include the quantity of winegrapes sold to vintners and the quantity of winegrapes processed by vintners from that producer region and the names and addresses of the vintners, or, in the alternative, may establish procedures for receiving the information at the time of the referendum. The request for this information shall be in writing. The information required by the directors shall be filed within 30 days following receipt of the written notice.

(b) Any producer whose name does not appear on the director's lists may have his or her name included on the appropriate list by filing with the director a signed statement identifying himself or herself as a producer of a given producer region. Failure to be on the appropriate list does not exempt any producer from paying assessments under this chapter.

SEC. 9. Section 74923.1 is added to the Food and Agricultural Code, to read:

74923.1. In determining whether this chapter is applicable to growers in a producer region, it is necessary that the director find

that at least 40 percent of the total number of growers from the list established by the director for the producer region participated in the referendum, and that either one of the following has occurred:

(a) Sixty-five percent or more of the growers in the producer region who voted in the referendum voted in favor of the local commission, and the growers so voting marketed a majority of the volume of winegrapes in the producer region in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

(b) A majority of the growers in the producer region who voted in the referendum voted in favor of the local commission, and the growers so voting marketed 65 percent or more of the volume of winegrapes in the producer region in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

SEC. 10. Section 74926 of the Food and Agricultural Code is amended to read:

74926. If the director finds that a favorable vote has not been given to the establishment of the commission as provided in this chapter, he or she shall certify and declare that result. If the director finds that a favorable vote has been given as provided in this chapter, he or she shall certify and give notice of the favorable vote to all producers and vintners whose names and addresses may be on file with the director.

SEC. 11. Section 74926.1 is added to the Food and Agricultural Code, to read:

74926.1. If the director finds that a favorable vote has not been given to the establishment of any local commission as provided in this chapter, he or she shall certify and declare that result. If the director finds that a favorable vote has been given, he or she shall certify and give notice of the favorable vote to all producers whose names and addresses may be on file with the director. If this chapter is certified as establishing the commission, any local commission shall be abolished unless its producers vote by referendum pursuant to Section 74923.1 in favor of that local commission remaining in operation.

SEC. 12. Section 74927 of the Food and Agricultural Code is repealed.

SEC. 13. Section 74927 is added to the Food and Agricultural Code, to read:

74927. The petition to establish the commission shall name the persons designated to serve as producer members and their alternate members in the event the commission is approved by referendum. Upon the certification of the establishment of the commission, the producer members and their alternates named in the petition shall become the initial members and alternate members of the commission.

SEC. 14. Section 74927.1 is added to the Food and Agricultural

Code, to read:

74927.1. The petition to establish a local commission shall name the persons designated to serve as producer members and their alternate members, if any, in the event that local commission is approved by referendum. Upon certification of the establishment of a local commission, the producer members and their alternates named in the petition shall become the initial members and alternate members of the local commission.

SEC. 15. Section 74928.1 is added to the Food and Agricultural Code, to read:

74928.1. Subsequent to the action taken pursuant to Section 74927.1, persons to be elected to a local commission shall be selected pursuant to the nomination and election procedures established by the local commission with the concurrence of the director.

SEC. 17. Section 74951.1 is added to the Food and Agricultural Code, to read:

74951.1. (a) The petition for a referendum to establish a local commission shall set forth the assessment rate which shall become effective during the first marketing season in which the local commission is operative. Thereafter, prior to the beginning of each marketing season or as soon thereafter as possible, the local commission shall establish an assessment rate for the marketing season. Assessment rates set by local commissions which vote to continue in operation after the certification of the commission shall be independent of, and additional to, any assessment rate established by the commission.

(b) The assessment rate for producers shall not exceed 1 percent of the gross dollar value of winegrapes grown in the producer region and marketed by producers to vintners. If a producer sells winegrapes for a specified sum in a bona fide sale, the gross dollar amount of this sum is the gross dollar value of the winegrapes.

SEC. 18. Section 74952 of the Food and Agricultural Code is repealed.

SEC. 20. Section 74952.5 of the Food and Agricultural Code is repealed.

SEC. 21 Section 74952.5 is added to the Food and Agricultural Code, to read:

74952.5. (a) Unless exempted by this chapter, the commission shall levy the assessment on the producer if he or she does any of the following:

(1) Sells to a vintner or to a handler for processing.

(2) Contracts or otherwise arranges with a vintner for processing into wine, with the producer retaining ownership of the wine for sale other than in bottled form.

(3) Is a member of an agricultural nonprofit cooperative association for processing which is subject to this chapter pursuant to Section 74861.2.

(b) If a producer delivers winegrapes to a vintner or handler for processing without selling them to the vintner or handler, the

"weighted average producer returns per ton" by district as published in the most recent Final Grape Crush Report issued annually for the current marketing season by the department shall be used as the basis for determining the gross dollar value of the winegrapes for the purpose of determining the amount of the assessment.

SEC. 22. Section 74952.7 is added to the Food and Agricultural Code, to read:

74952.7. (a) Any producer who meets any of the following requirements specified by subdivision (b) may apply to the director prior to the formation of the commission, or apply to the commission after its formation, for, and, if found eligible, shall receive either an exemption from, or a refund of, the assessment.

(b) A producer shall be eligible to claim an exemption from, or refund of, the assessment for winegrapes grown by the producer, with regard to which the producer does any of the following:

(1) Processes winegrapes which are grown by the producer. However, the producer shall not be eligible for an exemption or refund of assessments on winegrapes which are grown and sold; except that a producer who is also a vintner, and who commercially sells less than 25 tons of winegrapes in a marketing season, is not subject to assessment.

(2) Sells to a related vintner or a related handler.

(3) Contracts or otherwise arranges with a related vintner for processing into wine, with the producer retaining ownership of the wine for sale other than in bottled form.

(4) Is a producer who is also a vintner and who contracts or otherwise arranges with a nonrelated vintner for processing his or her winegrapes into wine and retains ownership of the wine for sale other than in bottled form.

(b) For the purpose of this section, an agricultural nonprofit cooperative association shall not be considered a "related vintner" or a "related handler." A vintner or handler shall be considered a "related vintner" or "related handler" if any one of the following relationships exists:

(1) The producer has an ownership interest in the vintner or handler processing the winegrapes.

(2) The vintner or handler processing the winegrapes has an ownership interest in the producer.

(3) The producer, or any person controlling the producer if the producer is not a natural person, is a member of the immediate family of the vintner or handler processing the winegrapes, or of any person controlling the vintner or handler if the vintner or handler is not a natural person. For the purpose of this paragraph, "member of the immediate family" means parents, spouses, and children.

(c) In order to be eligible for the exemption or refund, the producer shall file a claim with the director prior to formation of the commission and with the commission after its formation on a form prescribed by the commission attesting to the facts establishing the producer's right to the exemption or refund. The director or the

commission shall then determine whether the claim should be granted.

(d) The commission shall serve written notice on the claimant of its decision within 30 days of receipt of the claim. All approved claims shall be subject to verification through an independent audit of the claimant and the related vintner's or handler's business records by the commission or its duly authorized agent or, in the case of a local commission, by the director or his or her duly authorized agent. The local commission shall not serve as the director's duly authorized agent for purposes of auditing business records.

(e) Every producer receiving an exemption or refund shall, in addition to the requirements of Section 74954, maintain sales invoices, and all other business documents specified by the commission as necessary to verify the claim. The records shall be preserved for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent or, in the case of a local commission, by the director or his or her duly authorized agent. The local commission shall not serve as the director's duly authorized agent for purposes of records inspection.

(f) No claim of exemption or refund shall be approved by the commission after two years from the date the assessment was due. Failure to file a claim of exemption or refund within that two-year period constitutes a waiver of all claims or demands for an exemption or refund against the commission.

SEC. 24. Section 74954 of the Food and Agricultural Code is amended to read:

74954. Every producer subject to this chapter and every vintner who processes winegrapes for producers shall maintain normal commercial records of all winegrapes grown for market or processed. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be preserved for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent or, in the case of a local commission, by the director or his or her duly authorized agent. The local commission shall not serve as the director's duly authorized agent for purposes of records inspection.

SEC. 24.5. Section 74956 of the Food and Agricultural Code is amended to read:

74956. Any assessment levied by the commission, pursuant to this chapter, is a personal debt of every person so assessed and is due and payable to the commission within 30 days after the date the vintner deducts the assessment from the amounts paid by the vintner to the producer. The vintner first acquiring the grapes being assessed shall deduct the assessments from amounts paid by the vintner to the producer and shall be a trustee of the funds until they are paid to the commission. The vintner responsible for deducting the assessment may deduct and retain an amount not in excess of that reasonably

necessary to cover the actual cost of services provided by the vintner. Failure of a vintner to collect the assessment from a producer shall not exempt the vintner from liability nor relieve the producer of the obligation to pay the assessment.

SEC. 25. Section 74991 of the Food and Agricultural Code is amended to read:

74991. During the fifth year of operation of the commission, the commission shall cause a referendum to be conducted among producers to determine whether the commission shall be reapproved and continued to operate. A favorable vote shall be found if the director determines from the referendum that a majority of the eligible producers who voted in the referendum voted in favor of continuing the operations. If the director finds that a favorable vote has been given, he or she shall so certify that result. If the director finds that a favorable vote has not been given, he or she shall so certify and declare the operations of the commission suspended upon expiration of the marketing season. No bond or security shall be required for any referendum.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 855

An act to add Section 1748.7 to the Civil Code, relating to credit.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1748.7 is added to the Civil Code to read:

1748.7. (a) No person shall process, deposit, negotiate, or obtain payment of a credit card charge through a retailer's account with a financial institution or through a retailer's agreement with a financial institution, card issuer, or organization of financial institutions or card issuers if that retailer did not furnish or agree to furnish the goods or services which are the subject of the charge.

(b) No retailer shall permit any person to process, deposit, negotiate, or obtain payment of a credit card charge through the retailer's account with a financial institution or the retailer's

agreement with a financial institution, card issuer, or organization of financial institutions or card issuers if that retailer did not furnish or agree to furnish the goods or services which are the subject of the charge.

(c) Subdivisions (a) and (b) do not apply to any of the following:

(1) A person who furnishes goods or services on the business premises of a general merchandise retailer and who processes, deposits, negotiates, or obtains payment of a credit card charge through that general merchandise retailer's account or agreement.

(2) A general merchandise retailer who permits a person described in paragraph (1) to process, deposit, negotiate, or obtain payment of a credit card charge through that general merchandise retailer's account or agreement.

(3) A franchisee who furnishes the cardholder with goods or services that are provided in whole or in part by the franchisor and who processes, deposits, negotiates, or obtains payment of a credit card charge through that franchisor's account or agreement.

(4) A franchisor who permits a franchisee described in paragraph (3) to process, deposit, negotiate, or obtain payment of a credit card charge through that franchisor's account or agreement.

(5) The credit card issuer or a financial institution or a parent, subsidiary, or affiliate of the card issuer or a financial institution.

(6) A person who processes, deposits, negotiates, or obtains payment of less than five hundred dollars ($500) of credit card charges in any one year period through a retailer's account or agreement. The person shall have the burden of producing evidence that the person transacted less than five hundred dollars ($500) in credit card charges during any one year period.

(d) Any person injured by a violation of this section may bring an action for the recovery of damages, equitable relief, and reasonable attorney's fees and costs.

(e) Any person who violates this section shall be guilty of a misdemeanor. Each occurrence in which a person processes, deposits, negotiates, or otherwise seeks to obtain payment of a credit card charge in violation of subdivision (a) constitutes a separate offense.

(f) The penalties and remedies provided in this section are in addition to any other remedies or penalties provided by law.

(g) The exemptions from this title specified in Section 1747.03 do not apply to this section.

(h) As used in this section:

(1) "General merchandise retailer" means any person or entity, regardless of the form of organization, that has continuously offered for sale or lease more than 100 different types of goods or services to the public in this state throughout a period which includes the immediately preceding five years.

(2) "Franchisor" has the same meaning as defined in Section 31007 of the Corporations Code.

(3) "Franchisee" has the same meaning as defined in Section

31006 of the Corporations 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 856

An act to amend Sections 1725 and 1726 of, to add Sections 1727.1 and 1727.5 to, to add and repeal Section 1726.1 of, and to repeal and add Section 1727 of, the Health and Safety Code, relating to home health agencies.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1725 of the Health and Safety Code is amended to read:

1725. It is the purpose of this chapter to license home health agencies in order to protect the health and safety of the people of California. By passing a licensing act it is the intent of the Legislature to require all organizations which provide skilled nursing services to patients in the home to obtain a home health agency license. It is the further intent that the State Department of Health Services shall establish high standards of quality for home health agencies.

SEC. 2. Section 1726 of the Health and Safety Code is amended to read:

1726. No private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other governmental agency within the state, shall provide, or arrange for the provision of, skilled nursing services in the home in this state without first obtaining a home health agency license.

In establishing a system of licensing for home health agencies, it is the purpose of the Legislature to distinguish between the functions of a home health agency and the functions of a nurses' registry licensed pursuant to Article 3.5 (commencing with Section 9958) of Chapter 21 of Division 3 of the Business and Professions Code. It is not the intention of the Legislature to require that a licensed nurses' registry performing their functions as defined by Article 3.5 (commencing with Section 9958) of Chapter 21 of Division 3 of the

Business and Professions Code secure a home health agency license unless they are performing the functions of a home health agency, as defined in this chapter.

It is not the intent of the Legislature to require a hospice to secure a home health agency license unless it is performing the functions of a home health agency.

SEC. 3. Section 1726.1 is added to the Health and Safety Code, to read:

1726.1. (a) Any licensed pharmacy engaged in providing, pursuant to the order of a physician and surgeon, parenteral or enteral therapies administered by a licensed registered nurse employed, or whose services who are arranged for, by the pharmacy, shall be exempt from the requirements of this chapter until January 1, 1991.

(b) This section shall remain in effect only 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. 4. Section 1727 of the Health and Safety Code is repealed.

SEC. 5. Section 1727 is added to the Health and Safety Code, to read:

1727. (a) "Home health agency" means a private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence.

(b) "Skilled nursing services" means services provided by a registered nurse or licensed vocational nurse.

(c) "Home health aide services" means personal care services provided under a plan of treatment prescribed by the patient's physician and surgeon who is licensed to practice medicine in the state. Home health aide services shall be provided by a person certified by the state department to provide these services. Services which do not involve personal care services provided under a plan of treatment prescribed by a physician and surgeon may be provided by a person who is not a certified home health aide. Home health aide services shall not include services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 6. Section 1727.1 is added to the Health and Safety Code, to read:

1727.1. A licensed home health agency may also provide, or arrange for the provision of, other therapeutic services to persons in their temporary or permanent place of residence. Therapeutic services include, but are not limited to, physical, speech, or occupational therapy, medical social services, and home health aide services.

SEC. 7. Section 1727.5 is added to the Health and Safety Code, to read:

1727.5. Each home health agency providing home health agency services shall do all of the following:

(a) Provide for a plan of treatment for patients receiving skilled nursing services.

(b) Maintain clinical records on all patients.

(c) Provide for the supervision of licensed and unlicensed personnel by a registered nurse or physical, speech, or occupational therapist when within the therapist's scope of practice.

(d) Maintain policies regarding the delivery and supervision of patient care which are reviewed annually by a group of professional personnel including a physician and surgeon and a registered nurse and revised as needed.

(e) Meet all applicable federal, state, and local requirements.

(f) Meet such other standards, rules, and regulations adopted by the state department in order to implement this chapter.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 857

An act to add Section 66006.5 to the Government Code, relating to transportation.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. (a) The Legislature makes the following findings and declarations:

(1) Numerous areas throughout the state are experiencing rapid expansion of residential, commercial, industrial, and business activities, which is producing increased traffic levels.

(2) Many property owners have expressed a willingness to donate real property or property rights for transportation improvements to accomodate these increases in traffic.

(3) The cost of right-of-way acquisition is often a significant and, in some cases, even a prohibitive cost element in many transportation improvement projects.

(4) The voluntary donation of right-of-way can result in direct

benefits to property owners, developers and the community at large, and can greatly assist in reducing the costs associated with transportation improvement projects.

(5) It is in the best interest and welfare of the citizens of California for the state and counties and cities to actively foster donations of right-of-way for transportation purposes.

(b) It is the intention of the Legislature, through the enactment of this act, to encourage and facilitate donations of right-of-way by willing donors in all areas where transportation improvements are to be made.

SEC. 2. Section 66006.5 is added to the Government Code, to read:

66006.5. (a) A city or county which imposes an assessment, fee, or charge, other than a tax, for transportation purposes may, by ordinance, prescribe conditions and procedures allowing real property which is needed by the city or county for local transportation purposes, or by the state for transportation projects which will not receive any federal funds, to be donated by the obligor in satisfaction or partial satisfaction of the assessment, fee, or charge.

(b) To facilitate the implementation of subdivision (a), the Department of Transportation shall do all of the following:

(1) Give priority to the refinement, modification, and enhancement of procedures and policies dealing with right-of-way donations in order to encourage and facilitate those donations.

(2) Reduce or simplify paperwork requirements involving right-of-way procurement.

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right-of-way donations.

(4) Enhance communication and coordination with local public entities through agreements of understanding that address state acceptance of right-of-way donations.

CHAPTER 858

An act to amend Sections 8150.5, 8150.8, and 8153 of, and to add Section 8154 to, the Fish and Game Code, relating to sardines, and making an appropriation therefor.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 8150.5 of the Fish and Game Code is amended to read:

8150.5. Sardines may not be taken or possessed on any boat, barge, or vessel except pursuant to Section 8150.7.

(a) However, loads or lots of fish may contain 15 percent or less

by weight of sardines which are taken incidentally to other fishing operations and which are mixed with the other fish in the load or lot.

(b) Sardines incidentally taken under subdivision (a) or Section 8151 may be possessed and used for canning, reduction, or live bait purposes only.

(c) This section does not prohibit the possession and use of sardines imported into this state under a bill of lading identifying the country of origin.

(d) Imported sardines may be used for dead bait under regulations as the commission may prescribe.

(e) Subdivision (a) is operative only when Section 8151 is not operative. Subdivisions (b), (c), and (d) are operative and apply regardless of whether subdivision (a) or Section 8151 is operative.

SEC. 2. Section 8150.8 of the Fish and Game Code is amended to read:

8150.8. (a) Any sardine quota established by the department under Section 8150.7 shall be allocated in the following manner into two quotas, one for southern California and one for northern California, with the boundary division at Point Buchon in San Luis Obispo County. The allocation shall be as follows:

(1) Twenty percent of the quota shall be reserved for fishermen landing their catches north of Point Buchon in San Luis Obispo County.

(2) Eighty percent of the quota shall be reserved for fishermen landing their catches south of Point Buchon.

(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. 3. Section 8153 of the Fish and Game Code is amended to read:

8153. (a) In addition to any other provision of this article, 250 tons of sardines may be taken, possessed, and landed for dead bait purposes during the period March 1 to February 28. Sardines may not be taken for dead bait purposes except by fishermen operating under permits issued by the department pursuant to Section 8150.7.

(b) Whenever the department, under Section 8150.7, establishes a quota of 2,500 tons or more for the sardine fishery, the quota for dead bait provided for in subdivision (a) shall be 500 tons.

(c) The take of sardines authorized by this section shall be allocated in the following manner:

(1) Seventy-five tons shall be reserved for fishermen landing sardines north of Pescadero Point.

(2) Fifty tons shall be reserved for fishermen landing their catches between Pescadero Point and Point Buchon.

(3) The remaining quota shall be reserved for fishermen landing their catches south of Point Buchon.

(d) Any fisherman taking or possessing sardines for use as dead bait shall be in possession of a bona fide, written, and dated order from the commercial fish business which placed the order for the

sardines.

(e) Sardines taken, possessed, or sold for dead bait purposes shall be landed and kept in a whole condition until sold to a sportfisherman for use as bait.

(f) The fish receipt for any landing of sardines for dead bait purposes shall be completed at the time the landing is made and shall include the words "FOR DEAD BAIT PURPOSES ONLY" on the line designating use.

SEC. 4. Section 8154 is added to the Fish and Game Code, to read:

8154. No person shall receive, possess, or sell sardines for any purpose except for that purpose specified on the fish receipt completed at the time of landing of those sardines pursuant to Section 8043.

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

CHAPTER 859

An act to amend Sections 43156, 43203.5, 44200, 44201, 44202, and 44203 of, to amend the heading of Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of, and to add Sections 39024.6 and 43008.5 to, the Health and Safety Code, relating to vehicles.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 39024.6 is added to the Health and Safety Code, to read:

39024.6. "Direct import vehicle" means any light-duty motor vehicle manufactured outside of the United States which was not intended by the manufacturer for sale in the United States and which was not certified by the state board pursuant to Article 1 (commencing with Section 43100) of Chapter 2 of Part 5.

SEC. 2. Section 43008.5 is added to the Health and Safety Code, to read:

43008.5. In addition to the standards and test procedures adopted by the state board pursuant to Sections 43203.5 and 44201, the state board may adopt, by regulation, alternate test procedures for

certifying direct import vehicles identical to the test procedures applicable to those vehicles pursuant to the National Emission Standards Act (42 U.S.C., Secs. 1857f-1 to 1857f-7, incl.) and the regulations adopted thereunder, if the emission standards applicable to those motor vehicles are the standards adopted by the state board for new or used direct import vehicles pursuant to Section 43203.5 or 44201, respectively.

Those alternate test procedures shall be adopted only if the state board determines that those procedures would be at least as effective for controlling motor vehicle emissions as the procedures adopted pursuant to Section 43203.5 or 44201, as applicable.

SEC. 3. 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 direct import vehicle which is less than two years old has not been transferred to an ultimate purchaser and that the equitable or legal title to any 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.

SEC. 4. Section 43203.5 of the Health and Safety Code is amended to read:

43203.5. The state board shall adopt, by regulation, a certification program for new direct import vehicles, as defined by Sections 39024.6, and 39042, which are less than two years old. The state board shall issue a certificate of conformance to each new direct import vehicle which meets the requirements of the certification program. Any bonding requirements for the certification program may not exceed one thousand dollars ($1,000) per new direct import vehicle or engine.

The model year designation for new direct import vehicles in an engine family shall be determined on the same basis as vehicles in

the same engine family which are offered for sale in California by the manufacturer. The model year designation for any new direct import motor vehicle in an engine family which the manufacturer does not offer for sale in California shall be determined in accordance with the regulations adopted by the state board. The designations shall apply for all purposes of the certification program and for registration of new direct import vehicles.

The state board shall, by regulation, impose fees to recover the state board's costs, including enforcement costs, of administration of the certification program. Failure to pay the fees within 60 days of receipt after notification by the state board shall result in the assessment of a 10 percent penalty. An additional interest assessment on the fees equivalent to the rate earned by the Pooled Money Investment Fund shall accrue at the end of each 30-day period that the fees remain unpaid. Nonpayment of the fees for more than one year shall result in the state board withholding future certification of new vehicles for sale in California.

Fees collected in accordance with this section shall be deposited in the Air Pollution Control Fund.

SEC. 5. The heading of Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of the Health and Safety Code is amended to read:

CHAPTER 6. USED DIRECT IMPORT VEHICLES

SEC. 6. Section 44200 of the Health and Safety Code is amended to read:

44200. For purposes of this chapter, "used direct import vehicle" means any 1975 or later model-year direct import vehicle not required to be certified as a new direct import vehicle pursuant to this part.

For purposes of this section, the age of a motor vehicle shall be determined by the following, in descending order of preference:

(a) From the first calendar day of the model year as indicated in the vehicle identification number.

(b) From the last calendar day of the month the vehicle was delivered by the manufacturer as shown on the foreign title document.

(c) From January 1 of the same calendar year as the model year shown on the foreign title document.

(d) From the last calendar day of the month the foreign title document was issued.

SEC. 7. Section 44201 of the Health and Safety Code is amended to read:

44201. The state board shall adopt, by regulation, a certification program for used direct import vehicles. The state board shall issue a certificate of conformance to each used direct import vehicle which meets the requirements of this program.

SEC. 8. Section 44202 of the Health and Safety Code is amended

to read:

44202. A used direct import vehicle which was not registered in this state prior to the adoption of regulations adopted pursuant to Section 44201, may not be registered in this state unless it has received a certificate of conformance from the state board, except as provided in Section 44210.

SEC. 9. Section 44203 of the Health and Safety Code is amended to read:

44203. The certification program established pursuant to Section 44201 shall require all of the following components:

(a) A test of the vehicle's emissions performed at a laboratory licensed by the state board.

(b) A determination that the emissions of the vehicle meet applicable emission standards adopted by the state board.

(c) Any vehicle labelling and description of any emissions-related modifications to the vehicle that the state board finds appropriate to assure that the emission-related system of the vehicle can be inspected, serviced, and repaired successfully throughout the state.

(d) Any other requirements the board may determine appropriate to assure the used direct import vehicle will continue to comply with emission standards in use, except that no requirement may be established to warrant the emissions control system or to recall vehicles which exhibit a defective emission control system subsequent to receiving a valid certificate of conformance.

CHAPTER 860

An act to amend Section 4006 of the Education Code, relating to schools.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 4006 of the Education Code is amended to read:

4006. (a) Any vacancy created by the expiration of the term of office of a member of the county committee on school district organization shall be filled by the majority vote of the representatives of the governing boards at the annual meeting called and held pursuant to subdivision (a) of Section 4005. The county committee may authorize the representatives of the governing boards to vote, for this purpose, through the use of absentee ballots that are submitted, in the form and manner prescribed by the county committee, prior to the date set for the annual meeting.

(b) If the representatives fail to elect members to fill the vacancies on the county committee pursuant to subdivision (a), the

vacancies shall be filled by the county superintendent of schools.

(c) Vacancies on the county committee which occur prior to the expiration of the term of office of a member of the county committee, which are caused by the happening of any of the events specified in Section 1770 of the Government Code, shall be filled as follows:

(1) In a county in which the members of the county committee are appointed by the county superintendent of schools, by the appointment of the county superintendent of schools.

(2) In a county in which the members of the county committee are elected by the representatives of the governing boards, by the majority vote of the remaining members of the committee. However, if the remaining members of the committee do not fill the vacancy within 70 days of its occurrence, the county superintendent of schools shall fill the vacancy by his or her appointment.

Persons elected or appointed to fill a vacancy pursuant to this subdivision shall hold office for the remainder of the unexpired term.

(d) It is the intent of the Legislature that the allowance for absentee ballots will increase participation in the selection of county committees and will not diminish the public review of candidates for those county committees.

CHAPTER 861

An act to add Section 1940.9 to the Civil Code, relating to tenancies.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1940.9 is added to the Civil Code, to read:

1940.9. (a) If the landlord does not provide separate gas and electric meters for each tenant's dwelling unit so that each tenant's meter measures only the electric or gas service to that tenant's dwelling unit and the landlord or his or her agent has knowledge that gas or electric service provided through a tenant's meter serves an area outside the tenant's dwelling unit, the landlord, prior to the inception of the tenancy or upon discovery, shall explicitly disclose that condition to the tenant and shall do either of the following:

(1) Execute a mutual written agreement with the tenant for payment by the tenant of the cost of the gas or electric service provided through the tenant's meter to serve areas outside the tenant's dwelling unit.

(2) Make other arrangements, as are mutually agreed in writing, for payment for the gas or electric service provided through the tenant's meter to serve areas outside the tenant's dwelling unit.

These arrangements may include, but are not limited to, the landlord becoming the customer of record for the tenant's meter, or the landlord separately metering and becoming the customer of record for the area outside the tenant's dwelling unit.

(b) If a landlord fails to comply with subdivision (a), the aggrieved tenant may bring an action in a court of competent jurisdiction. The remedies the court may order shall include, but are not limited to, the following:

(1) Requiring the landlord to be made the customer of record with the utility for the tenant's meter.

(2) Ordering the landlord to reimburse the tenant for payments made by the tenant to the utility for service to areas outside of the tenant's dwelling unit. Payments to be reimbursed pursuant to this paragraph shall commence from the date the obligation to disclose arose under subdivision (a).

(c) Nothing in this section limits any remedies available to a landlord or tenant under other provisions of this chapter, the rental agreement, or applicable statutory or common law.

CHAPTER 862

An act to add Section 1795.8 to the Civil Code, and to amend Section 4453 of the Vehicle Code, relating to consumer warranties.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 1795.8 is added to the Civil Code, to read:

1795.8. (a) The Legislature finds and declares that the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers; that in states without this valuable warranty protection used and irrepairable motor vehicles are inundating the marketplace; that other states have addressed this problem by requiring notices on the titles of these vehicles warning consumers that the motor vehicles were repurchased by a dealer or manufacturer because either the vehicle could not be repaired in a reasonable length of time or the dealer or manufacturer was not willing to repair the vehicle; that these notices serve the interests of consumers who have a right to information relevant to their buying decisions; and that the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of "lemons" to this state for sale to the drivers of this state. Therefore, the Legislature hereby enacts the Automotive Consumer Notification Act.

(b) For purposes of this section, "dealer" means any person engaged in the business of selling, offering for sale, or negotiating the

the personal assets of their volunteer decisionmakers with adequate insurance It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit corporation subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of this division on account of any negligent act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the corporation; and (4) is in the exercise of his or her policymaking judgment.

(c) This section shall not limit the liability of a director or officer for any of the following:

(1) Self-dealing transactions, as described in Sections 5233 and 9243.

(2) Conflicts of interest, as described in Section 7233.

(3) Actions described in Sections 5237, 7236, and 9245.

(4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.

(5) Any action or proceeding brought by the Attorney General.

(6) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

(7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(d) This section only applies to nonprofit corporations organized to provide charitable, educational, scientific, social, or other forms of public service that are exempt from federal income taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.

(e) This section applies only if the nonprofit corporation maintains a general liability insurance policy with an amount of coverage of at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars ($50,000), the minimum required amount is five hundred thousand dollars ($500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars ($50,000), the minimum required amount is one million dollars ($1,000,000).

This section applies only if the general liability insurance policy is in force both at the time of injury and at the time that the claim is made, so that the policy is applicable to the claim.

(f) For the purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

(g) Nothing in this section shall be construed to limit the liability of a nonprofit corporation for any negligent act or omission of a director, officer, employee, agent, or servant occurring within the scope of his or her duties.

(h) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of race, religious creed, color, national origin, ancestry, sex, marital status, disability, political affiliation, or age.

(i) This section does not apply to any volunteer director or officer who receives compensation from the corporation in any other capacity, including, but not limited to, as an employee.

(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. 3. Section 21200 of the Corporations Code is amended to read:

21200. Any unincorporated association that is an organized medical society limiting its membership to licensed physicians and surgeons and that has as members at least 25 percent of the eligible physicians and surgeons residing in the area in which it functions (which must be at least one county) may, without incorporation, purchase, receive, own, hold, lease, mortgage, pledge, or encumber by deed of trust or otherwise, manage and sell all the real estate and other property as may be convenient for the purposes and objects of the association. However, if the association has less than 100 members, it shall have as members at least a majority of the eligible persons or licensees in the geographic area served by the particular association. The members of that unincorporated association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, construction, repairing or furnishing of buildings or other structures to be used for the purposes of the association or for debts or liabilities contracted or incurred by the association in the carrying out or performance of any of its purposes; provided, that the purposes are within the purposes stated in Section 21000 of this part.

SEC. 4. Section 24001.5 of the Corporations Code is amended to read:

24001.5. (a) The Legislature finds and declares that the services of directors or officers of nonprofit medical associations, as defined in Section 21200, who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these associations to protect the personal assets of their volunteer decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit medical association, as defined in Section 21200, on account of any negligent act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the association; and (4) is in the exercise of his or her policymaking judgment.

(c) This section shall not limit the liability of a director or officer for any of the following:

(1) Self-dealing transactions, as described in Sections 5233 and 9243.

(2) Conflicts of interest, as described in Section 7233.

(3) Actions described in Sections 5237, 7236, and 9245.

(4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.

(5) Any action or proceeding brought by the Attorney General.

(6) Intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression, or malice.

(7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(d) This section only applies to nonprofit organizations organized to provide charitable, educational, scientific, social, or other forms of public service that are exempt from federal income taxation under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code.

(e) This section applies only if the nonprofit association maintains a general liability insurance policy with an amount of coverage of at least the following amounts:

(1) If the association's annual budget is less than fifty thousand dollars ($50,000), the minimum required amount is five hundred thousand dollars ($500,000).

(2) If the association's annual budget equals or exceeds fifty thousand dollars ($50,000), the minimum required amount is one million dollars ($1,000,000).

This section applies only if the general liability insurance policy is in force both at the time of injury and at the time that the claim is made, so that the policy is applicable to the claim.

(f) For the purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

(g) Nothing in this section shall be construed to limit the liability of a nonprofit association for any negligent act or omission of a director, officer employee, agent, or servant occurring within the scope of his or her duties.

(h) This section does not apply to any association that unlawfully

restricts membership, services, or benefits conferred on the basis of race, religious creed, color, national origin, ancestry, sex, marital status, disability, political affiliation, or age.

(i) This section does not apply to any volunteer director or officer who receives compensation from the association in any other capacity, including, but not limited to, as an employee.

(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.

CHAPTER 865

An act to amend Section 14591 of, and to add Section 14560.5 to, 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 25, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. It is the intent of the Legislature, in enacting this act to promote public awareness of the California Beverage Container Recycling and Litter Reduction Act by informing consumers of beverages, as defined in Section 14504 of the Public Resources Code, of the minimum redemption value applied to a beverage container in order to reinforce and expand the recycling of empty beverage containers pursuant to that act.

Further, it is the intent of the Legislature, in enacting this act, to encourage beverage distributors to comply with subdivision (c) of Section 14560.5 of the Public Resources Code, as added by Section 2 of this act.

SEC. 2. Section 14560.5 is added to the Public Resources Code, to read:

14560.5. (a) (1) On and after October 1, 1989, the invoice or other form of accounting of the transaction submitted by a beverage distributor of soft drinks or mineral water to a dealer shall separately identify the amount of any minimum redemption value imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall separately state the gross amount of the minimum redemption value for each type of container included in each delivery.

(2) On and after November 1, 1989, the invoice or other form of accounting of the transaction submitted by any distributor of beer and malt beverages to a dealer shall separately identify the amount of any minimum redemption value imposed on beverage containers

pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall separately state the gross amount of the minimum redemption value for each type of container included in each delivery.

(3) Notwithstanding Section 14541, the department shall randomly inspect beverage distributor invoices or other forms of accounting to ensure compliance with this subdivision.

(b) To the extent technically and economically feasible, a dealer may separately identify the amount of any minimum redemption value on the customer cash register receipt provided to the consumer, by the dealer, which is applied to the purchase of a beverage container.

(c) (1) On and after October 1, 1989, a dealer shall separately identify the amount of any redemption value imposed on a beverage container in all advertising of beverage products and on the shelf labels of the dealer's establishment. The separate identification shall be accomplished by stating one of the following:

(A) The price of the beverage product plus a descriptive term, as described in paragraph (2).

(B) The price of the beverage product plus the amount of the applicable redemption value and a descriptive term, as described in paragraph (2).

(C) The price of the beverage product plus the amount of the applicable redemption value, a descriptive term, as described in paragraph (2), and the total of these two amounts.

(2) For purposes of paragraph (1), the redemption value shall be identified by one of the following descriptive terms: "California Redemption Value," "CA Redemption Value," "California Cash Refund," "CA Cash Refund," or any other message specified in Section 14561.

(3) A dealer shall not include the minimum redemption value in the total price of a beverage container in any advertising or on the shelf of the dealer's establishment.

(4) This subdivision applies only to a dealer at a dealer location with a sales and storage area totaling more than 4,000 square feet.

(5) The penalties specified in Section 14591 shall not be applied to a person who violates this subdivision.

(d) With regard to the sale of beer and other malt beverages or wine and distilled spirits cooler beverages, any amount of minimum redemption value imposed by this division is subject to Section 25509 of the Business and Professions Code.

(e) On or before September 1, 1989, or 60 days after the effective date of the act adding this section, whichever occurs later, the department shall inform all beverage distributors and dealers of this section.

SEC. 3. Section 14591 of the Public Resources Code, as amended by Section 3 of Chapter 117 of the Statutes of 1989, is amended to read:

14591. (a) Except as provided in subdivisions (b) and (e), in

addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of not more than one hundred dollars ($100) per day.

(b) Every person who, with intent to defraud, submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5 or who, with intent to defraud, fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550, or who, with intent to defraud, fails to make payments as required by Section 14574 or who, with intent to defraud, redeems containers which have already been redeemed or returns redeemed containers to the marketplace for reredemption with intent to defraud, or who submits a false or fraudulent claim for convenience incentive payments pursuant to Section 14585, is guilty of fraud. If the money obtained or withheld exceeds four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding one thousand dollars ($1,000), or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding ten thousand dollars ($10,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld equals, or is less than, four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) Any person who violates this division may be assessed a civil penalty by the department of up to one hundred dollars ($100) per day pursuant to a hearing and notice.

(d) The department shall suspend all convenience incentive payments received by any certified recycling center for up to six months, but not less than two months, from the date of a third violation assessed upon that recycling center pursuant to subdivision (c) within a one-year period, commencing upon the effective date of the act amending this section.

(e) This section does not apply to a violation of subdivision (c) of Section 14560.5.

(f) This section shall remain in effect 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 14591 of the Public Resources Code, as added by Section 4 of Chapter 117 of the Statutes of 1989, is amended to read:

14591. (a) Except as provided in subdivisions (b) and (d), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of not more than one hundred dollars ($100) per day.

(b) Every person who, with intent to defraud, submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5 or who, with intent to defraud, fails to accurately report the number of

beverage containers sold, as required by subdivision (b) of Section 14550, or who, with intent to defraud, fails to make payments as required by Section 14574 or who, with intent to defraud, redeems containers which have already been redeemed or returns redeemed containers to the marketplace for reredemption with intent to defraud, or who submits a false or fraudulent claim for convenience incentive payments pursuant to Section 14585, is guilty of fraud. If the money obtained or withheld exceeds four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding one thousand dollars ($1,000), or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding ten thousand dollars ($10,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld equals, or is less than, four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) Any person who violates this division may be assessed a civil penalty by the department of up to one hundred dollars ($100) per day pursuant to a hearing and notice.

(d) This section does not apply to a violation of subdivision (c) of Section 14560.5.

(e) This section shall become operative on January 1, 1993.

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

SEC. 6 This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to encourage the recycling of beverage containers, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 866

An act to amend Sections 49112 and 49116 of the Education Code, relating to education.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 49112 of the Education Code is amended to read:

49112. (a) Except as provided in subdivisions (b) and (c), a permit to work may be issued to a minor under the age of 18 and age 14 or older to work outside of school hours for a period of time not to exceed four hours in any day in which he or she is required by law to attend school if he or she has completed the equivalent of the seventh grade of a public school course.

(b) Notwithstanding subdivision (a), a permit to work may be issued, at the school district's discretion, to a minor 13 years of age if he or she has completed grade 6, has been identified by the school district in which he or she is enrolled as exhibiting the potential to drop out of school, and is a participant in an employment program sponsored by one or more school districts, provided the program serves to foster the development of an appreciation by the pupil of the importance of education in preparing a pupil for future education and employment. The permit shall limit the period any minor age 13 may work pursuant to this subdivision to two hours on any given day, up to a maximum of four hours each week.

(c) A permit to work may also be issued to a minor age 16 or older to work outside of school hours for a period of time not to exceed eight hours in any day in which the minor is required by law to attend school and which is immediately prior to a nonschoolday.

SEC. 2. Section 49116 of the Education Code is amended to read:

49116. (a) An employer shall not employ a minor for more than four hours in any day in which that minor is required by law to attend school for 240 minutes or more each schoolday, except as follows:

(1) The minor is employed in personnel attendance occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 1-74, school approved work experience, or cooperative vocational education programs.

(2) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(b) No employer shall employ any minor under the age of 18 years in any agricultural occupation for more than 20 hours in any schoolweek in which that minor is required by law to attend school for 240 minutes or more each schoolday. Minors 16 and 17 years of age shall not work in any agricultural occupation more than six hours

a day they are required to attend school for 240 minutes or more each schoolday. Minors 14 and 15 years of age shall not work in any agricultural occupation more than four hours on a schoolday.

(c) Holidays and days school is not in session are not covered by this section.

(d) If evidence is shown to the satisfaction of the person issuing the permit that the schoolwork or the health of the minor is being impaired by the employment, the authority issuing the permit may revoke it.

CHAPTER 867

An act to amend Sections 22651, 22652, 24651, 24652, and 26050 of, and to add Sections 22650 and 24650 to, the Financial Code, relating to lenders.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 22650 is added to the Financial Code, to read:

22650. (a) If any amount other than, or in excess of, the charges permitted by this division is willfully charged, contracted for, or received, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a loan, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

SEC. 2. Section 22651 of the Financial Code is amended to read:

22651. (a) If any amount other than or in excess of the charges permitted by this division is charged, contracted for, or received, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the error the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error.

SEC. 3. Section 22652 of the Financial Code is amended to read:

22652. (a) If any provision of this division is violated in the

making or collection of a loan for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

SEC. 4. Section 24650 is added to the Financial Code, to read:

24650. (a) If any amount other than or in excess of the charges permitted by this division is willfully charged, contracted for, or received, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a loan, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

SEC. 5. Section 24651 of the Financial Code is amended to read:

24651 (a) If any amount other than or in excess of the charges permitted by this division is charged, contracted for, or received for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the error the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error.

SEC. 6. Section 24652 of the Financial Code is amended to read:

24652. (a) If any provision of this division is violated in the making or collection of a loan for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking

other action necessary to correct the error.

SEC. 7. Section 26050 of the Financial Code is amended to read:

26050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating to banks, trusts companies, savings and loan associations, industrial loan companies, credit unions, small business investment companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a broker-dealer acting pursuant to a certificate, then in effect, issued pursuant to Section 25211 of the Corporations Code.

(c) This division does not apply to any person who makes no more than one commercial loan in any 12-month period.

CHAPTER 868

An act to amend Sections 777.5, 5621, 5806, 6451, 6503, 6525, 7200, 7504, 8009, 8010, 8160, and 8201 of, and to add Sections 261 and 8012 to, the Financial Code, relating to financial institutions, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 261 is added to the Financial Code, to read:

261. (a) Notwithstanding any other provision of law, the superintendent may deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of a bank, bank holding company, or any subsidiary of a bank or bank holding company, to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of that person relating to convictions, and to any arrest for which the person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) No request shall be submitted pursuant to this section without the written consent of the person affected.

(c) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 1.5. Section 777.5 of the Financial Code is amended to read:

777.5. (a) Notwithstanding the provisions of Sections 1051, 1052,

and 1054 of the Labor Code and Section 2947 of the Penal Code, a bank or any affiliate thereof, lincensed under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its customers, the person may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting bank or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the person fingerprinted.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.

SEC. 2. Section 5621 of the Financial Code is amended to read:

5621. (a) With the approval of the commissioner, a mutual association may amend its articles of incorporation to authorize the issuance of stock and may issue stock. Any amendment to the articles of incorporation and bylaws of an association which for the first time authorizes it to issue stock shall be approved by the vote or written assent of a majority of the total votes of members outstanding, except that the amendment shall require approval only of the commissioner and board of directors of an association if the commissioner finds that grounds exist for the appointment of a conservator for the association pursuant to subdivision (a) of Section 8225.

(b) An amendment to the articles of incorporation of an association pursuant to this section may include provisions with respect to the surplus, reserves, and undivided profits of the association and in that case the surplus, reserves, and undivided profits shall be retained and disposed of in accordance with those provisions.

(c) The corporate existence of a mutual association which amends its articles of incorporation pursuant to this section to authorize the issuance of stock and which issues stock shall continue to be, and the resulting stock association shall be deemed to be, a continuation of the mutual association. The Legislature finds and declares that Section 563b.41 (d) (3) of Title 12 of the Code of Federal Regulations sets forth the law of this state with regard to the continuity of corporate existence in mutual association to stock association conversions and that this section has reflected that law from the time of the original adoption of Section 563b.41 of Title 12 of the Code of Federal Regulations.

SEC. 3. Section 5806 of the Financial Code is amended to read:

5806. Each savings and loan holding company, which is not an individual, shall pay an initial and an annual registration fee of five hundred dollars ($500) if the registrant's association subsidiaries have total assets of up to one hundred million dollars ($100,000,000) or one thousand dollars ($1,000) if the subsidiaries have total assets of one hundred million dollars ($100,000,000) or more. These fees shall be paid within 30 days following notice from the commissioner that payment is due.

SEC. 4. Section 6451 of the Financial Code is amended to read:

6451. (a) Except as provided in subdivision (b), each agency of an association, as defined in Section 6551, shall keep an original record of each transaction of business completed on behalf of the association at the agency.

(b) Records of transactions are not required to be maintained at the agency if they are maintained at the association's home office or branch office.

SEC. 5. Section 6503 of the Financial Code is amended to read:

6503. (a) An association may acquire, hold, sell, develop, subdivide, dispose of, and convey real and personal property consistent with its objectives and powers. It may mortgage, pledge, or lease any real or personal property and may take the property by gift, devise, or bequest.

(b) No association or subsidiary thereof, without the prior written consent of the commissioner, shall enter into any transaction or modification of any transaction with an affiliated person to buy, lease, or sell real or personal property, or take that property by gift.

SEC. 6. Section 6525 of the Financial Code is amended to read:

6525. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, an association, a subsidiary or affiliate of an association, or any officer or employee thereof may deliver fingerprints taken of a director, an

officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may pursuant to Section 13300 of the Penal Code, furnish to the officer of the association or subsidiary or affiliate thereof responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the association, subsidiary, or affiliate summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the association, subsidiary, or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to the association, subsidiary, or affiliate or its customers, the person fingerprinted may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting association, subsidiary, or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the person fingerprinted.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a savings association, whether directly, indirectly, or through one or more intermediaries.

SEC. 7. Section 7200 of the Financial Code is amended to read:

7200. No association shall invest in any security under this chapter, other than in liquid assets, or in any loan at any time if the association fails to meet the minimum liquidity requirements prescribed by Section 523.11 of Title 12 of the Code of Federal Regulations, unless the commissioner has issued prior written approval. "Liquid assets," as used in this section, has the same meaning as defined by the regulations codified in Section 523.10 of Title 12 of the Code of Federal Regulations.

SEC. 8. Section 7504 of the Financial Code is amended to read:

7504. Notwithstanding any other provision of law, an association may adjust the interest rate, payment, balance, or term-to-maturity

on any loan secured by real property as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property during the loan term or at maturity exceeds the original appraised value, subject to the limitations of subdivision (b) and Section 341 of P.L. 97-320 (H.R. 6267, the Garn-St. Germain Depository Institutions Act of 1982).

(a) For the purposes of this section:

(1) "Fully amortized loan" means a loan in which, at inception of the loan, the entire principal balance, together with accrued interest, shall be payable with the scheduled term of the loan in substantially equal installments (excepting the last payment, which may be smaller than a regular scheduled payment).

(2) "Home loans" means loans made on the security of one- to four-unit residential dwellings (including condominiums and cooperatives), combinations of these dwellings and business property (where no more than 20 percent of the total appraised value of the real estate is attributable to the business use), farm residences and combinations of farm residences and commercial farm real property.

(3) "Nonamortized loan" means a loan in which none of the principal balance shall be payable prior to the maturity of the loan.

(4) "Open end line of credit" means a loan plan in which the association reasonably contemplates repeated transactions; the association may impose interest from time to time on the unpaid principal of the loan plan, and the amount of credit that may be extended to the borrower during the term of the loan plan (up to any limit set by the association) is generally made available to the extent that any outstanding principal balance is repaid.

(5) "Partially amortized loan" means a loan in which some but not all of the principal balance, together with accrued interest, shall be payable prior to the maturity of the loan.

(6) "Reverse annuity mortgage" means an instrument which provides for periodic payments to be made to a homeowner based on accumulated equity. The payments are made monthly directly by the association, or are made through the purchase of an annuity from an insurance company. The loan becomes due on a specified date after disbursement of the entire principal amount of the loan or when a specified event occurs, such as sale of the property or death of the borrower. The interest rate on this instrument may be fixed, or may be adjusted periodically as provided by this section.

(b) Adjustments to the interest rate, payment, balance, or term-to-maturity on home loans shall be subject to the limitations of this subdivision.

(1) The loan term shall not exceed 40 years, with interest payable at least semiannually, except as expressly authorized by this section.

(2) The loan balance for other than nonamortized and open end line of credit loans shall be repayable in at least semiannual installments; provided, that loans on the security of farm residences

and combinations of farm residences and commercial farm real property may be repayable in annual installments.

(3) The loan may be fully amortized, partially amortized, nonamortized, a reverse annuity mortgage, or an open end line of credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest, in the case of loans to natural persons secured by borrower-occupied real property and on which periodic advances are being made.

(4) (A) At origination, the loan-to-value ratio may not exceed the maximum permitted by Section 7509, as determined by the association's board of directors (but not more than 100 percent). During the term of the loan, the loan-to-value ratio may increase above the maximum percentage otherwise permissible if the increase results from an adjustment described in paragraph (3) or (5). The commissioner shall assume continued compliance with applicable loan-to-value limitations where the original loan-to-value ratio met the requirements of this paragraph, but in no event may the loan balance exceed 125 percent of the original appraised value of the security property during the term of the loan unless pursuant to clause (i) of subparagraph (B) of paragraph (5) of subdivision (b) or unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the 10th year of the loan, to a level sufficient to amortize the loan at the then existing interest rate and loan balance over the remaining term of the loan. However, this 125 percent limitation shall not apply to the portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property.

(B) If, at maturity of a loan secured by a home that provides for adjustments pursuant to paragraph (3) or (5), the ratio of the loan balance to the current market value of the security property exceeds the maximum permissible amount under Section 7509, the association may offer to refinance the loan if (i) the refinanced loan complies with subdivision (b) of Section 7509 and (ii) the loan contract for the refinanced loan requires that, in addition to full or partial amortization of the loan, the pro rata portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment.

(5) For any home loan secured by borrower-occupied property or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term-to-maturity shall comply with the limitations of this paragraph.

(A) Adjustments to the interest rate shall correspond directly to the movement of an interest rate index or of a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to, and verifiable by, the borrower and is beyond the direct control of the association. An association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the

increase and the time at which it may be made and which is set forth in the loan contract. An association, in its sole discretion, may decrease the interest rate at any time.

(B) Adjustments to the payment and the loan balance that do not reflect an interest rate adjustment may be made if: (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the direct control of the association; (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract; or (iii) in the case of an open end line of credit loan, the adjustment reflects an advance taken by the borrower under the line of credit, or a payment made by the borrower, that is permitted by the loan contract.

(C) Any combination of indices or a moving average of index values may be used as an index, and an association (i) may use more than one index during the term of a loan, if set forth in the loan contract and (ii) may provide for the selection of a substitute index by the association in the event the index being used is no longer available to or verifiable by the borrower or as otherwise provided in the loan contract.

(D) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide an association with the right to call the loan due and payable either after a specified period of time has elapsed following the date of the loan contract or as specified in a reverse annuity mortgage.

(6) For any home loan secured by borrower-occupied property and on which the interest rate may be adjusted pursuant to paragraph (5), an association may not impose a prepayment charge on any prepayment made within 90 days of a required notice of an interest-rate increase with respect to the loan.

(c) Disclosure and notices for loans made pursuant to this section shall comply with the regulations codified in Section 563.9-9 of Title 12 of the Code of Federal Regulations.

SEC. 9. Section 8009 of the Financial Code is amended to read:

8009. (a) Except where required by law, regulation, or court order, or permitted under subdivision (b), the commissioner, and all employees of the department, shall not disclose any information acquired by them in the discharge of their duties as prescribed by this division.

(b) The commissioner may furnish information relating to the condition or operation of any association or other person to state and federal authorities that supervise financial institutions, to state, local and federal law enforcement agencies, and state agencies that are engaged in any investigation of an unsafe or unsound business practice.

(c) No record or document in the possession or custody of the

department which contains information specified in subdivision (a) shall be produced pursuant to a subpoena duces tecum addressed to the commissioner or any employee of the department except upon a determination of a court of competent jurisdiction that disclosure of the information in the record or document would serve the public interest and assist the department in conducting the duties prescribed by this subdivision. With respect to each item subject to the subpoena duces tecum, the court shall either make this determination or shall determine that the item is not subject to disclosure. The court's determination shall be made upon hearing on a motion by the subpoenaing party under this subdivision to compel production of the document or record.

SEC. 10. Section 8010 of the Financial Code is amended to read:

8010. The commissioner, after a determination of value made in accordance with Article 4 (commencing with Section 8150) of Chapter 7, may order that assets, individually or in the aggregate, to the extent that the assets are overvalued on an association's books, be charged off against current operations, or that a special reserve or reserves equal to the overvaluation be set up by transfers from retained earnings or reserves.

SEC. 11. Section 8012 is added to the Financial Code, to read:

8012. (a) Notwithstanding any other provision of law, the commissioner may deliver fingerprints taken of an applicant or a director, officer, or employee of an association, savings and loan holding company or any of their subsidiaries to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of that person relating to convictions, and to any arrest for which the person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) No request shall be submitted pursuant to this section without the written consent of the person affected.

(c) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 12. Section 8160 of the Financial Code is amended to read:

8160. (a) If an association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company fails to furnish the commissioner any report required by this article within five days of the due date set forth in this article or, if no due date is set forth in this article, the date specified by the commissioner, the commissioner shall assess a penalty of one hundred dollars ($100) per day for each additional day the report is delayed or withheld up to and including the 25th day after the first day of the assessment of the penalty; thereafter from the 26th day to the 60th day the penalty shall be three hundred dollars ($300) per day and from the 61st day

until receipt of the report the penalty shall be one thousand dollars ($1,000) per day.

(b) Upon written application by an association, savings and loan holding company, or subsidiary showing good cause satisfactory to the commissioner, the commissioner may grant an extension of time for filing any report required by this article and may specifically waive or reduce the penalty required by this section.

SEC. 13. Section 8201 of the Financial Code is amended to read:

8201. (a) Upon a finding by the commissioner that a director, officer, or employee of an association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company has knowingly and willfully participated in a violation or an unsafe or unsound practice as described in Section 8200 or who has breached his or her fiduciary duty, the commissioner may require that the director, officer, or employee be removed from the association, savings and loan holding company, or subsidiary and, in addition thereto or in lieu thereof, the commissioner may prohibit the person, without the commissioner's prior written approval, from (1) participating in any manner in the conduct of the affairs of that association, savings and loan holding company, or subsidiary or (2) serving as a director, officer, or employee of any other association, savings and loan holding company, or subsidiary of an association or savings and loan holding company.

(b) Prior to issuance of an order under subdivision (a), the commissioner shall deliver a full statement of the objectionable acts and conduct to the board of directors of the association or other person and the individual or individuals concerned and of the commissioner's intention to enter an order under subdivision (a). If a hearing on the matter is requested within 10 days after delivery of the statement, the commissioner shall hold a public hearing at which any pertinent evidence relating to the matters set forth in the statement may be presented. After the hearing, the commissioner, on the basis of the evidence presented at the hearing, may (1) proceed to enter an order under subdivision (a), which shall take effect immediately, (2) issue a reprimand to the individuals and association or other person concerned, or (3) dismiss the entire matter.

(c) If no hearing is requested within the time specified, the commissioner may proceed to issue an order under subdivision (a) on the basis of the facts set forth in the original statement.

(d) In respect to any officer, director, or employee of an association or service corporation thereof who is the subject of a statement delivered by the commissioner pursuant to subdivision (b), the commissioner may, if the commissioner deems it necessary for the protection of the association or service corporation, by written notice to that effect served upon the officer, director, or employee, suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the association or service corporation, or take both these actions.

The suspension or prohibition shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by subdivision (e), shall remain in effect pending completion of the proceedings pursuant to the statement delivered under subdivision (b) and until the effective date of an order entered by the commissioner under subdivision (b) or subdivision (c). Copies of the notice shall also be served upon the association or service corporation of which the person is a director, officer, or employee.

(e) Within 10 days after any director, officer, or employee has been suspended from office or prohibited from participation in the conduct of the affairs of an association or service corporation thereof under subdivision (d), the director, officer, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings pursuant to subdivision (b), and the court shall have power to stay the suspension or prohibition.

SEC. 14. The amendments to Section 8009 of the Financial Code made by Section 9 of this act shall apply prospectively only and shall not apply to any records or documents released by the Department of Savings and Loan prior to the effective date of this act.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid further misinterpretation of provisions for conversion of savings associations that were enacted in 1988, as well as to clarify liquidity requirements for these associations, without delay, it is necessary that this act take effect immediately.

CHAPTER 869

An act to amend Section 13127 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 13127 of the Food and Agricultural Code is amended to read:

13127. (a) Not later than December 31, 1985, the department shall identify 200 pesticide active ingredients which the department determines have the most significant data gaps, widespread use, and which are suspected to be hazardous to people. Not later than 30 days after the report issued pursuant to Section 13125, the department shall notify each registrant of a pesticide product containing any of the identified 200 pesticide active ingredients of the applicable data

gap required to be filled pursuant to this section.

(b) Not later than December 31, 1985, the department shall also adopt a timetable for the filling of all data gaps on all pesticide active ingredients, other than those identified by the department pursuant to subdivision (a), which are currently registered or licensed in California. The department shall notify registrants of the applicable data gaps and the scheduled time to initiate and complete studies as provided in the timetable.

(c) (1) Not later than September 1, 1986, the department shall determine whether a test has been initiated to fill each of the data gaps for each pesticide active ingredient identified in subdivision (a). If no test has been initiated, the department shall fill data gaps in accordance with procedures provided in subparagraph (B) of paragraph (2) of subdivision (c) of Section 136a of Title 7 of the United States Code. In order to carry out this section, the director has the same authority to require information from registrants of active pesticide ingredients that the administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of Section 136a of Title 7 of the United States Code. On or before July 1, 1986, the director shall, by regulation, prescribe procedures for resolving disputes or funding the filling of data gaps The procedures may include mediation and arbitration. The arbitration procedures, insofar as practical, shall be consistent with the federal act, or otherwise shall be in accordance with the commercial arbitration rules established by the American Arbitration Association. The procedures shall be established so as to resolve any dispute within the timetable established in subdivision (a) of Section 13127.

(2) The department shall also obtain the data which is identified in subdivision (b), according to the timetable and procedures specified in this section.

(d) (1) Not later than March 1, 1987, the director shall again determine whether tests have been initiated to fill each of the data gaps for each pesticide active ingredient identified in subdivision (a). If the tests have not been initiated or if, having been initiated, the tests are not completed within a reasonable time not to exceed four years, the director shall obtain the required test results. The director may utilize assessments charged to those registrants of the active ingredient for which the data gaps exist in amounts necessary to cover the department's expenses in filling the data gaps. Any assessments shall be made pursuant to Section 12824 of the Food and Agricultural Code. The director may also request an appropriation to be used in combination with assessments to obtain the required test results. The director shall initiate the tests as soon as possible, and the tests shall be completed within a reasonable time, not to exceed four years after initiation.

The director shall furnish not less than 30 days' public notice of any proposed action under this paragraph, stating the reasons therefor and allowing public comment thereon. Copies of this notice and final

decision shall be provided to the appropriate committees of the Legislature.

(2) The director shall monitor compliance with the timetable established pursuant to subdivision (b) of Section 13127. If the director determines that tests are not initiated or completed according to the timetable, the director shall obtain the required test results as provided in paragraph (1).

(3) The director shall review the timetable established by the Environmental Protection Agency for the accelerated registration program under amendments effective in 1989 to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 135 et seq.).

(e) (1) This section does not apply to any product which the director determines has limited use or that substantial economic hardship would result to users due to unavailability of the product and there is not significant exposure to the public or workers and the product is otherwise in compliance with federal law.

(2) The director may not, pursuant to this subdivision, exempt all pesticide products containing the same pesticide active ingredient unless it is determined that the pesticide active ingredient has only limited use, there is insignificant exposure to workers or the public, and the products are otherwise in compliance with federal law. Any exemption issued pursuant to this paragraph shall expire at the end of three years after it is issued.

(f) (1) Whenever the director exercises the authority provided in paragraph (1) of subdivision (e), he or she shall give public notice of the action stating the reasons for exempting the pesticide product from the data requirements of this article. Copies of this notice shall be provided to the appropriate policy committees of the Legislature.

(2) Whenever the director acts pursuant to paragraph (2) of subdivision (e), the director shall furnish not less than 30 days' public notice of the proposed action, stating the reasons for exempting the pesticide product from the data requirements of this article and allowing public comment thereon. Copies of the notice and the final decision shall be provided to the appropriate policy committees of the Legislature.

CHAPTER 870

An act to amend Section 602 of, and to add Section 602.8 to, the Penal Code, relating to crimes.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Notwithstanding Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard or notice is intended to indicate or designate a road, or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any such lands, whether covered by water or not, without the license of the owner or legal occupant; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of

any such lands.

(h) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(i) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

(k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent or of the person in lawful possession, and

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent or by the person in lawful possession to leave the lands, or

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands, or

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands, or

(4) Discharging any firearm.

(*l*) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(m) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to or lawfully occupied by another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or

the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed six months when the premises or property is closed to the public and posted as being closed. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(o) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(p) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable person that the person has no apparent lawful business to pursue.

(q) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(r) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(s) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed

by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

This subdivision shall apply only to a person who has been convicted of a violent felony, as specified in subdivision (c) of Section 667.5, committed upon the particular private property. A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

SEC. 2. Section 602.8 is added to the Penal Code, to read:

602.8. (a) Any person who without the written permission of the landowner, the owner's agent or of the person in lawful possession of the land, willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or who willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands, is guilty of an infraction or a misdemeanor.

(b) Any person convicted of a violation of subdivision (a) shall be punished as follows:

(1) For a first offense, punished as an infraction by a fine of ten dollars ($10).

(2) For a second offense on any contiguous land of the same owner, punished as an infraction by a fine of not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250).

(3) For a third or subsequent offense on any contiguous land of the same owner, by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or both.

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

(1) Any person engaged in lawful labor union activities which are permitted to be carried out on property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.

(2) Any person on the premises who is engaging in activities protected by the California or United States Constitution.

(3) Any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.

(d) For any infraction charged pursuant to this section, the defendant shall have the option to forfeit bail in lieu of making a court appearance. Notwithstanding subdivision (e) of Section 853.6, if the offender elects to forfeit bail pursuant to this subdivision, no further proceedings shall be had in the case.

SEC. 3. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 871

An act to add Section 25355.6 to the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1 Section 25355.6 is added to the Health and Safety Code, to read:

25355.6. (a) The State Water Resources Control Board or a California regional water quality control board which has jurisdiction over a hazardous substance release site pursuant to Division 7 (commencing with Section 13000) of the Water Code may refer the site to the department as a candidate for listing pursuant to Section 25356. After determining that the site meets the criteria adopted pursuant to subdivision (a) of Section 25356, the department may place the site on the list of sites subject to this chapter and establish its priority ranking pursuant to Section 25356.

(b) If a hazardous substance release site is referred to the department and is listed pursuant to subdivision (a), the department may expend money from the state account or the Hazardous Substance Cleanup Fund for removal or remedial action at the site, upon appropriation by the Legislature, without first issuing an order or entering into an agreement pursuant to paragraph (1) of subdivision (a) of Section 25355.5, if all of the following apply:

(1) The State Water Resources Control Board or a California regional water quality control board has issued either a cease and desist order pursuant to Section 13301 of the Water Code or a cleanup and abatement order pursuant to Section 13304 of the Water Code to the potentially responsible party for the site.

(2) The State Water Resources Control Board or the California regional water quality control board has made a final finding that the potentially responsible party has not complied with the order issued pursuant to paragraph (1).

(3) The State Water Resources Control Board or the California

regional water quality control board has notified the potentially responsible party of the determination made pursuant to paragraph (2) and that the hazardous substance release site has been referred to the department pursuant to subdivision (a).

(c) If a hazardous substance release site is referred to the department pursuant to subdivision (a), and the department makes either of the following determinations, the department shall notify the appropriate California regional water quality control board and the State Water Resources Control Board:

(1) The department determines that the site does not meet the criteria established pursuant to subdivision (a) and the site cannot be placed, pursuant to Section 25356, on the list of sites subject to this chapter.

(2) The department determines that a removal or remedial action at the site will not commence for a period of one year from the date of listing due to a lack of funds or the low priority of the site.

(d) If a California regional water resources control board or the State Water Resources Control Board receives a notice pursuant to subdivision (c), the regional board or state board may take any further action concerning the hazardous substance release site which the regional board or state board determines to be necessary or feasible, and which is authorized by this chapter or Division 7 (commencing with Section 13000) of the Water Code.

CHAPTER 872

An act to add Article 3.5 (commencing with Section 89070.10) to Chapter 1 of Part 55 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

I am deleting the $119,500 appropriation contained in Section 3 of Assembly Bill No. 2240

This bill would make the California Mathematics Diagnostic Testing Program (MDTP) independent from the California Academic Partnership Program (CAPP), establish an advisory committee for the MDTP, and appropriate $119,500 from the General Fund for the purposes of the program

The demands placed on budget resources require all of us to set priorities With legislation I will be signing and the budget enacted in July 1989, more than $50 billion in state funds will be appropriated this fiscal year. 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.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1990-91 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 Assmbly Bill No. 2240

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The Legislature finds and declares that the California Academic Partnership Program has been successful in preparing secondary school students for higher education and that a major effort of the California Academic Partnership Program has been the Mathematics Diagnostic Testing Program. It is the intent of the Legislature to separate the Mathematics Diagnostic Testing Program from the California Academic Partnership Program in order to allow both successful programs to operate independently, expand, and meet all of the goals for which they were established.

SEC. 2. Article 3.5 (commencing with Section 89070.10) is added to Chapter 1 of Part 55 of the Education Code, to read:

Article 3.5. California Mathematics Diagnostic Testing Program

89070.10. It is the intent of the Legislature in enacting this chapter to establish a program which will identify skills and knowledge necessary for success at various levels of college preparatory mathematics and to ensure that each public school pupil who can benefit from this program shall have access thereto. The program shall provide timely diagnostic assessments to both teachers and pupils indicating in which areas of mathematics pupils and classes are adequately prepared and in which areas further study is necessary.

89070.15. The California Mathematics Diagnostic Testing Program is hereby established. The Trustees of the California State University shall administer the program and in so doing shall cooperate with the University of California, the California Community Colleges, and the State Department of Education.

89070.20. The trustees shall do all of the following:

(a) Develop assessment materials and diagnostic services which are designed to assess pupils' knowledge and skills in the area of mathematics and which are consistent with the Mathematics Framework for California Public Schools and the expectations of postsecondary education.

(b) Make these materials and services available to mathematics faculty members of the public school system, who request them.

(c) Provide opportunities for mathematics faculty of high schools operated by school districts throughout California, especially those at junior and senior high schools which have low student participation or achievement in postsecondary education, to work with postsecondary faculty to consider their pupils' diagnostic results.

89070.25. In developing this system, the trustees shall ensure that the use of these assessment instruments and diagnostic services assist in all of the following.

(a) Contributing to secondary school pupils' preparation for postsecondary education.

(b) Reducing the demand for remedial programs in mathematics

at the postsecondary level.

(c) Complementing and supplementing other assessment efforts, including, but not limited to, the California Assessment Program, and the Golden State Examination, by making available to pupils, parents, faculty, and the advisory committee careful analyses of pupils' readiness for work in college preparatory mathematics.

(d) Providing individual pupils with detailed information about their levels of preparedness in areas of mathematics needed for success in further college-preparatory or beginning level college mathematics.

(e) Helping teachers and departments examine the effectiveness of existing courses in preparing pupils for further mathematics study.

(f) Encouraging appropriate use of these instruments in schools with low student participation in postsecondary education.

(g) Ensuring that public schools located in all areas of the state, including rural, urban, and suburban have access to program services.

(h) Establishing networks between secondary and postsecondary mathematics faculty to address curricular issues, including but not limited to, mathematics prerequisites for success in college.

89070.30. An intersegmental advisory committee is hereby established to make recommendations to the trustees regarding the policies, organization, and operations of the California Mathematics Diagnostic Testing Program, including, but not limited to, all of the following:

(a) Developing a general policy for the diagnostic assessment of secondary pupils which is directly related to the skills and knowledge needed for success in college level mathematics and which is consistent with the Mathematics Framework for California Public Schools and the expectations of postsecondary education.

(b) Developing criteria for determining program direction.

(c) Developing criteria for program evaluation which shall include, but shall not be limited to, determining whether there is an increase in the number of students taking advanced college preparatory mathematics courses, and determining whether there is an improvement in California Assessment Program, Golden State Examination, and other assessment scores.

(d) Developing criteria for ensuring that all public schools throughout the state have access to program services, and ensuring, as a primary objective, participation by those schools with low student enrollment in postsecondary education.

(e) Identifying additional resources and efforts which promote the objectives of the program.

89070.35. (a) The intersegmental advisory committee shall consist of the following members:

(1) Two members, one of whom shall be a mathematics faculty member, appointed by each of the following:

(A) The Chancellor of the California State University.

(B) The President of the University of California, if he or she

chooses to serve as a member.

(C) The Chancellor of the California Community Colleges.

(D) The Superintendent of Public Instruction.

(2) One member appointed by each of the following:

(A) The Chair of the Association of Independent California Colleges and Universities.

(B) The Director of the California Postsecondary Education Commission.

(C) The Chair of the California Academic Partnership Program Advisory Committee.

(D) The Director of the California Mathematics Project.

(b) The intersegmental advisory committee may recommend that the trustees increase its size by the appointment of public, corporate, or other members.

89070.40. The Trustees of the California State University shall work with the University of California, the California Postsecondary Education Commission, and the advisory committee to develop a comprehensive program evaluation. This evaluation shall be conducted in 1993, and every three years thereafter to determine the success of the program.

89070.45. It is the intent of the Legislature that the California State University allocate the sum of four hundred eighty-four thousand one hundred dollars ($484,100) to the California Academic Partnership Program in the 1989–90 fiscal year for the purposes of the Mathematics Diagnostic Testing Program. It is further the intent of the Legislature that this amount be allocated to the Mathematics Diagnostic Testing Program as established by this article, and that funding appropriated in the article that adds this act supplement and not supplant the funding allocated to that program.

SEC. 3. The sum of one hundred nineteen thousand five hundred dollars ($119,500) is hereby appropriated from the General Fund to the Trustees of the California State University for the purposes of this act for allocation as follows:

(a) Sixty-nine thousand five hundred dollars ($69,500) for expansion of the Mathematics Diagnostic Testing Program.

(b) Fifteen thousand dollars ($15,000) for duties of the intersegmental advisory committee pursuant to Section 89070.30 of the Education Code.

(c) Thirty-five thousand dollars ($35,000) for the program evaluation pursuant to Section 89070.40 of the Education Code.

CHAPTER 873

An act to amend Section 1167 of the Code of Civil Procedure, relating to forcible entry and detainer.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 1167 of the Code of Civil Procedure is amended to read:

1167. The summons shall be in the form specified in Section 412.20 except that when the defendant is served, the defendant's response shall be filed within five days, including Saturdays and Sundays but excluding all other judicial holidays, after the complaint is served upon him or her. If the last day for filing the response falls on a Saturday or Sunday, the response period shall be extended to and including the next court day.

In all other respects the summons shall be issued and served and returned in the same manner as a summons in a civil action.

CHAPTER 874

An act to amend Section 25503.5 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 25503.5 of the Health and Safety Code is amended to read:

25503.5. (a) Any business, except as provided in subdivisions (b) and (c), which handles a hazardous material or a mixture containing a hazardous material which has a quantity at any one time during the reporting year equal to, or greater than, a total weight of 500 pounds, or a total volume of 55 gallons, or 200 cubic feet at standard temperature and pressure for compressed gas, shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards in the regulations adopted pursuant to Section 25503.

(b) Oxygen and nitrous oxide, ordinarily maintained by a physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from

Section 25505. The administering agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars ($50) to pay for the costs incurred by the agency in processing the inventory forms.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance specified in subdivision (k) of Section 25501, if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the office within five days of the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may, exempt a handler under the conditions it deems proper from any portion of the business plan upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying this exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(4) The administering agency upon application by a handler may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section 25504 if all of the following requirements are met:

(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.

(B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations which the office shall adopt, which provide notice of the storage of any of the following:

(i) Pesticides.

(ii) Petroleum fuels and oil.

(iii) Types of fertilizers.

(C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days after receiving the inventory.

(d) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(e) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

CHAPTER 875

An act to amend Sections 18008, 18062.2, and 18063 of, and to add Sections 18052.6 and 18052.7 to, the Health and Safety Code, relating to mobilehomes-manufactured housing, and making an appropriation therefor.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 18008 of the Health and Safety Code is amended to read:

18008. "Mobilehome," for the purposes of this part, means either of the following:

(a) A structure transportable under permit in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system.

(b) A structure transportable under permit in one or more sections, designed to be used with a foundation system for any of the following purposes:

(1) Three or more dwelling units, as defined by Section 18003.3.

(2) As a dormitory. A "dormitory" shall mean a room or rooms inhabited for the purposes of temporary residence by two or more persons.

(3) A residential hotel, as defined by paragraph (1) of subdivision (b) of Section 50519.

(4) Efficiency units, as defined by Section 17958.1.

Mobilehome does not include a recreational vehicle, commercial coach, or factory-built housing, as defined in Section 19971. The

handicap accessibility and adaptability requirements of Title 24 of the California Code of Regulations applicable to dormitories, hotels, and apartment houses shall be applicable to mobilehomes constructed for those purposes.

SEC. 2. Section 18052.6 is added to the Health and Safety Code, to read:

18052.6. (a) Notwithstanding any of the provisions of this chapter, the department may, on a one-time-only basis, issue a 90-day certificate to an applicant for an original salesperson's license. The certificate shall permit that person to exercise the privileges granted by the license for a period not to exceed 90 days from the date of issuance. Any person, while acting under the authority of the 90-day certificate, shall not execute any documents, contracts, or listing agreements, or accept any cash or cash equivalent, for the sale or lease of a new or used manufactured home.

(b) Prior to the expiration of the 90-day certificate, the holder shall complete all other requirements prescribed under this chapter, in order to continue as a salesperson past the expiration date of the 90-day certificate.

(c) The department may restrict or condition the 90-day certificate, and attach to the exercise of the privileges thereunder, those terms and conditions as it determines are necessary for the protection of the public.

(d) The department may establish a fee to cover the costs for the issuance of the 90-day certificate.

(e) The department shall report to the Legislature the number of 90-day certificates issued and the name and address of the employing dealer of the salesperson holding the certificate during the year 1990.

SEC. 3. Section 18052.7 is added to the Health and Safety Code, to read:

18052.7. No dealer shall employ more than three salespersons licensed pursuant to a 90-day certificate at his or her established place of business at any one time. In the case where a dealer has more than one established place of business, the dealer may employ up to three salespersons licensed pursuant to a 90-day certificate at each place of business. If a dealer employs a salesperson licensed pursuant to a 90-day certificate, the dealer shall designate a responsible managing employee who shall directly supervise those salespersons at each established place of business at which they are employed. The dealer shall bear full legal responsibility for all actions of employed salespersons licensed pursuant to a 90-day certificate.

SEC. 4. Section 18062.2 of the Health and Safety Code is amended to read:

18062.2. It is also unlawful for a dealer to do any of the following:

(a) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business.

(b) Employ any person as a salesperson who is not licensed pursuant to this part, or whose license or 90-day certificate is not displayed on the premises of the dealer as provided in Section 18063.

(c) Permit the use of his or her dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of manufactured homes, mobilehomes, or commercial coaches, or to permit the use of the dealer's license, supplies, or books to operate a branch or secondary location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the manufactured homes, mobilehomes, or commercial coaches sold by, or the business of, or branch or secondary location used by, the person, or has no such interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the dealer's license, supplies, or books to engage in the sale of manufactured homes, mobilehomes, or commercial coaches.

(d) Advertise any specific manufactured home, mobilehome, or commercial coach for sale without identifying the manufactured home, mobilehome, or commercial coach by its serial number or by the number on its federal label or insignia of approval issued by the department.

(e) Advertise the total price of a manufactured home, mobilehome, or commercial coach without including all costs to the purchaser at time of delivery at the dealer's premises, except sales tax, title and registration fees, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty dollars ($20).

(f) Exclude from the advertisement of a manufactured home, mobilehome, or commercial coach for sale information to the effect that there will be added to the advertised total price at the time of sale, charges for sales tax, title and registration fees, escrow fees, and any dealer documentary preparation charge.

(g) Represent the dealer documentary preparation charge as a governmental fee.

(h) Refuse to sell the manufactured home, mobilehome, or commercial coach to any person at the advertised total price for that manufactured home, mobilehome, or commercial coach, exclusive of sales tax, title fee, finance charges, and dealer documentary preparation charge, which charge shall not exceed twenty dollars ($20), while it remains unsold, unless the advertisement states the advertised total price is good only for a specified time and that time has elapsed.

(i) Not post the salesperson's license in a place conspicuous to the public on the premises where they are actually engaged in the selling of manufactured homes, mobilehomes, and commercial coaches for the employing dealer. The license shall be displayed continuously during their employment. If a salesperson's employment is terminated, the dealer shall return the license to the salesperson.

(j) Offer for sale, rent, or lease within this state a new manufactured home, mobilehome, or commercial coach whose manufacturer is not licensed under this part.

(k) To violate Section 798.71 or 798.74 of the Civil Code, or both.

SEC. 5. Section 18063 of the Health and Safety Code is amended to read:

18063. It is unlawful for a salesperson to do any of the following:

(a) At the time of employment, not deliver to his or her employing dealer his or her salesperson's license or 90-day certificate.

(b) Fail to report in writing to the department every change of residence within five days of the change.

(c) Act or attempt to act as a salesperson while not employed by a dealer. For purposes of this subdivision, "employment by a dealer" means employment reported to the department pursuant to subdivision (d) of Section 18060.

(d) To violate Section 798.71 or 798.74 of the Civil Code, or both.

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

CHAPTER 876

An act to amend Sections 301, 303, and 708 of, and to add Section 301.5 to, the Corporations Code, relating to corporations.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 301 of the Corporations Code is amended to read:

301. (a) Except as provided in Section 301.5, at each annual meeting of shareholders, directors shall be elected to hold office until the next annual meeting. However, to effectuate a voting shift (Section 194.7) the articles may provide that directors hold office for a shorter term. The articles may provide for the election of one or more directors by the holders of the shares of any class or series voting as a class or series.

(b) Each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

SEC. 2. Section 301.5 is added to the Corporations Code, to read:

301.5. (a) A listed corporation may, by amendment of its articles

or bylaws, adopt provisions to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. After the issuance of shares, a corporation which is not a listed corporation may, by amendment of its articles or bylaws, adopt provisions to be effective when the corporation becomes a listed corporation to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. An article or bylaw amendment providing for division of the board of directors into classes, or any change in the number of classes, or the elimination of cumulative voting may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903.

(b) If the board of directors is divided into two classes pursuant to subdivision (a), the authorized number of directors shall be no less than six and one-half of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. If the board of directors is divided into three classes, the authorized number of directors shall be no less than nine and one-third of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. Directors of a listed corporation may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in subdivision (a) is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(c) If directors for more than one class are to be elected by the shareholders at any one meeting of shareholders and the election is by cumulative voting pursuant to Section 708, votes may be cumulated only for directors to be elected within each class.

(d) For purposes of this section, a "listed corporation" means any of the following:

(1) A corporation with outstanding shares listed on the New York Stock Exchange or the American Stock Exchange.

(2) A corporation with outstanding securities designated as qualified for trading as a national market system security on the National Association of Securities Dealers Automatic Quotation System (or any successor national market system) if the corporation has at least 800 holders of its equity securities as of the record date of the corporation's most recent annual meeting of shareholders. For purposes of determining the number of holders of a corporation's equity securities under this paragraph, 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 equivalent to the certification permitted by subdivision (a) of Section 2115, provided, that the corporation retains the certification with the record of shareholders

and makes the certification available for inspection and copying in the same manner as provided in Section 1600.

(e) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (d). If an article or bylaw amendment referred to in subdivision (a) is adopted by a corporation which is not a listed corporation, the provision as adopted, shall include the following the statement or the substantial equivalent of: "This provision shall become effective only when the corporation becomes a listed corporation within the meaning of Section 301.5 of the Corporations Code."

SEC. 3. Section 303 of the Corporations Code is amended to read:

303. (a) Any or all of the directors may be removed without cause if the removal is approved by the outstanding shares (Section 152), subject to the following:

(1) Except for a corporation to which paragraph (3) is applicable, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles the holders of the shares of any class or series, voting as a class or series, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the holders of the shares of that class or series.

(3) A director of a corporation whose board of directors is classified pursuant to Section 301.5 may not be removed if the votes cast against removal of the director, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively (without regard to whether shares may otherwise be voted cumulatively) at an election at which the same total number of votes were cast (or, if the action is taken by written consent, all shares entitled to vote were voted) and either the number of directors elected at the most recent annual meeting of shareholders, or if greater, the number of directors for whom removal is being sought, were then being elected.

(b) Any reduction of the authorized number of directors or amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(c) Except as provided in this section and Sections 302 and 304, a director may not be removed prior to the expiration of the director's term of office.

SEC. 4. Section 708 of the Corporations Code is amended to read:

708. (a) Except as provided in Section 301.5, every shareholder complying with subdivision (b) and entitled to vote at any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes which such shareholder normally is entitled to cast) unless such candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given such notice, all shareholders may cumulate their votes for candidates in nomination.

(c) In any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by such shares are elected; votes against the director and votes withheld shall have no legal effect.

(d) Subdivision (a) applies to the shareholders of any mutual water company organized or existing for the purpose of delivering water to its shareholders at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state, but does not otherwise apply to the shareholders of mutual water companies unless their articles or bylaws so provide.

(e) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the bylaws so require.

CHAPTER 877

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

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. The State Allocation Board shall contract with the Office of the State Architect to study and develop recommendations for facilitating the computerization of classrooms in public schools for kindergarten and grades 1 to 12, inclusive. The study shall examine

the viability of including specific structural support systems for advanced technology as part of the standards for the new construction of public educational facilities.

SEC. 2. The study shall include, but need not be limited to, an assessment of the feasibility and desirability of all of the following:

(a) An interstitial floor structure to facilitate a cabling system throughout the building.

(1) The interstitial floor structure and cabling system shall, to the extent feasible, accommodate foreseeable changes in computer, audio, and video technology.

(2) Plans for the new educational construction shall include research into technological advances in computers, audio, and video to make allowances as needed in educational construction plans.

(b) A cabling system laid out to support at least one outlet on each wall of all classrooms, library media centers, and offices.

(c) Each outlet capable of supporting the power, audio, video, and information transfer needs of a minimum of one computer terminal and monitor per classroom, library media center, or office, one video display set for class viewing per classroom, and one video cassette recorder per classroom.

(d) State of the art protection of the equipment from power interruptions, power surges, and problems of static electricity.

SEC. 3. On or before January 1, 1991, the Office of the State Architect shall provide to the Legislature a report of the findings, including recommendations for modifications to the standards for the new construction of public educational facilities.

If appropriate, the State Allocation Board shall adopt these standards as part of the requirements for the new construction of educational facilities.

SEC. 4. The sum of seventy thousand dollars ($70,000) is hereby appropriated from the State School Building Lease-Purchase Fund to the State Allocation Board for the purpose of contracting with the Office of the State Architect to conduct the study with respect to public educational facilities, as specified in Section 2.

CHAPTER 878

An act to amend Sections 626 and 626.5 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 626 of the Welfare and Institutions Code is amended to read:

626. An officer who takes a minor into temporary custody under

the provisions of Section 625 may do any of the following:

(a) Release the minor.

(b) Deliver or refer the minor to a public or private agency with which the city or county has an agreement or plan to provide shelter care, counseling, or diversion services to minors so delivered.

(c) Prepare in duplicate a written notice to appear before the probation officer of the county in which the minor was taken into custody at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons the minor was taken into custody. The officer shall deliver one copy of the notice to the minor or to a parent, guardian, or responsible relative of the minor and may require the minor or the minor's parent, guardian, or relative, or both, to sign a written promise to appear at the time and place designated in the notice. Upon the execution of the promise to appear, the officer shall immediately release the minor. The officer shall, as soon as practicable, file one copy of the notice with the probation officer.

(d) Take the minor without unnecessary delay before the probation officer of the county in which the minor was taken into custody, or in which the minor resides, or in which the acts take place or the circumstances exist which are alleged to bring the minor within the provisions of Section 601 or 602, and deliver the custody of the minor to the probation officer. The peace officer shall prepare a concise written statement of the probable cause for taking the minor into temporary custody and the reasons the minor was taken into custody and shall provide the statement to the probation officer at the time the minor is delivered to the probation officer. In no case shall the officer delay the delivery of the minor to the probation officer for more than 24 hours if the minor has been taken into custody without a warrant on the belief that the minor has committed a misdemeanor.

In determining which disposition of the minor to make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided that alternative is compatible with the best interests of the minor and the community.

SEC. 2 Section 626.5 of the Welfare and Institutions Code is amended to read:

626.5. If an officer who takes a minor into temporary custody under the provisions of Section 625 determines that the minor should be brought to the attention of the juvenile court, he or she shall thereafter take one of the following actions:

(a) He or she may prepare in duplicate a written notice to appear before the probation officer of the county in which the minor was taken in custody at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons the minor was taken into custody. The officer shall deliver one copy of the notice to the minor or to a parent, guardian, or responsible relative of the minor and may require the minor or his or her parent, guardian, or relative, or both, to sign a written promise that either

or both will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the officer shall immediately release the minor. The officer shall, as soon as practicable, file one copy of the notice with the probation officer.

(b) He or she may take the minor without unnecessary delay before the probation officer of the county in which the minor was taken into custody, or in which the minor resides, or in which the acts took place or the circumstances exist which are alleged to bring the minor within the provisions of Section 601 or 602, and deliver the custody of the minor to the probation officer. The peace officer shall prepare a concise written statement of the probable cause for taking the minor into temporary custody and the reasons the minor was taken into custody and shall provide that statement to the probation officer at the time the minor is delivered to the probation officer. In no case shall he or she delay the delivery of the minor to the probation officer for more than 24 hours if the minor has been taken into custody without a warrant on the belief that he or she has committed a misdemeanor.

In determining which disposition of the minor he or she will make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided that alternative is compatible with the best interests of the minor and the community.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 879

An act to add Sections 6258 and 6258.1 to the Penal Code, relating to correctional facilities.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 6258 is added to the Penal Code, to read:

6258. (a) The Director of Corrections may contract for the establishment and operation of separate community correctional

reentry centers for men and women, provided that the per-inmate cost for operating these facilities under contract will be less than the per-inmate cost of maintaining custody of the inmates by the department.

(b) The purpose of the community correctional reentry center is to provide an enhancement program to increase the likelihood of a successful parole. The objective of the program is to make the inmates aware of their responsibility to society, and to assist the inmates with educational and employment training to ensure employability once on parole.

(c) A community correctional reentry center shall prepare the inmate for reintegration into society. These centers shall provide counseling in the areas of drug and alcohol abuse, stress, employment skills, victim awareness, and shall, in general, prepare the inmate for return to society. The program shall also emphasize literacy training and utilize computer-supported training so that the inmate can read and write at least at a ninth grade level.

(d) In awarding contracts pursuant to this section, the director may entertain proposals for the establishment and operation of community correctional reentry centers from public and private entities and shall give preference to community correctional reentry centers located near large population centers.

SEC. 2. Section 6258.1 is added to the Penal Code, to read:

6258.1. No inmate shall be transferred to a community correctional reentry facility unless all of the following conditions are met:

(a) The inmate applies for a transfer to a community correctional reentry facility.

(b) The inmate is not currently serving a sentence for conviction of any offense described in subdivision (c) of Section 667.5.

(c) The inmate has less than 120 days left to serve in a correctional facility.

(d) The inmate has not been convicted previously of an escape pursuant to Section 4532 of the Penal Code.

(e) The department determines that the inmate would benefit from the transfer.

CHAPTER 880

An act to amend Section 10015 of, and to amend, add, and repeal Section 10005 of, the Financial Code, relating to financial institutions.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 10005 of the Financial Code is amended to read:

10005. For the purposes of this article and any other law of this state prohibiting, limiting, or regulating the doing of business or the selling, taking, or solicitation of savings accounts in this state by foreign savings associations or foreign corporations, any foreign savings association subject to state or federal supervision, which by law is subject to periodic examination by that supervisory authority and to a requirement of periodic audit, and any broker-dealer registered in accordance with the requirements of the Securities Exchange Act of 1934 and any partner, officer, director, branch manager, or person performing similar functions, and employees of that broker-dealer, shall not be considered to be doing business or selling, taking, or soliciting savings accounts in this state by reason of engaging in any of the following:

(a) Any of the activities specified in subdivision (d) of Section 191 of the Corporations Code.

(b) The advertising or solicitation of savings accounts in this state through the media of the mail, radio, television, magazines, newspapers, or any other media that are published or circulated within this state, provided that the advertising or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate.

(c) The offering by a registered broker-dealer of, or the placement by a registered broker-dealer of a customer's funds into, a savings account at a federally insured foreign savings association chartered under the laws of a state in which broker-dealers make available savings accounts of associations chartered under the laws of this state, provided that any advertising, offering material, or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate.

(d) This section shall be repealed on January 1, 1992.

SEC. 2. Section 10005 is added to the Financial Code, to read:

10005. (a) For the purposes of this article and any other law of this state prohibiting, limiting, or regulating the doing of business in this state by foreign savings associations or foreign corporations, any foreign savings association subject to state or federal supervision, which by law is subject to periodic examination by that supervisory

authority and to a requirement of periodic audit, shall not be considered to be doing business in this state by reason of engaging in the following:

(1) Any of the activities specified in subdivision (d) of Section 191 of the Corporations Code.

(2) The advertising or solicitation of savings accounts in this state through the media of the mail, radio, television, magazines, newspapers, or any other media that are published or circulated within this state, provided that the advertising or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate.

(b) This section shall become operative on January 1, 1992.

SEC. 3. Section 10015 of the Financial Code is amended to read:

10015. For the purposes of this article and any other law of this state prohibiting, limiting, or regulating the doing of business or the selling, taking, or solicitation of savings accounts in this state by foreign savings associations or foreign corporations, any foreign savings association subject to state or federal supervision, which by law is subject to periodic examination by that supervisory authority and to a requirement of periodic audit, and any broker-dealer registered in accordance with the requirements of the Securities Exchange Act of 1934 and any partner, officer, director, branch manager, or person performing similar functions, and employee of that broker-dealer, shall not be considered to be doing business or selling, taking, or soliciting savings accounts in this state by reason of engaging in any of the following:

(a) Any of the activities specified in subdivision (d) of Section 191 of the Corporations Code.

(b) The advertising or solicitation of savings accounts in this state through the media of the mail, radio, television, magazines, newspapers, or any other media that are published or circulated within this state, provided that the advertising or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate.

(c) The offering by a registered broker-dealer of, or the placement by a registered broker-dealer of a customer's funds into, a savings account at a federally insured foreign savings association chartered under the laws of a state in which broker-dealers make available savings accounts of associations chartered under the laws of this state, provided that any advertising, offering material, or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate.

CHAPTER 881

An act to amend Section 33334.3 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. 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 and any repayments or other income to the agency for loans, advances, or grants, of any kind, from the Low and Moderate Income Housing Fund, shall accrue to, and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve 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, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, or preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation 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 Section 33334.13.

(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.

(g) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to low- and moderate-income households, including very low income households, for a specified period of time, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require the units remain affordable to persons and families of low- and moderate-income and very low income households for the longest feasible time. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location 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 (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

SEC. 2. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 882

An act to amend Section 11126 of, and to add Section 54956.95 to, the Government Code, relating to public meetings.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 26, 1989]

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

SECTION 1. 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 a state body operating under a joint powers agreement for insurance

pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) 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.

(x) 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.

(y) 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.

(z) 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. 2. 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 a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) 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.

(x) 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.

(y) 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.

(z) This article shall not prevent the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

SEC. 3. Section 54956.95 is added to the Government Code, to read:

54956.95. (a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a

local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

SEC. 4. Section 2 of this bill incorporates amendments to Section 11126 of the Government Code proposed by both this bill and AB 1284. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 11126 of the Government Code, and (3) this bill is enacted after AB 1284, in which case Section 1 of this bill shall not become operative.

CHAPTER 883

An act to add Section 14005.29 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 14005.29 is added to the Welfare and Institutions Code, to read:

14005.29. To the extent that federal matching funds are available, disabled persons who are otherwise eligible for benefits under this chapter, except for income due to employment, shall continue to be eligible to receive benefits for conditions excluded from coverage by a private insurer, provided those persons' incomes do not exceed 200 percent of the income level for maintenance established pursuant to Section 14005.12.

CHAPTER 884

An act to amend Sections 21626, 21628, 21636, 21638, and 21647 of, and to add Section 21636.5 to, the Business and Professions Code, relating to personal property.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 26, 1989]

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

SECTION 1. Section 21626 of the Business and Professions Code is amended to read:

21626. (a) A "secondhand dealer," as used in this article, means

and includes any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. A "secondhand dealer" does not include a "coin dealer."

(b) As used in this section, a "coin dealer" means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals.

SEC. 2. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer and coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of such property, on forms either approved or provided at actual cost by the Department of Justice, all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633. The report shall be legible, prepared in English, completed where applicable, and include, but not limited to, the following information:

(a) The name and current address of the intended seller or pledgor of the property.

(b) The identification of the intended seller or pledgor. The identification of the seller or pledgor of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, is signed by the person, and bears a serial or other identifying number:

(1) A passport of the United States.

(2) A driver's license issued by any state, or Canada.

(3) An identification card issued by any state.

(4) An identification card issued by the United States.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions and other identifying marks or symbols.

(e) A certification by the intended seller or pledgor that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

(f) A certification by the intended seller or pledgor that to his or her knowledge and belief the information is true and complete.

(g) A legible fingerprint taken from the intended seller or pledgor, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

SEC. 3. Section 21636 of the Business and Professions Code is amended to read:

21636. (a) Every secondhand dealer and coin dealer shall retain in his or her possession for a period of 30 days all tangible personal property reported under Sections 21628, 21629, and 21630. The 30-day holding period with respect to such tangible personal property shall commence with the date the report of its acquisition was made to the chief of police or to the sheriff by the secondhand dealer and coin dealer. The chief of police or the sheriff may for good cause, as specified by the Department of Justice, authorize prior disposition of any such property described in a specific report; provided, that a secondhand dealer who disposes of tangible personal property pursuant to such authorization shall report the sale thereof to the chief of police or the sheriff.

(b) During the 30-day holding period specified in subdivision (a) every secondhand dealer and coin dealer shall produce any tangible personal property reported under Sections 21628, 21629, and 21630 for inspection by any peace officer or employee designated by the chief of police or sheriff.

SEC. 4. Section 21636.5 is added to the Business and Professions Code, to read:

21636.5. No secondhand dealer or coin dealer shall promise a seller of tangible property that the seller may repurchase property sold to the secondhand dealer or coin dealer.

SEC. 5. Section 21638 of the Business and Professions Code is amended to read:

21638. The provisions of this article shall not prohibit enactment, amendment, or enforcement by any city, county, or city and county of any local ordinance relating to a secondhand dealer or coin dealer which is not inconsistent with the provisions of this article, except that no city, county, or city and county, or any other state agency shall adopt the following:

(a) Holding, reporting, or identification requirements for transactions involving coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals.

(b) Identification, holding, or reporting requirements for the acquisition of tangible personal property, in the ordinary course of business, by pawnbrokers and secondhand dealers, other than as set forth in Sections 21628, 21630, 21633, and 21636 of this code, and Section 21208 of the Financial Code.

SEC. 6. 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, secondhand dealer, or coin 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, secondhand dealer, or coin dealer a written notice at the time the hold is placed, describing the item or items to be held. During that period the pawnbroker, secondhand dealer, or coin 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, secondhand property dealer, or coin dealer shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a pawnbroker, secondhand dealer, or coin dealer is subject to a hold and the property is required by a peace officer in a criminal investigation, the pawnbroker, secondhand dealer, or coin 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, secondhand dealer, or coin 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, secondhand dealer, or coin 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; notwithstanding the foregoing, if the alleged owner chooses not to file a criminal complaint against an identified alleged thief, the alleged owner shall pay the pawnbroker, secondhand dealer, or coin dealer the "out of pocket" expenses paid in the acquisition of the allegedly stolen 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, secondhand dealer, or coin 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.

SEC. 7. 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.

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 a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 885

An act to amend Sections 1265 and 1267.5 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 26, 1989.]

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

SECTION 1. Section 1265 of the Health and Safety Code is amended to read:

1265. Any person, political subdivision of the state, or governmental agency desiring a license for a health facility or approval for a special service under this chapter shall file with the state department a verified application on forms prescribed and furnished by the state department, containing all of the following:

(a) The name of the applicant and, if an individual, whether the applicant has attained the age of 18 years.

(b) The type of facility or health facility.

(c) The location thereof.

(d) The name of the person in charge thereof.

(e) Evidence satisfactory to the state department that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the health facility for which application for license is made. If the

applicant is a political subdivision of the state or other governmental agency, like evidence shall be submitted as to the person in charge of the health facility for which application for license is made.

(f) Evidence satisfactory to the state department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the state department.

(g) Evidence satisfactory to the department that the applicant to operate a skilled nursing facility or intermediate care facility possesses financial resources sufficient to operate the facility for a period of at least 45 days.

(h) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state department evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of a copy of applicable portions of a lease agreement or deed of trust. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and the grounds appurtenant to the buildings, shall be disclosed to the state department.

(i) Any other information as may be required by the state department for the proper administration and enforcement of this chapter.

(j) Upon submission of an application to the state department by an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing, the application shall include a statement of need signed by the chairperson of the area board pursuant to Chapter 4 (commencing with Section 4570) of Division 4.5 of the Welfare and Institutions Code. In the event the area board has not provided the statement of need within 30 days of receipt of the request from the applicant, the state department may process the application for license without the statement.

SEC. 2. Section 1267.5 of the Health and Safety Code is amended to read:

1267.5. (a) (1) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of 5 percent or more in the applicant corporation or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of, or has held a beneficial ownership interest of 5 percent or more in, any other skilled nursing facility or intermediate care facility or in any community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of this division, the applicant shall

disclose the relationship to the state department, including the name and current or last address of the health facility or community care facility and the date such relationship commenced and, if applicable, the date it was terminated.

(3) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5 percent or more in the management company shall be disclosed to the state department. This provision shall not apply if the management company has submitted an application for licensure with the state department and has complied with paragraph (1).

(4) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization of the subsidiary and the names and addresses of any officer or director of the parent organization.

The information required by this subdivision shall be provided to the state department upon initial application for licensure, and changes in the information shall be provided to the state department on an annual basis. Failure to comply with this section may result in action to revoke or deny a license. The information required by this section shall be made available to the public upon request, and shall be included in the public file of the facility.

(b) On and after January 1, 1990, no person may acquire a beneficial interest of 5 percent or more in any corporation or partnership licensed to operate a skilled nursing facility or intermediate care facility, nor may any person become an officer or director of, or general partner in, such a corporation or partnership without the prior written approval of the state department. Each application for departmental approval pursuant to this subdivision shall include the information specified in subdivision (a) as regards the person for whom the application is made.

If the state department fails to approve or disapprove the application within 30 days after receipt thereof, the application shall be deemed approved.

(c) The state department may deny approval of a license application or of an application for approval under subdivision (b) if a person named in the application, as required by this section, was an officer, director, general partner, or owner of a 5-percent or greater beneficial interest in a licensee of a skilled nursing facility, intermediate care facility, or community care facility at a time when one or more violations of law were committed therein which resulted in suspension or revocation of its license. However, the prior suspension or revocation of a license shall not be grounds for denial of the application if the applicant shows to the satisfaction of the state department (1) that the person in question took every reasonably available action to prevent the violation or violations which resulted in the disciplinary action and (2) that he or she took every reasonably available action to correct the violation or violations once he or she knew, or with the exercise of reasonable diligence should have

known of, the violation or violations.

(d) No application shall be denied pursuant to this section until the state department first (1) provides the applicant with notice in writing of grounds for the proposed denial of application, and (2) affords the applicant an opportunity to submit additional documentary evidence in opposition to the proposed denial.

(e) Nothing in this section shall cause any individual to be personally liable for any civil penalty assessed pursuant to Chapter 2.4 (commencing with Section 1417) of this division or create any new criminal or civil liability contrary to general laws limiting such liability.

(f) The provisions of this section shall not apply to a bank, trust company, financial institution, title insurer, controlled escrow company, or underwritten title company to which a license is issued in a fiduciary capacity.

(g) As used in this section, "person" has the same meaning as specified in Section 19.

(h) The provisions of this section shall not apply to the directors of a nonprofit corporation exempt from taxation under Section 23701d of the Revenue and Taxation Code which operates a skilled nursing facility or intermediate care facility in conjunction with a licensed residential facility, where the directors serve without financial compensation and are not compensated by the nonprofit corporation in any other capacity.

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

CHAPTER 886

An act to amend Sections 101, 128.5, 130, 160, 337, 500, 650.1, 656, 718, 800, 801, 805, 805.1, 805.5, 851, 920.5, 2001, 2002, 2055, 2163, 2201, 2208, 2210, 2292, 2321, 2340, 2341, 2420, 2435, 2445, 2450, 2451, 2460, 2461, 2529.5, 2530.2, 2531, 2536, 2541.3, 2541.6, 2545, 2550, 2550.1, 2558, 2559, 2567, 2568, 2601, 2632, 2655, 2690, 2725, 2746.3, 2746.4, 2902, 2920, 2936, 2980, 2987, 2995, 3041, 3041.2, 3302, 3501, 3504, 3519, 3527, 3535, 3540, 3704, 3730, 4033, 4047.7, 4051, 4051.3, 4051.4, 4051.7, 4051.8, 4051.9, 4927, and 7634 of the Business and Professions Code, to amend Section 13401 of the Corporations Code, to amend Sections 11501 and 26509 of the Government Code, to amend Sections 320.5, 324.7,

429.97, 429.982, 1198, 1317.1, 1317.5, 1701, 1704.5, 1797.132, 7187, 11217, and 11998.1 of the Health and Safety Code, to amend Section 87 of the Military and Veterans Code, to amend Section 830.3 of the Penal Code, and to amend Sections 5326.15, 5326.9, 9721, 14110.5, 14132.55, and 14193 of the Welfare and Institutions Code, relating to the Board of Medical Quality Assurance.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Board of Dental Examiners of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Board of Examiners in Veterinary Medicine.

(f) The State Board of Accountancy.

(g) The California State Board of Architectural Examiners.

(h) The State Board of Barber Examiners.

(i) The State Board of Registration for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The State Board of Cosmetology.

(*l*) The State Board of Funeral Directors and Embalmers.

(m) The Structural Pest Control Board.

(n) The Bureau of Home Furnishings and Thermal Insulation.

(o) The Board of Registered Nursing.

(p) The State Board of Dry Cleaning and Fabric Care.

(q) The Board of Chiropractic Examiners.

(r) The Board of Behavioral Science Examiners.

(s) The State Athletic Commission.

(t) The Cemetery Board.

(u) The State Board of Guide Dogs for the Blind.

(v) The Bureau of Collection and Investigative Services.

(w) The Certified Shorthand Reporters Board.

(x) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.

(y) The California State Board of Landscape Architects.

(z) The Bureau of Repair Services.

(aa) The Bureau of Employment Agencies.

(ab) The Board of Osteopathic Examiners.

(ac) The Division of Investigation.

(ad) The Bureau of Automotive Repair.

(ae) The State Board of Registration for Geologists and Geophysicists.

(af) The State Board of Examiners of Nursing Home Administrators.

(ag) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 128.5 of the Business and Professions Code is amended to read:

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California State Board of Architectural Examiners, the Board of Behavioral Science Examiners, the Board of Examiners in Veterinary Medicine, the Certified Shorthand Reporters Board, the Medical Board of California, the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California, the Bureau of Collection and Investigative Services has unencumbered funds in an amount which equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether such license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount which will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

SEC. 3. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1st.

(b) Subdivision (a) applies to the following boards or committees:

(1) Medical Board of California.

(2) California Board of Podiatric Medicine.

(3) Physical Therapy Examining Committee.

(4) Board of Registered Nursing.

(5) Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.

(6) State Board of Optometry.

(7) California State Board of Pharmacy.

(8) Board of Examiners in Veterinary Medicine.

(9) California State Board of Architectural Examiners.

(10) California State Board of Landscape Architects.

(11) State Board of Barber Examiners.

(12) State Board of Registration for Professional Engineers and Land Surveyors.

(13) Contractors' State License Board.

(14) State Board of Cosmetology.

(15) State Board of Guide Dogs for the Blind.

(16) State Board of Funeral Directors and Embalmers.

(17) Board of Behavioral Science Examiners.

(18) Structural Pest Control Board.

(19) Cemetery Board.

(20) Bureau of Electronic and Appliance Repair Advisory Board.

(21) Certified Shorthand Reporters Board.

(22) State Board of Registration for Geologists and Geophysicists.

(23) State Athletic Commission.

(24) California Advisory Board to the Bureau of Employment Agencies.

(25) Board of Osteopathic Examiners of the State of California.

SEC. 4. Section 160 of the Business and Professions Code is amended to read:

160. The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Board of Dental Examiners have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

SEC. 5. Section 337 of the Business and Professions Code is amended to read:

337. (a) The department shall prepare and disseminate an informational brochure for victims of psychotherapist-patient sexual contact and advocates for those victims. This brochure shall be developed by the department in consultation with members of the Sexual Assault Program of the Office of Criminal Justice Planning and the office of the Attorney General.

(b) The brochure shall include, but is not limited to, the following:

(1) A legal and an informal definition of psychotherapist-patient sexual contact.

(2) A brief description of common personal reactions and histories of victims and victim's families.

(3) A patient's bill of rights.

(4) Options for reporting psychotherapist-patient sexual relations and instructions for each reporting option.

(5) A full description of administrative, civil, and professional associations complaint procedures.

(6) A description of services available for support of victims.

(c) The brochure shall be provided to each individual contacting

the Medical Board of California and their allied health boards or the Board of Behavioral Science Examiners regarding a complaint involving psychotherapist-patient sexual relations.

SEC. 6. Section 500 of the Business and Professions Code is amended to read:

500. Whenever the register or book of registration of the Medical Board of California, the Board of Dental Examiners, or the Board of Pharmacy is destroyed by fire or other public calamity, the board, whose duty it is to keep the register or book, may reproduce it so that there may be shown as nearly as possible the record existing in the original at the time of destruction.

SEC. 7. Section 650.1 of the Business and Professions Code is amended to read:

650.1. (a) Any amount payable to any hospital, as defined in Section 4047, or any person or corporation prohibited from pharmacy permit ownership by subdivision (a) of Section 4080.5 under any rental, lease or service arrangement with respect to the furnishing or supply of pharmaceutical services and products, which is determined as a percentage, fraction, or portion of (1) the charges to patients or of (2) any measure of hospital or pharmacy revenue or cost, for pharmaceuticals and pharmaceutical services is prohibited.

(b) Any lease or rental arrangement existing on the effective date of this section shall be in full compliance with subdivision (a) by January 1, 1986.

(c) Any lease or rental agreement entered into prior to January 1, 1980, that extends beyond the effective date of this section shall be construed to be in compliance with this section until its expiration or the expiration of any option which is contained in any such lease or rental agreement provided that the lease or rental agreement contains provisions which limit pharmacy charges to the amounts not in excess of the prevailing charges in similar hospitals in the general geographic area.

(d) The California State Board of Pharmacy, the Medical Board of California, and the State Department of Health Services shall enforce this section and may require information from any person as is necessary for the enforcement of this section. It shall be the duty of the licensees of the respective regulatory agencies to produce the requisite evidence to show compliance with this section. Violations of this section shall be deemed to be the mutual responsibility of both lessee and lessor, and shall be grounds for disciplinary action or other sanctions against both.

SEC. 8. Section 656 of the Business and Professions Code is amended to read:

656. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this article, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order,

restraining such conduct on application of the State Board of Optometry, the Medical Board of California, the Board of Osteopathic Examiners, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

SEC. 9. Section 718 of the Business and Professions Code is amended to read:

718. A physician and surgeon who is not licensed in this state but who is a commissioned officer on active duty in the medical corps of any branch of the armed forces of the United States may engage in the practice of medicine as part of a residency, fellowship, or clinical training program if all the following conditions are met:

(a) The residency, fellowship, or clinical training program is conducted by a branch of the armed forces of the United States at a health facility on a federal reservation and limited in enrollment to military physicians on active duty in the medical corps of a branch of the armed forces of the United States.

(b) The residency, fellowship, or clinical training program, as part of its program, contracts with or affiliates with a similar program in or at a health facility not on a federal reservation to offer specific courses or training not available at the facility located on the federal reservation.

(c) The officers enrolled in the residency, fellowship, or clinical training program restrict their practice only to patients who are seen as part of their duties in the program.

(d) The compensation received by the officers enrolled in the residency, fellowship, or clinical training program is limited to their regular pay and allowances as commissioned officers.

(e) The officers enrolled in the training programs or portions of training programs not conducted on a federal reservation shall register with the Division of Licensing of the Medical Board of California on a form provided by the division.

SEC. 10. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Dental Examiners, the Board of Osteopathic Examiners, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nurse and Psychiatric Technician Examiners, the State Board of Optometry, the Board of Examiners in Veterinary Medicine, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate or similar authority from such board. Each such central file shall be so created and maintained as to provide an individual historical record for each such person with respect to (1) any conviction of a crime in this or any other state which constitutes unprofessional conduct pursuant to the reporting requirements of Section 803; (2) any judgment or settlement

requiring him or his insurer to pay any amount of damages in excess of three thousand dollars ($3,000) with respect to any claim that injury or death was proximately caused by such person's negligence, error or omission in practice or rendering of unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each such board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in or connected with the performance of professional services by such person.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that it may be reviewed (1) by the licensee involved or his or her counsel or representative who may, but is not required to submit any additional exculpatory or explanatory statements or other information, which statements or other information must be included in the file, (2) by any district attorney or representative or investigator therefor who has been assigned to review the activities of a healing arts licentiate, (3) by any representative of the Attorney General's office or investigator thereof who has been assigned to review the activities of a healing arts licentiate, or (4) by any investigator of the department, or a healing arts board referred to in this section, who has been assigned to review the activities of a healing arts licentiate. Such licensee may, but is not required to submit any additional exculpatory or explanatory statements or other information which statements or other information must be included in the file.

SEC. 11. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by such person's negligence, error or omission in practice, or rendering of unauthorized professional services. Such report shall be sent within 30 days after such written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of such arbitration

award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Board of Osteopathic Examiners, as appropriate, as to any settlement or arbitration award over thirty thousand dollars ($30,000) of a claim or action for damages for death or personal injury caused by such person's negligence, error or omission in practice, or rendering of unauthorized professional services. Such report shall be sent within 30 days after such written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of such arbitration award on the parties.

(c) Notwithstanding any other provision of law, no insurer shall enter into such a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without such written consent. The requirement of written consent can only be waived by both the insured and the insurer. The provisions of this section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 12. Section 805 of the Business and Professions Code is amended to read·

805. (a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any licensed health care facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Any medical, psychological, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class, which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractural arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of privileges" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, when the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body shall file an 805 report with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

In addition to the duty to report as set forth in paragraphs (1), (2) and (3), the peer review body also has a duty to report under this section a licentiate's resignation from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary cause or reason.

The 805 report shall be filed within 30 days after the effective date of the denial, termination, restriction, or resignation, or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 30 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

(c) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976. The Medical Board of California, the Board of Osteopathic Examiners, and the Board of Dental Examiners shall disclose reports as required by Section 805.5.

An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(d) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(e) Failure to make a report pursuant to this section is a misdemeanor punishable by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 13. Section 805.1 of the Business and Professions Code is amended to read:

805.1. (a) The Medical Board of California, the Board of Osteopathic Examiners, and the Board of Dental Examiners shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action which is required to be reported pursuant to Section 805:

(1) Any statement of charges.

(2) Any document, medical chart, or exhibits in evidence.

(3) Any opinion, findings, or conclusions.

(b) The information so disclosed shall be kept confidential and not subject to discovery, in accordance with Section 800, except that it may be reviewed, as provided in subdivision (c) of Section 800, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code)

SEC. 14. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, clinical psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of any such institution, shall request a report from the Medical Board of California, the Board of Osteopathic Examiners, or the Board of Dental Examiners to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, clinical psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, clinical psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) where the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) where the board has found the information reported is without merit, or (3) where a period of three years has elapsed since the report was submitted.

In the event that the board fails to advise such institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, clinical psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff which violates the provisions of subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 15 Section 851 of the Business and Professions Code is amended to read:

851. A healing arts licensure board or examining committee may by regulation require an applicant for licensure or certification to meet the standards of a specified private voluntary association or professional society when either of the following conditions is met:

(a) There is direct statutory authority or requirement that the board or examining committee utilize the standards of the specified private voluntary association or professional society; or

(b) The board or examining committee specifies in the regulation the amount of education, training, experience, examinations, or other requirements of the private voluntary association or professional society, which standards shall be consistent with the

provisions of law regulating such licensees, and the board or examining committee adopts such standards in public hearing. The board or examining committee may, by regulation, require an applicant to successfully complete an examination conducted by or created by a relevant national certification association, testing firm, private voluntary association, or professional society.

Nothing in this section authorizes the Medical Board of California to limit the licensure of physicians and surgeons by specialty.

SEC. 16. Section 920.5 of the Business and Professions Code is amended to read:

920.5. The term "board" as used in this chapter means the Medical Board of California.

SEC. 17. Section 2001 of the Business and Professions Code is amended to read:

2001. There is in the Department of Consumer Affairs a Medical Board of California which consists of 19 members, seven of whom shall be public members.

The Governor shall appoint 17 members to the board, subject to confirmation by the Senate, five of whom shall be public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

SEC. 18. Section 2002 of the Business and Professions Code is amended to read:

2002. Unless otherwise expressly provided, the term "board" as used in this chapter means the Medical Board of California.

SEC. 19. Section 2055 of the Business and Professions Code is amended to read:

2055. Notwithstanding any other provision of law, a person issued a physician's and surgeon's certificate by the Medical Board of California pursuant to the provisions of this chapter shall be entitled to use of the initials "M.D."

SEC. 20. Section 2163 of the Business and Professions Code is amended to read:

2163. The loan shall be repayable to the Contingent Fund of the Medical Board of California in equal or graduated periodic installments, according to a schedule agreed upon by the division and the borrower, over a 10-year period which shall begin three years after the student ceases to pursue a full-time course of professional instruction, excluding from such 10-year period all periods, up to three years, of (a) active duty performed by the borrower as a member of the United States armed forces, or (b) nonmilitary public services performed by the borrower which the division finds to be in the public interest.

SEC. 21. Section 2201 of the Business and Professions Code is amended to read:

2201. For the purposes of this article.

(a) "Commission" means the California Health Manpower Policy

Commission.

(b) "Division" means the Division of Licensing of the Medical Board of California.

(c) "Practice of medicine" or "medical practice" means all activities authorized by a physician's and surgeon's certificate, except activities performed in the course of employment as a public health officer, as a medical school faculty member where teaching time is more than 25 percent of the working day, or as a resident or first-year postgraduate trainee.

(d) "Primary care services" means those medical services involving the specialties of general practice, family practice, general internal medicine, obstetrics, gynecology, and general pediatrics.

SEC. 22. Section 2208 of the Business and Professions Code is amended to read:

2208. Loans made pursuant to this article shall be repayable to the Contingent Fund of the Medical Board of California or cancelled under the following conditions:

(a) A licensed physician and surgeon who establishes and maintains a medical practice in an area deficient in primary care services for less than one year shall repay the total amount of the loan, in addition to accrued interest charges.

(b) A licensed physician and surgeon who establishes and maintains a medical practice in an area deficient in primary care services for more than one year, but less than two years, shall repay half the total amount of the loan, in addition to accrued interest charges.

(c) The total amount of the loan and all accrued interest shall be canceled for a licensed physician and surgeon who establishes and maintains a medical practice in an area deficient in primary care services for more than two years from the date the loan is made.

SEC. 23. Section 2210 of the Business and Professions Code is amended to read:

2210. (a) In addition to the principal of the loan, interest shall accrue on the principal of all loans made at a rate which shall be two percentage points less than the authorized interest rate on California Water Bonds at the time the application is filed. Interest shall accrue from the date the loan is made until it is repaid unless the loan is canceled pursuant to Section 2208 or 2209.

(b) Loans made pursuant to this article which are not canceled shall be repayable to the Contingent Fund of the Medical Board of California under the terms specified in such loan agreements in periodic installments, according to the schedule agreed upon by the division and the borrower, over a 10-year period which shall begin one year after the borrower ceases to operate his or her medical practice in an area deficient in primary care services, excluding from such 10-year period all periods, up to three years, of (1) active duty performed by the borrower as a member of the armed forces of the United States, or (2) nonmilitary public service performed by the borrower which the division finds to be in the public interest.

SEC. 24. Section 2292 of the Business and Professions Code is amended to read:

2292. (a) A physician may be ordered to undergo a professional competency examination if, after investigation and review by a medical consultant of the Medical Board of California or his or her designee, and review and concurrence by at least one outside medical consultant, there is reasonable cause to believe that the physician is unable to practice medicine with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following: (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

(b) The matter shall be presented by the board's executive director or his or her 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 physician who shall have the opportunity to file written opposition to the petition within 45 days after service. Service of the petition and any orders shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The petition may be considered by the Division of Medical Quality, or the division may assign the petition for consideration to a panel of a medical quality review committee, formed pursuant to Section 2323.

(d) The division or a committee panel shall review the petition and any opposition paper from the physician, or the division or panel 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 physician shall have the right to be represented at that hearing by the person of his or her choice. If the division or panel is satisfied that reasonable cause exists as to the circumstances specified in subdivision (a), the division or panel shall issue an order compelling the physician 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 on the physician shall constitute unprofessional conduct for purposes of disciplinary proceedings.

SEC. 25. Section 2321 of the Business and Professions Code is amended to read.

2321. As used in this article:

(a) "Division" means the Division of Medical Quality of the Medical Board of California.

(b) "Committee" means a medical quality review committee.

(c) "District" means a district established by Section 2322.

SEC. 26. Section 2340 of the Business and Professions Code is

amended to read:

2340. It is the intent of the Legislature that the Medical Board of California seek ways and means to identify and rehabilitate physicians and surgeons with impairment due to abuse of dangerous drugs or alcohol, or due to mental illness or physical illness, affecting competency so that physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety.

SEC. 27. Section 2341 of the Business and Professions Code is amended to read:

2341. As used in this article:

(a) "Division" means the Division of Medical Quality of the Medical Board of California.

(b) "Committee" means a diversion evaluation committee created by this article.

SEC. 28. Section 2420 of the Business and Professions Code is amended to read:

2420. The provisions of this article apply to, determine the expiration of, and govern the renewal of, each of the following certificates, licenses, registrations, and permits issued by or under the Medical Board of California: physician's and surgeon's certificates, certificates to practice podiatric medicine, physical therapy licenses and approvals, registrations of dispensing opticians, registrations of contact lens dispensers, certificates of drugless practitioners, certificates to practice midwifery, and fictitious-name permits.

SEC. 29. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to physician's and surgeon's certificates, certificates of drugless practitioners, and certificates to practice midwifery:

(a) Each applicant for a certificate based upon a national board diplomate certificate, and each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) Between January 1, 1987, and December 31, 1989, the application and processing fee, for the first year, shall be two hundred seventy-five dollars ($275), and, for each subsequent year, shall be equal to the prior year's fee plus a sum fixed by the Division of Licensing equal to not more than 10 percent of the prior year's fee, up to a maximum of three hundred fifty dollars ($350). On and after January 1, 1990, the application and processing fee shall be fixed by the Division of Licensing by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant for a certificate by written examination, unless otherwise provided by this chapter, shall pay an examination fee

fixed by the board, which shall equal the actual cost to the board of the purchase of the written examination furnished by the organization pursuant to Section 2176, plus the actual cost to the board of administering the written examination. Such actual cost to the board of administering the written examination that shall be charged to the applicant shall not exceed one hundred dollars ($100). The board may charge the examination fee provided for in this section 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, if any. On and after July 1, 1987, the initial license fee shall be fixed by the board at an amount not less than two hundred dollars ($200), and not to exceed three hundred twenty-five dollars ($325), in accordance with paragraph (3) of subdivision (e). Until July 1, 1987, that fee shall be fixed as provided by paragraph (2) of subdivision (e). Any applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(e) (1) On and after July 1, 1987, the biennial renewal fee shall be fixed by the board at an amount not less than two hundred dollars ($200), and not to exceed three hundred twenty-five dollars ($325), in accordance with paragraph (3).

(2) Until July 1, 1987, the biennial fee and the initial license fee shall each be two hundred fifty-five dollars ($255), except that the board may fix the biennial renewal fee at an amount determined by the board between two hundred forty dollars ($240) and two hundred fifty-five dollars ($255), inclusive.

(3) On and after July 1, 1987, the board shall fix the biennial renewal fee and the initial license fee so that, together with the amounts from other revenues, the reserve balance in the board's contingent fund shall be equal to approximately four months of annual authorized expenditures. Any increase in the renewal and initial license fees made after July 1, 1987, shall be effective upon a determination by the board, by regulation adopted pursuant to Section 2436, that additional amounts are necessary to maintain a reserve balance in the board's contingent fund equal to four months of annual authorized expenditures in the state fiscal year in which the expenditures are to occur.

(f) Notwithstanding Section 163.5, the delinquency fee is 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars ($50), and the certification and letter of good standing fees shall each be ten dollars ($10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Medical Board of California equal to approximately four months' operating expenditures.

SEC. 30. Section 2445 of the Business and Professions Code is amended to read.

2445. All moneys paid to and received by the board shall be paid into the State Treasury and shall be credited to the Contingent Fund of the Medical Board of California. Those moneys shall be reported at the beginning of each month, for the month preceding, to the Controller.

The contingent fund shall be for the use of the board and from it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect the provisions of this chapter.

If there is any surplus in these receipts after the board's salaries and expenses are paid, such surplus shall be applied solely to expenses incured under the provisions of this chapter. No surplus in these receipts shall be deposited in or transferred to the General Fund.

SEC. 31. Section 2450 of the Business and Professions Code is amended to read:

2450. There is a Board of Osteopathic Examiners of the State of California, established by the Osteopathic Act, which enforces the provisions of this chapter relating to persons holding or applying for physician's and surgeon's certificates issued by the Board of Osteopathic Examiners under the Osteopathic Act.

Persons who elect to practice using the term of suffix "M.D.," as provided in Section 2275, shall not be subject to the provisions of this article, and the Medical Board of California shall enforce the provisions of this chapter relating to such persons who made such election.

SEC. 32. Section 2451 of the Business and Professions Code is amended to read:

2451. The words "Medical Board of California," the term "board," or any reference to a division of the Medical Board of California as used in this chapter shall be deemed to mean the Board of Osteopathic Examiners, where that board exercises the functions granted to it by the Osteopathic Act.

SEC 33. Section 2460 of the Business and Professions Code is amended to read:

2460. There is created within the jurisdiction of the Division of Allied Health Professions of the Medical Board of California the California Board of Podiatric Medicine.

SEC. 34. Section 2461 of the Business and Professions Code is amended to read:

2461. As used in this article:

(a) "Division" means the Division of Allied Health Professions of the Medical Board of California.

(b) "Board" means the California Board of Podiatric Medicine.

(c) "Podiatric licensing authority" refers to any officer, board, commission, committee, or department of another state upon whose certificate a reciprocity certificate may be issued.

SEC. 35. Section 2529.5 of the Business and Professions Code is amended to read:

2529.5. Each person to whom registration is granted under the provisions of this chapter shall pay into the Contingent Fund of the

Medical Board of California a fee to be fixed by the Division of Allied Health Professions at a sum not in excess of one hundred dollars ($100).

The registration shall expire after two years. The registration may be renewed biennially at a fee to be fixed by the division at a sum not in excess of fifty dollars ($50). Students seeking to renew their registration shall present to the division evidence of their continuing student status.

The money in the Contingent Fund of the Medical Board of California necessary for the administration of this chapter is hereby continuously appropriated for such purposes.

SEC. 36. Section 2530 2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Committee" means the Speech Pathology and Audiology Examining Committee.

(b) "Board" means the Division of Allied Health Professions of the Medical Board of California.

(c) "Person" means any individual, organization or corporate body except that only individuals can be licensed under this chapter.

(d) A "speech pathologist" is a person who practices speech pathology.

(e) "The practice of speech pathology" means the application of principles, methods, and procedures for measurement, testing, identification, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of identifying, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals, and the planning, directing, conducting and supervision of programs for identification, evaluation, habilitation, and rehabilitation of disorders of speech, voice, or language.

(f) "Speech pathology aide" means any person meeting the minimum requirements established by the committee, who works directly under the supervision of a speech pathologist.

(g) An "audiologist" is one who practices audiology.

(h) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to hearing and disorders of hearing and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from hearing loss; and the planning, directing, conducting, supervising, or participating in programs of identification of hearing problems, hearing conservation, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures such as, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading.

(i) "Audiology aide" means any person, meeting the minimum requirements established by the committee, who works directly under the supervision of an audiologist.

SEC. 37. Section 2531 of the Business and Professions Code is amended to read:

2531. There is hereby created a Speech Pathology and Audiology Examining Committee under the jurisdiction of the Division of Allied Health Professions of the Medical Board of California. The committee shall consist of nine members, three of whom shall be public members.

SEC. 38. Section 2536 of the Business and Professions Code is amended to read:

2536. A speech pathology corporation or an audiology corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are speech pathologists or audiologists are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a speech pathology corporation or an audiology corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Speech Pathology and Audiology Examining Committee of the Medical Board of California.

SEC. 39. Section 2541.3 of the Business and Professions Code is amended to read:

2541.3. The State Department of Health Services, the State Board of Optometry and the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California shall prepare and adopt quality standards and promulgate regulations relating to prescription ophthalmic devices, including, but not limited to, lenses, frames, and contact lenses. Regulations adopted subsequent to those in effect on July 1, 1976, shall become operative July 1, 1978. In promulgating such rules and regulations, the department and the boards shall adopt the current standards of the American National Standards Institute regarding ophthalmic materials. Nothing in this section shall prohibit the department and the boards from jointly adopting subsequent standards which are equivalent or more stringent than the current standards of the American National Standards Institute regarding ophthalmic materials.

No individual or group which deals with prescription ophthalmic devices, including, but not limited to, distributors, dispensers, manufacturers, laboratories, optometrists or ophthalmologists shall sell, dispense, or furnish any prescription ophthalmic device which does not meet the minimum standards set by the State Department

of Health Services, the State Board of Optometry or the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California.

Any violation of the regulations promulgated by the State Department of Health Services, the State Board of Optometry or the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California pursuant to this section shall be a misdemeanor.

Any optometrist, ophthalmologist, or dispensing optician who violates the regulations promulgated by the State Department of Health Services, the State Board of Optometry or the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California pursuant to this section shall be subject to disciplinary action by his or her licensing board.

The State Board of Optometry or the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California may send any prescription ophthalmic device to the State Department of Health Services for testing as to whether or not such device meets established standards adopted pursuant to this section, which testing shall take precedence over any other prescription ophthalmic device testing being conducted by the department. The department may conduct such testing in its own facilities or may contract with any other facility to conduct such testing.

SEC. 40. Section 2541.6 of the Business and Professions Code is amended to read:

2541.6. Effective January 1, 1977, no prescription ophthalmic device which does not meet the standards promulgated by the State Department of Health Services, the State Board of Optometry or the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California under Section 2541.3 shall be purchased with state funds.

SEC. 41. Section 2545 of the Business and Professions Code is amended to read:

2545. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the State Board of Optometry, the Division of Allied Health Professions of the Medical Board of California, the Board of Osteopathic Examiners of the State of California, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure

SEC. 42. Section 2550 of the Business and Professions Code is amended to read:

2550. Individuals and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Division of

Licensing of the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the Division of Allied Health Professions of the Medical Board of California.

This section shall become operative on January 1, 1988.

SEC. 43. Section 2550.1 of the Business and Professions Code is amended to read:

2550.1. All references in this chapter to the board or the Board of Medical Examiners or division shall mean the Division of Allied Health Professions of the Medical Board of California.

SEC. 44. Section 2558 of the Business and Professions Code is amended to read:

2558 Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than 10 days nor more than one year, or by a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) or by both such fine and imprisonment.

The Division of Allied Health Professions of the Medical Board of California may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, such rules and regulations as are reasonably necessary to carry out the provisions of this chapter.

SEC. 45. Section 2559 of the Business and Professions Code is amended to read:

2559. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this chapter, or Chapter 5.4 (commencing with Section 2540), the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the Division of Allied Health Professions of the Medical Board of California, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

SEC. 46. Section 2567 of the Business and Professions Code is amended to read:

2567. (a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter All fees collected from persons registered

or seeking registration under this chapter shall be paid into the Contingent Fund of the Medical Board of California.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

SEC. 47. Section 2568 of the Business and Professions Code is amended to read:

2568. On and after July 1, 1982, the board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit in the Dispensing Opticians Fund, which fund is created and continuously appropriated to carry out the provisions of this chapter.

On and after July 1, 1982, the unencumbered balance of any funds in the Contingency Fund of the Medical Board of California derived from fees and revenues received from registered dispensing opticians and registered contact lens dispensers, and applicants for such registration, shall be transferred to the Dispensing Opticians Fund and shall be expended as provided in this section.

SEC. 48. Section 2601 of the Business and Professions Code is amended to read:

2601. "Board" as used in this chapter means the Division of Allied Health Professions of the Medical Board of California.

SEC. 49. Section 2632 of the Business and Professions Code is amended to read:

2632. All licenses for the practice of physical therapy in this state shall be issued by the board, upon the recommendation and direction of the examining committee, and all applications for such licenses shall be filed with the committee. Excepting as otherwise required by the director pursuant to Section 164, the license issued by the board shall describe the licensee as a "registered physical therapist licensed by the Division of Allied Health Professions of the Medical Board of California."

Each application shall be accompanied by the application fee prescribed by Section 2688, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a license without examination or to take an examination.

SEC. 50. Section 2655 of the Business and Professions Code is amended to read:

2655. As used in this article:

(a) "Physical therapist" means a registered physical therapist licensed by the Medical Board of California.

(b) "Physical therapist assistant" means a person who meets the qualifications stated in Section 2655.3 and who is approved by the examining committee to assist in the provision of physical therapy under the supervision of a physical therapist who shall be responsible for the extent, kind and quality of the services provided by the physical therapist assistant.

(c) "Physical therapist assistant" and "physical therapy assistant"

shall be deemed identical and interchangeable.

SEC. 51. Section 2690 of the Business and Professions Code is amended to read:

2690. A physical therapy corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physical therapists are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a physical therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Physical Therapy Examining Committee of the Medical Board of California.

SEC. 52 Section 2725 of the Business and Professions Code is amended to read:

2725 In amending this section at the 1973–74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973–74 session to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems which provide for collaboration between physicians and registered nurses. Such organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

The practice of nursing within the meaning of this chapter means those functions, including basic health care, which help people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all of the following:

(a) Direct and indirect patient care services that insure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(b) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(c) The performance of skin tests, immunization techniques, and

the withdrawal of human blood from veins and arteries.

(d) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (1) determination of whether such signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics; and (2) implementation, based on observed abnormalties, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

"Standardized procedures," as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses;

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system which is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Such policies and protocols shall be subject to any guidelines for standardized procedures which the Division of Allied Health Professions of the Medical Board of California and the Board of Registered Nursing may jointly promulgate; and if promulgated shall be administered by the Board of Registered Nursing.

Nothing in this section shall be construed to require approval of standardized procedures by the Division of Allied Health Professions of the Medical Board of California or the Board of Registered Nursing.

SEC. 53. Section 2746.3 of the Business and Professions Code is amended to read:

2746.3. Midwife's certificates issued by the Medical Board of California prior to the effective date of this article shall be renewable only by such board.

SEC. 54. Section 2746.4 of the Business and Professions Code is amended to read·

2746.4. Nothing in this article shall be construed to prevent the practice of midwifery by a person possessing a midwife's certificate issued by the Medical Board of California on the effective date of this article.

SEC. 55. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Board" means the Division of Allied Health Professions of

the Medical Board of California. "Committee" means the Psychology Examining Committee.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under the provisions of subdivision (a) of Section 94310 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under the provisions of subdivision (b) of Section 94310 of the Education Code.

SEC. 56. Section 2920 of the Business and Professions Code is amended to read:

2920. The Psychology Examining Committee of the Medical Board of California of the Department of Consumer Affairs shall administer the provisions of this chapter. The committee shall consist of eight members, three of whom shall be public members.

SEC. 57. Section 2936 of the Business and Professions Code is amended to read:

2936. The committee shall by rule or regulation, establish standards of ethical conduct relating to the practice of psychology.

The committee shall periodically evaluate the relevancy and efficacy of the standards.

In establishing these standards, the committee may consider codes of ethics of relevant professional organizations, information and complaints regarding issues of ethical conduct from consumers of psychological services and other providers of mental health services. The committee shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology.

The adoption, amendment, or repeal of such rules or regulations shall be made in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location, a notice which reads as follows:

"NOTICE: The Department of Consumer Affairs receives questions and complaints regarding the practice of psychology. If you have any questions or complaints, you may contact this department by calling (insert appropriate regional number) or (insert appropriate telephone number), or by writing to the following address:

Medical Board of California
Allied Health Complaints
1430 Howe Avenue
Sacramento, California 95825"

SEC. 58. Section 2980 of the Business and Professions Code is amended to read:

2980. (a) There is in the State Treasury the Psychology Fund. The board shall report to the Controller at the beginning of each calender month for the month preceding the amount and source of all revenue received by it on behalf of the committee, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into such fund. All revenue received by the committee and the board from fees authorized to be charged relating to the practice of psychology shall be deposited into such fund as provided in this section.

(b) If on the effective date of this section, money expended in the administration and enforcement of this chapter for five fiscal years prior to the effective date of this section has exceeded revenue derived from fees authorized under this chapter, the State Controller shall transfer from the Psychology Fund to the Contingent Fund of the Medical Board of California within three years from the effective date of this section the amount that such expenditures exceeded such revenue.

SEC. 59. Section 2987 of the Business and Professions Code is amended to read:

2987. The amount of the fees prescribed by this chapter shall be determined by the committee subject to the review and approval of the Medical Board of California, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars ($50).

(b) The examination fee for a psychologist shall not be more than one hundred fifty dollars ($150).

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued, except that 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 renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(d) The biennial renewal fee for a psychologist shall not be more than one hundred fifty dollars ($150).

(e) The application fee for registration and supervision of a

psychological assistant by a supervisor under Section 2913, which is payable by such supervisor, shall not be more than seventy-five dollars ($75).

(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars ($75).

(g) The duplicate license or registration fee is five dollars ($5).

(h) The delinquency fee is twenty-five dollars ($25).

(i) The endorsement fee is five dollars ($5).

SEC. 60. Section 2995 of the Business and Professions Code is amended to read:

2995. A psychological corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.

With respect to a psychological corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Psychology Examining Committee of the Medical Board of California.

SEC. 61. Section 3041 of the Business and Professions Code is amended to read:

3041. The practice of optometry is the doing of any or all of the following:

(a) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(b) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(c) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(d) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses which may be classified as drugs by any law of the United States or of this state.

(e) The use of topical pharmaceutical agents for the sole purpose of the examination of the human eye or eyes for any disease or pathological condition. The State Board of Optometry, with the advice and consent of the Division of Allied Health Professions of the Medical Board of California, to be provided within six months of the effective date of this section, shall designate the specific topical pharmaceutical agents, known generically as mydriatics,

cycloplegics, and topical anesthetics, to be used.

SEC. 62. Section 3041.2 of the Business and Professions Code is amended to read:

3041.2. The State Board of Optometry shall by regulation, with the advice and consent of the Division of Allied Health Professions of the Medical Board of California establish educational and examination requirements for licensure to insure the competence of optometrists to practice pursuant to subdivision (e) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original certificate of registration under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry with the advice and consent of the Division of Allied Health Professions of the Medical Board of California shall be permitted the use of pharmaceutical agents specified by subdivision (e) of Section 3041.

SEC. 63. Section 3302 of the Business and Professions Code is amended to read:

3302. "Board," as used in this chapter, means the Division of Allied Health Professions of the Medical Board of California.

SEC. 64. 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 Medical Board 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 Code of Regulations.

(g) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity; for visual field defects; for color blindness; and depth perception.

SEC. 65. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician's Assistant Examining Committee of the Medical Board of California. The committee shall consist of nine members.

SEC. 66. Section 3519 of the Business and Professions Code is amended to read:

3519. The committee shall issue under the name of the Medical Board of California a license to all physician's assistant applicants who meet all of the following requirements:

(a) Provide evidence of one of the following:

(1) Successful completion of an approved program.

(2) Successful completion in a medical school approved by the Division of Licensing of a resident course of professional instruction which meets the requirements of Sections 2088 and 2089.

(b) Pass any examination required under Section 3517.

(c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527

(d) Pay all fees required under Section 3521.1.

SEC. 67. 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 Medical Board of California, 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. 68. Section 3535 of the Business and Professions Code is amended to read:

3535. Notwithstanding any other 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 Medical Board of California 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. 69. Section 3540 of the Business and Professions Code is amended to read:

3540. A physicians' assistants corporation is a corporation which is authorized to render professional services, as defined in Section

13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are certified physicians' assistants are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physicians' assistants corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Physicians' Assistant Examining Committee of the Medical Board of California.

SEC. 70. Section 3704 of the Business and Professions Code is amended to read:

3704. As used in this chapter, these terms shall be defined as follows:

(a) "Board" means the Division of Allied Health Professions of the Medical Board of California.

(b) "Department" means the Department of Consumer Affairs.

(c) "Examining committee" means the Respiratory Care Examining Committee.

(d) "Medical director" means a physician and surgeon who is a member of a health care facility's active medical staff and who is knowledgeable in respiratory care.

(e) "Respiratory care" includes "respiratory therapy" or "inhalation therapy," where those terms mean respiratory care.

(f) "Respiratory therapy training program" means a program approved by the examining committee.

SEC. 71. 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 Medical Board of California."

Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a 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. 72. Section 4033 of the Business and Professions Code is amended to read:

4033. "Physicians," "dentists," "pharmacists," "podiatrists," "veterinarians," "veterinary surgeons," "registered nurses," and "physician's assistants" are persons authorized by a currently valid

and unrevoked license to practice their respective professions in this state. "Physicians" means and includes any person holding a valid and unrevoked physician's and surgeon's certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Board of Osteopathic Examiners of this state, and includes an unlicensed person lawfully practicing medicine pursuant to Section 2147.5, when acting within the scope of that section.

SEC. 73. Section 4047.7 of the Business and Professions Code is amended to read:

4047.7. (a) The Director of Health Services shall establish by regulation a formulary of generic drug types and drug products which the Director of Health Services determines demonstrate clinically significant biological or therapeutic inequivalence and which, if substituted under Section 4047.6, would pose a threat to the health and safety of patients receiving prescription medication.

(b) The drug formulary established pursuant to this section shall include generic drug types and manufactured brand drug products, including, where applicable, drug products differentiated by dosage form or strength. In compiling the generic drug types and drug products for inclusion on the formulary, the Director of Health Services may rely on drug product research, testing, information, and formularies compiled by other states, the United States Department of Health and Human Services, and any other source which the Director of Health Services deems reliable.

(c) Regulations establishing the drug formulary shall be promulgated within 120 days of the effective date of this section. The formulary shall be added to or deleted from as the Director of Health Services deems appropriate. Regulations 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 Any person who requests that the Director of Health Services make any inclusion, addition, or deletion, of a generic drug type or drug product to the formulary shall have the burden of proof to show cause why such inclusion, addition, or deletion, should be made by the Director of Health Services.

(d) Upon adoption of the formulary, and upon each addition, deletion or modification to the formulary, the Director of Health Services shall mail a copy to each pharmacist licensed by the State Board of Pharmacy and to each physician and surgeon licensed to practice in the state by the Medical Board of California and each person licensed by the Board of Osteopathic Examiners. No pharmacist shall dispense a generically equivalent drug product pursuant to Section 4047.6 if the drug product and its generic drug type is included in the formulary.

SEC. 74. 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 Medical Board of California 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 Medical Board of California 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. 75. Section 4051.3 of the Business and Professions Code is amended 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 Medical Board of California shall, by regulation, define the term "secure" for purposes of this section.

SEC. 76. Section 4051.4 of the Business and Professions Code is amended to read:

4051.4. The Board of Pharmacy shall promptly forward to the

Medical Board of California all complaints received related to drugs or dangerous devices dispensed by a prescriber pursuant to Section 4051.

SEC. 77. Section 4051.7 of the Business and Professions Code is amended 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 Medical Board of California as a case of greatest potential harm to a patient.

SEC. 78. Section 4051.8 of the Business and Professions Code is amended to read:

4051.8. On or before January 1, 1990, the Medical Board of California 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. 79. Section 4051.9 of the Business and Professions Code is amended to read:

4051.9. The Medical Board of California 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. 80. Section 4927 of the Business and Professions Code is amended to read:

4927. As used in this chapter, unless the context otherwise requires:

(a) "Committee" means the Acupuncture Examining Committee.

(b) "Board" means the Division of Allied Health Professions of the Medical Board of California.

(c) "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.

(d) "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which is in effect and is not suspended or revoked.

(e) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.

SEC. 81. Section 7634 of the Business and Professions Code is amended to read:

7634. Notwithstanding any other provision of law, a licensed embalmer, at the request of a licensed physician, may remove tissue from a dead human body for transplant, or therapeutic, or scientific purposes specified in, and pursuant to, the provisions of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code), if such embalmer has completed a course in tissue removal for transplant, or therapeutic, or scientific purposes approved by the Medical Board of California of the State of California.

SEC. 82. 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 Medical Board of California 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. 83. Section 11501 of the Government Code is amended to read:

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) The enumerated agencies referred to in Section 11500 are:

Accountancy, State Board of

Air Resources Board, State
Alcohol and Drug Programs, State Department of
Alcoholic Beverage Control, Department of
Architectural Examiners, California State Board of
Attorney General
Auctioneer Commission, Board of Governors of
Automotive Repair, Bureau of
Barber Examiners, State Board of
Behavioral Science Examiners, Board of
Boating and Waterways, Department of
Cancer Advisory Council
Cemetery Board
Chiropractic Examiners, Board of
Collection and Investigative Services, Bureau of
Community Colleges, Board of Governors of the California
Conservation, Department of
Consumer Affairs, Director of
Contractors, Registrar of
Corporations, Commissioner of
Cosmetology, State Board of
Dental Examiners of California, Board of
Education, State Department of
Electronic and Appliance Repair, Bureau of
Engineers and Land Surveyors, State Board of Registration for Professional
Fair Employment and Housing Commission
Fair Political Practices Commission
Fire Marshal, State
Food and Agriculture, Director of
Forestry and Fire Protection, Department of
Funeral Directors and Embalmers, State Board of
Geologists and Geophysicists, State Board of Registration for
Guide Dogs for the Blind, State Board of
Health Services, State Department of
Highway Patrol, Department of the California
Home Furnishings and Thermal Insulation, Bureau of
Horse Racing Board, California
Housing and Community Development, Department of
Insurance Commissioner
Labor Commissioner
Landscape Architects, State Board of
Medical Board of California, Medical Quality Review Committees and Examining Committees
Motor Vehicles, Department of
Nursing, Board of Registered
Nursing Home Administrators, Board of Examiners of
Optometry, State Board of
Osteopathic Examiners of the State of California, Board of
Personnel Services, Bureau of

Pharmacy, California State Board of
Public Employees' Retirement System, Board of Administration of the
Real Estate, Department of
San Francisco, San Pablo and Suisun, Board of Pilot Commissioners for the Bays of
Savings and Loan Commissioner
School Districts
Secretary of State, Office of
Shorthand Reporters Board, Certified
Social Services, State Department of
Statewide Health Planning and Development, Office of
Structural Pest Control Board
Tax Preparer Program, Administrator
Teacher Credentialing, Commission on
Teachers' Retirement System, State
Transportation, Department of, acting pursuant to the State Aeronautics Act
Veterinary Medicine, Board of Examiners in
Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

SEC. 84. 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 Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.

(5) The Board of Examiners in Veterinary Medicine.
(6) The State Board of Accountancy.
(7) The California State Board of Architectural Examiners.
(8) The State Board of 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. 85. Section 320.5 of the Health and Safety Code is amended to read:

320.5. A State Maternal, Child, and Adolescent Health Board advisory to the director is hereby established within the State Department of Health Services.

The state board shall consist of 13 voting members. The membership shall reflect the ethnic and geographic diversity of the State of California and shall include individuals or parents of individuals who are recipients of services administered by the department, health providers, including Medical Board of California certified or qualified physicians, and representatives of other related interests. The Governor shall appoint seven members of the state board, including a county health officer; a member of the Primary

Care Clinics Advisory Committee; one family practice physician; one dentist a major part of whose practice is children's dentistry; one pediatrician; one representative of a child health advocacy organization; and one parent, who is not a health care provider, of a child eligible for health services administered by the department. The Senate Rules Committee shall appoint three members of the state board, including a pediatrician, and a parent, who is not a health care provider, of a child eligible for health services administered by the department, and an individual experienced in administering a local family planning agency. The Speaker of the Assembly shall appoint three members of the state board, including a pediatrician, a nurse specializing in child health, and an obstetrician/gynecologist. A member of the State Council on Developmental Disabilities, a member of the State Commission on Special Education, the Directors of the Departments of Health Services, Mental Health, and Social Services and the Superintendent of Public Instruction, or their designees, shall serve as ex officio, nonvoting members of the state board. The term of each member shall be three years, or for the duration that each member maintains the qualifications under which he or she was appointed, whichever is shorter.

The members of the state board shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties under this article. Members who are parents of children eligible for departmental programs may additionally be reimbursed upon request for their actual and necessary costs of additional child care and lost wages. The State Department of Health Services shall provide necessary support staff and services to the state board. The state board shall utilize available department staff to carry out specific tasks enumerated in this article. The state board may hire staff for special projects provided the total budget level for board operations does not exceed the existing level, except as provided for by the director or the Legislature by statute.

The state board shall select its own chairperson from among the 13 appointed members by majority vote of the members and shall establish technical advisory committees as it deems necessary and desirable for the efficient and expeditious performance of its duties. The director may provide or the state board may request that the director provide additional technical experts and consultants to facilitate and support the work of the state board. The state board shall meet on call of the chairperson, at least once quarterly, or as often as necessary to fulfill its duties. All meetings and records of the state board shall be open to the public.

The state board shall have all of the following powers, duties and responsibilities:

(a) Recommend that independent studies, investigations, and hearings on the health of women, children, and adolescents and the system of health services for women, children, and adolescents be conducted.

(b) Review health programs which serve women, children, and adolescents and recommend steps to facilitate service delivery.

(c) Identify deficiencies and barriers in the maternal, child, and adolescent health delivery system on a statewide basis, and recommend priorities for remedy.

(d) Review, during the development stage, any plans developed by the department for establishment of new or for major revision to, existing health programs for women, children, and adolescents and make recommendations on those plans.

(e) Receive from the department for review and comment, prior to their adoption and prior to public hearing if a public hearing is required, rules, regulations, and standards affecting maternal, child, and adolescent health. These may include, but not be limited to, the following:

(1) Review of standards for health screening, evaluation, and diagnostic procedures for community maternal, child, and adolescent health programs.

(2) Review of standards for directors of community maternal, child, and adolescent health programs.

(3) Review of standards for public and private health providers, facilities, and agencies which participate in community maternal, child, and adolescent health programs.

(f) Review and comment upon any proposed written department policies that would have a significant effect on maternal, child, and adolescent health programs as determined by the board.

(g) Review policies and develop recommendations regarding:

(1) Health goals with measurable objectives for women, children and adolescents in California

(2) Range of services currently available and systems to assure coordination of services for women, children, and adolescents, including fiscal aspects thereof.

(h) Review reports and respond to needs and recommendations of the local boards.

(i) Work with local boards to evaluate the success of established programs and assess the potential viability of proposed programs.

The provisions of 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 before January 1, 1992, deletes or extends that date.

SEC. 86. Section 324.7 of the Health and Safety Code is amended to read:

324.7. The State Department of Health Services shall develop a plan to identify causes of infant mortality and morbidity in California and to study recommendations on the reduction of infant mortality and morbidity in California.

The study plan shall be completed on or before July 1, 1988, and shall be developed in conjunction with, and reviewed by, each of the following organizations:

(1) The California Medical Association.

(2) The California Nurses Association.
(3) The California Hospital Association.
(4) The American College of Obstetrics and Gynecologists.
(5) The American College of Nurse Midwives.
(6) The California Academy of Family Physicians.
(7) The American Academy of Pediatrics.
(8) The California Association of Freestanding Birth Centers.
(9) The American Public Health Association.
(10) The Medical Board of California.
(11) The Board of Registered Nurses.
(12) The Department of Consumer Affairs.
(13) The Office of Statewide Health Planning and Development.
(14) The California Association of Midwives.

SEC. 87. Section 429.97 of the Health and Safety Code is amended to read:

429.97. The Legislature finds and declares that:

(a) Planning for appropriate supplies and distribution of health care personnel is essential to assure the continued health and well-being of the people of the state and also to contain excess costs that may result from unnecessary training and underutilization of health care personnel.

(b) The information on physicians and surgeons collected by the Medical Board of California, in cooperation with the Office of Statewide Health Planning and Development, and under the authority of Sections 921 and 923 of the Business and Professions Code has proven to be valuable for health manpower planning purposes. It is the intent of the Legislature, through this article, to provide for the efficient collection and analysis of similar information on other major categories of healing arts licentiates, in order to facilitate the development of the biennial health manpower plan and other reports and program activities of the office.

(c) It is the intent of the Legislature that the data transmitted to the Office of Statewide Health Planning and Development by the various boards be processed by the boards in such a manner that licentiates are not identified by name or license number.

SEC. 88. Section 429.982 of the Health and Safety Code is amended to read:

429.982. Notwithstanding Sections 922 and 925 of the Business and Professions Code, the office may receive, and the Medical Board of California may provide, information respecting individual licentiates collected pursuant to Sections 921 and 923 of the Business and Professions Code

Information provided to the office pursuant to this section shall be transmitted in such a form that the name or license number of an individual licensee are not identifiable. However, an encoding procedure shall be used to assign a unique identifying number to the other information provided upon the questionnaire so as to allow the office to track the geographical movements of physicians for planning purposes.

SEC. 89. Section 1198 of the Health and Safety Code is amended to read:

1198. (a) It is the intent of the Legislature that the Division of Licensing of the Medical Board of California strongly urge those organizations responsible for the development of physician licensing examinations to include within those examinations increased emphasis on medical problems of the elderly.

(b) The Medical Board of California shall report to the Legislature its initial findings regarding the intent declared in subdivision (a) by January 1, 1986, and shall submit a subsequent report on or before January 1, 1987.

SEC. 90. Section 1317.1 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is amended to read:

1317.1. Unless the context otherwise requires, the following definitions shall control the construction of this article:

(a) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the capability of the facility.

(b) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that 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 of any bodily organ or part.

(c) "Active labor" means a labor at a time at which either of the following would occur:

(1) There is inadequate time to effect safe transfer to another hospital prior to delivery.

(2) A transfer may pose a threat to the health and safety of the patient or the unborn child.

(d) "Hospital" means all hospitals with an emergency department licensed by the state department.

(e) "State department" means the State Department of Health Services.

(f) "Medical hazard" means a material deterioration in medical condition in, or jeopardy to, a patients' medical condition or expected chances for recovery.

(g) "Board" means the Medical Board of California.

(h) "Within the capability of the facility" means those capabilities which the hospital is required to have as a condition of its emergency medical services permit and services specified on Services Inventory Form 7041 filed by the hospital with the Office of Statewide Health Planning and Development.

(i) "Consultation" means the rendering of an opinion, advice, or

prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and specialty physicians, includes review of the patient's medical record, examination, and treatment of the patient in person by a specialty physician who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient.

SEC. 91. Section 1317.1 of the Health and Safety Code, as added by Chapter 1240 of the Statutes of 1987, is amended to read:

1317.1. Unless the context otherwise requires, the following definitions shall control the construction of this article:

(a) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the capability of the facility.

(b) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that 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 of any bodily organ or part.

(c) "Active labor" means a labor at a time at which either of the following would occur.

(1) There is inadequate time to effect safe transfer to another hospital prior to delivery.

(2) A transfer may pose a threat to the health and safety of the patient or the unborn child.

(d) "Hospital" means all hospitals with an emergency department licensed by the state department.

(e) "State department" means the State Department of Health Services.

(f) "Medical hazard" means a material deterioration in, or jeopardy to, a patient's medical condition or expected chances for recovery.

(g) "Board" means the Medical Board of California.

(h) "Within the capability of the facility" means those capabilities which the hospital is required to have as a condition of its emergency medical services permit and services specified on Services Inventory Form 7041 filed by the hospital with the Office of Statewide Health Planning and Development.

(i) "Consultation" means the rendering of an opinion, advice, or prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and the specialty physicians, includes review of the patient's medical record, examination and treatment of the patient in person by a specialty physician who is qualified to give an opinion or render the necessary

treatment in order to stabilize the patient.

SEC. 92. Section 1317.5 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is amended to read:

1317.5. (a) All alleged violations of this article and the regulations adopted hereunder shall be investigated by the state department. The state department, with the agreement of the local EMS agency, may refer violations of this article to the local EMS agency for investigation. The investigation shall be conducted pursuant to procedures established by the state department and shall be completed no later than 60 days after the report of apparent violation is received by the state department.

(b) At the conclusion of its investigation, the state department or the local EMS agency shall refer any alleged violation by a physician to the Medical Board of California unless it is determined that the complaint is without a reasonable basis.

SEC. 93. Section 1317.5 of the Health and Safety Code, as added by Chapter 1240 of the Statutes of 1987, is amended to read:

1317.5. (a) All alleged violations of this article and the regulations adopted hereunder shall be investigated by the state department. The state department, with the agreement of the local EMS agency, may refer violations of this article to the local EMS agency for investigation The investigation shall be conducted pursuant to procedures established by the state department and shall be completed no later than 60 days after the report of apparent violation is received by the state department.

(b) At the conclusion of its investigation, the state department or the local EMS agency shall refer any alleged violation by a physician to the Medical Board of California unless it is determined that the complaint is without a reasonable basis.

SEC. 94. Section 1701 of the Health and Safety Code is amended to read:

1701. There is in the State Department of Health Services a Cancer Advisory Council composed of nine physicians and surgeons licensed to practice medicine in, and residing in, this state, three persons who are not physicians and surgeons, two persons representing nonprofit cancer research institutes recognized by the National Cancer Institute, and the director of the state department, who shall be an ex officio member. The members of the council shall be appointed by the Governor to serve for terms of four years. The Governor, in appointing the first members, shall appoint at least one member from the faculty of each of the schools teaching medicine and surgery and located in this state that are approved by the Medical Board of California. The Governor shall endeavor to maintain one member from the faculty of each school in making subsequent appointments.

SEC. 95. Section 1704.5 of the Health and Safety Code is amended to read:

1704.5. The failure of a physician and surgeon to inform a patient by means of a standardized written summary, as developed by the

department on the recommendation of the Cancer Advisory Council, in layman's language and in a language understood by the patient of alternative efficacious methods of treatment which may be medically viable, including surgical, radiological, or chemotherapeutic treatments or combinations thereof, when the patient is being treated for any form of breast cancer constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

A standardized written summary in layman's language and in a language understood by the patient, to be developed by the department on the recommendation of the Cancer Advisory Council and printed and made available by the Medical Board of California to physicians and surgeons, informing the patient of the advantages, disadvantages, risks and descriptions of the procedures with regard to medically viable and efficacious alternative methods of treatment, which is given to the patient shall constitute compliance with the requirements of this section

Prior to performance of a biopsy, the physician and surgeon shall note on the patient's chart that he or she has given the patient the written summary required by this section.

SEC. 96. Section 1797.132 of the Health and Safety Code is amended to read:

1797.132. An Interdepartmental Committee on Emergency Medical Services is hereby established. This committee shall advise the authority on the coordination and integration of all state activities concerning emergency medical services. The committee shall include a representative from each of the following state agencies and departments: the Office of Emergency Services, the Department of the California Highway Patrol, the Department of Motor Vehicles, a representative of the administrator of the California Traffic Safety Program as provided by Chapter 5 (commencing with Section 2900) of Division 2 of the Vehicle Code, the Medical Board of California, the State Department of Health Services, the Board of Registered Nursing, the State Department of Education, the National Guard, the Office of Statewide Health Planning and Development, the State Fire Marshal, the California Conference of Local Health Officers, the Department of Forestry, the Chancellor's Office of the California Community Colleges, and the Department of General Services.

SEC. 97. Section 7187 of the Health and Safety Code is amended to read:

7187. The following definitions shall govern the construction of this chapter:

(a) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(b) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section

7188. The directive, or a copy of the directive, shall be made part of the patient's medical records.

(c) "Life-sustaining procedure" means any medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(d) "Physician" means a physician and surgeon licensed by the Medical Board of California or the Board of Osteopathic Examiners.

(e) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, who have personally examined the patient.

(f) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient.

SEC. 98. Section 11217 of the Health and Safety Code is amended to read:

11217. No person shall treat an addict for addiction to a narcotic drug except in one of the following:

(a) An institution approved by the State Department of Mental Health, and where the patient is at all times kept under restraint and control.

(b) A city or county jail.

(c) A state prison.

(d) A facility designated by a county and approved by the State Department of Mental Health pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions Code.

(e) A state hospital.

(f) A county hospital.

(g) A facility licensed by the State Department of Alcohol and Drug Programs pursuant to Division 10.5 (commencing with Section 11750).

(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3.

Methadone in the continuing treatment of addiction to a controlled substance shall be used only in those programs licensed by the State Department of Alcohol and Drug Programs pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 on either an inpatient or outpatient basis, or both.

This section does not apply during emergency treatment, or where the patient's addiction is complicated by the presence of incurable

disease, serious accident, or injury, or the infirmities of old age

Neither this section nor any other provision of this division shall be construed to prohibit the maintenance of a place in which persons seeking to recover from addiction to a controlled substance reside and endeavor to aid one another and receive aid from others in recovering from such addiction, nor does this section or such division prohibit such aid, provided that no person is treated for addiction in such place by means of administering, furnishing, or prescribing of controlled substances. The preceding sentence is declaratory of preexisting law.

Neither this section or any other provision of this division shall be construed to prohibit short-term methadone detoxification treatment in a controlled setting approved by the director and pursuant to rules and regulations of the director. Facilities and treatment approved by the director under this paragraph shall not be subject to approval or inspection by the Medical Board of California, nor shall persons in such facilities be required to register with, or report the termination of residence with, the police department or sheriff's office.

SEC. 99. Section 11998.1 of the Health and Safety Code is amended to read:

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do about, drug and alcohol abuse has been provided to administrators and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each public school in kindergarten and grades 1 to 12, inclusive, has appointed an onsite drug and alcohol abuse advisory team of school administrators, teachers, counselors, students, parents, and community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrator.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school in kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school

employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school in kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school has instituted policies which address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of school time, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve schoolaged children have staff trained in drug and alcohol abuse and will give a clear, drug and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to effectively use the entertainment industry to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to effectively use product advertising to discourage substance abuse

(C) Assisted television stations in identifying ways to effectively

use television programming to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Medical Board of California, the Psychology Examining Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed by the county designated alcohol and drug program administrator and reviewed and approved by the advisory body set forth in paragraph (2). In those counties which do not have an established advisory body as provided in paragraph (2), the county designated alcohol and drug program administrator has assumed responsibility for developing the plan, with assistance from representatives of the county's population as designated in paragraph (2). To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has a multidisciplinary drug and alcohol abuse advisory body. The membership of the local advisory body is representative of the county's population, geographically balanced, and consists of representatives of each of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) The judiciary.

(E) County alcohol and drug administrators or their designees.

(F) Student groups.

(G) Parent groups.

(H) Private industry.

(I) Other community organizations involved in drug and alcohol services.

To the maximum extent possible, the county advisory board on alcohol problems and the county advisory board on drug problems have been modified to meet this goal.

(3) Every county public social service agency has established direct service policies that discourage drug and alcohol abuse and encourage rehabilitation treatment when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services.

(6.5) Every county master plan includes specialized provisions to ensure optimum alcohol and drug abuse service delivery for handicapped and disabled persons

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Criminal Justice Planning has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted local school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health programs with prevention efforts.

(6) The Department of the California Highway Patrol has established routine statewide sobriety check points for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) All drug and alcohol abuse treatment programs provide polydrug abuse services or have an established referral system to ensure clients receive all needed services.

(3) Adequate nonresidential and residential services, are available statewide for juveniles in need of alcohol or drug abuse services.

(4) Each provider of alcohol or drug services has been certified by the state.

(5) Drug and alcohol abuse treatment providers provide general acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors, as a part of the overall drug and alcohol abuse advisory committee. This team includes all components of the criminal justice system.

This team shall be responsible to the board of supervisors and shall advise the drug and alcohol abuse advisory committee and the county on all criminal justice matters relating to drug and alcohol abuse.

(2) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(3) State career criminal apprehension and community crime prevention programs have included drug and alcohol abuse prevention components.

(4) The Office of Criminal Justice Planning, Youth and Adult Correctional Agency, and the Department of Justice have as a priority when determining training subjects, prevention seminars on drug and alcohol abuse.

(5) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety check points statewide, assist local law enforcement agencies with the establishment of local programs.

(6) Counties with more than 10 Superior Court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(7) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(8) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(9) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(10) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(11) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(12) The courts, when sentencing offenders convicted of selling drugs, consider "street value" of the drugs involved in the underlying crime.

(13) Judges have been encouraged to include treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(14) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(15) The estimated number of clandestine labs operating has decreased by 10 percent per year.

(16) Each local law enforcement agency has developed, with the schools, protocol on responding to school drug and alcohol abuse problems.

(17) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

SEC. 100. Section 87 of the Military and Veterans Code is amended to read:

87. (a) The department, in cooperation with the Medical Board of California, shall develop a questionnaire for the identification of physicians and surgeons whose experience or medical specialties include the treatment of disorders experienced by veterans as a result of combat.

(b) The Medical Board of California shall, once each year in 1988, 1989, and 1990, transmit the questionnaire to every licensed physician and surgeon in the state explaining the purposes of the physician referral service and requesting the physician and surgeon to indicate his or her experience or skills, if any, in combat-related disorders. Response to the questionnaire shall be voluntary. Physicians and surgeons responding to the questionnaire shall be requested to transmit their responses to the county veteran service officer serving the geographic area within which the physician and surgeon practices.

(c) A county veteran service officer may provide the name, address, and telephone number of a physician and surgeon who has responded to the questionnaire to any veteran requesting that information.

(d) The department shall, on or before July 1, 1990, compile and submit to the Legislature any information obtained voluntarily from county veteran service officers relating to their experiences with the physician referral service pursuant to this section together with their recommendations concerning continuation of the service.

(e) Neither the state nor any county is required to verify or endorse any response furnished by a physician and surgeon pursuant to this section or shall be liable for any injury arising from a referral made pursuant to this section, or from any failure to make a referral.

(f) 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. 101. 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 Medical Board of California 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. 102. Section 5326 15 of the Welfare and Institutions Code is amended to read:

5326.15. (a) Quarterly, any doctor or facility which administers convulsive treatments or psychosurgery, shall report to the local mental health director, who shall transmit a copy to the Director of Mental Health, the number of persons who received such treatments wherever administered, in each of the following categories:

(1) Involuntary patients who gave informed consent.

(2) Involuntary patients who were deemed incapable of giving informed consent and received convulsive treatment against their will.

(3) Voluntary patients who gave informed consent.

(4) Voluntary patients deemed incapable of giving consent.

(b) Quarterly, the Director of Mental Health shall forward to the Medical Board of California any records or information received from such reports indicating violation of the law, and the regulations which have been adopted thereto.

(c) The Director of Mental Health shall annually submit to the Legislature the accumulation of such reports which shall indicate:

(1) The age distribution, the sex, and race of the patients.

(2) The source of the treatment payment.

(3) The average number of treatments.

(4) The number of cardiac arrests without death, fracture cases, "reported" memory loss, incidents of apnea, and all autopsy findings in case of death following administration of convulsive treatment.

SEC. 103. Section 5326.9 of the Welfare and Institutions Code is amended to read:

5326.9. (a) Any alleged or suspected violation of the rights

described in Chapter 2 (commencing with Section 5150) shall be investigated by the local director of mental health, or his or her designee. Violations of Sections 5326.2 to 5326.8, inclusive, shall also be investigated by the Director of Mental Health, or his or her designee. If it is determined by the local director of mental health or Director of Mental Health that a right has been violated, a formal notice of violation shall be issued.

(b) Either the local director of mental health or the Director of Mental Health upon issuing a notice of violation may take any or all of the following action:

(1) Assign a specified time period during which the violation shall be corrected.

(2) Referral to the Medical Board of California or other professional licensing agency. Such board shall investigate further, if warranted, and shall subject the individual practitioner to any penalty the board finds necessary and is authorized to impose.

(3) Revoke a facility's designation and authorization under Section 5404 to evaluate and treat persons detained involuntarily.

(4) Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction.

(c) Any physician who intentionally violates Sections 5326.2 to 5326.8, inclusive, shall be subject to a civil penalty of not more than five thousand dollars ($5,000) for each violation Such penalty may be assessed and collected in a civil action brought by the Attorney General in a superior court. Such intentional violation shall be grounds for revocation of license.

(d) Any person or facility found to have knowingly violated the provisions of the first paragraph of Section 5325.1 or to have denied without good cause any of the rights specified in Section 5325 shall pay a civil penalty, as determined by the court, of fifty dollars ($50) per day during the time in which the violation is not corrected, commencing on the day on which a notice of violation was issued, not to exceed one thousand dollars ($1,000), for each and every violation, except that any liability under this provision shall be offset by an amount equal to a fine or penalty imposed for the same violation under the provisions of Sections 1423 to 1425, inclusive, or 1428 of the Health and Safety Code. These penalties shall be deposited in the general fund of the county in which the violation occurred. The local district attorney or the Attorney General shall enforce this section in any court with jurisdiction. Where the State Department of Health Services, under the provisions of Sections 1423 to 1425, inclusive, of the Health and Safety Code, determines that no violation has occurred, the provisions of paragraph (4) of subdivision (b) shall not apply.

(e) The remedies provided by this subdivision shall be in addition to and not in substitution for any other remedies which an individual may have under law.

SEC. 104. Section 9721 of the Welfare and Institutions Code is amended to read:

9721. (a) The office may refer any complaint to any appropriate state or local government agency. The following state licensing authorities shall give priority to any complaint referred to them by the office, except that any complaint alleging an immediate threat to resident health and safety may be given first priority:

(1) Licensing and Certification Division of the State Department of Health Services.

(2) Community Care Licensing Division of the State Department of Social Services.

(3) Board of Examiners for Nursing Home Administrators.

(4) Board of Registered Nurses.

(5) Medical Board of California.

(6) Board of Pharmacy.

(7) Board of Vocational Nurse and Psychiatric Technician Examiners.

(b) Any licensing authority which responds to a complaint against a long-term care facility which was referred to the authority by the office shall forward to the office copies of related inspection reports and plans of correction and notify the office of any citations and civil penalties levied against the long-term care facility.

SEC. 105. Section 14110.5 of the Welfare and Institutions Code is amended to read:

14110.5. Effective January 1, 1977, no payment for any prescription ophthalmic device shall be made under Medi-Cal if that device does not meet the standards promulgated by the department, the State Board of Optometry or the Division of Allied Health Professions and Division of Medical Quality of the Medical Board of California under Section 2541.3 of the Business and Professions Code.

SEC. 106. Section 14132.55 of the Welfare and Institutions Code is amended to read:

14132.55. For the purposes of reimbursement under the Medi-Cal program, a speech pathologist or audiologist shall be licensed by the Speech Pathology and Audiology Examining Committee of the Medical Board of California or similarly licensed by a comparable agency in the state in which he or she practices. Licensed speech pathologists or licensed audiologists are authorized to utilize and shall be reimbursed for the services of those personnel in the process of completing requirements under the provisions of subdivision (d) of Section 2532.2 of the Business and Professions Code

SEC. 107. Section 14193 of the Welfare and Institutions Code is amended to read:

14193. The department shall transmit any data acquired by it regarding willful failure of a physician and surgeon to comply with the regulations of the department under this article to the Medical Board of California.

SEC. 108. Any section of any act enacted by the Legislature during the 1989 calendar year, which takes effect on or before January 1, 1990, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and

renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 887

An act to amend Section 2902 of the Business and Professions Code, relating to professional licensing.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Board" means the Division of Allied Health Professions of the Board of Medical Quality Assurance. "Committee" means the Psychology Examining Committee.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychological consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under the provisions of subdivision (a) of Section 94310 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under the provisions of subdivision (b) of Section 94310 of the Education Code.

SEC. 2. Section 2902 of the Business and Professions Code is

amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Board" means the Division of Allied Health Professions of the Medical Board of California. "Committee" means the Psychology Examining Committee.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under the provisions of subdivision (a) of Section 94310 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under the provisions of subdivision (b) of Section 94310 of the Education Code.

SEC. 3. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Division" means the Division of Allied Health Professions of the Board of Medical Quality Assurance. "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University,

an institution accredited under subdivision (a) of Section 94310.1 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under subdivision (b) of Section 94310.2 of the Education Code.

SEC. 4. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Division" means the Division of Allied Health Professions of the Medical Board of California. "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under subdivision (a) of Section 94310.1 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under subdivision (b) of Section 94310.2 of the Education Code.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 2902 of the Business and Professions Code proposed by both this bill and AB 184. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 2902 of the Business and Professions Code, and (3) AB 858 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 184, 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 2902 of the Business and Professions Code proposed by both this bill and AB 858. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 2902 of the Business and Professions Code, (3) AB 184 is not enacted or as enacted does not amend that section, and (4) this bill is enacted

after AB 858 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 2902 of the Business and Professions Code proposed by this bill, AB 184, and AB 858. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 2902 of the Business and Professions Code, (3) this bill is enacted after AB 184 and AB 858, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 888

An act to amend Sections 2902 2909, 2913, 2914, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2940, 2941, 2942, 2943, 2944, 2945, 2946, 2947, 2948, 2960, 2961, 2962, 2963, 2964, 2965, 2971, 2980, 2982, 2983, 2984, 2986, 2987, 2988, 2989, 2995, and 2999 of the Business and Professions Code, relating to psychology.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Division" means the Division of Allied Health Professions of the Board of Medical Quality Assurance. "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under of subdivision (a) of Section 94310.1 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional

accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under subdivision (b) of Section 94310.2 of the Education Code.

SEC. 1.5. Section 2902 of the Business and Professions Code is amended to read:

2902. As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, and which license is in force and has not been suspended or revoked.

(b) "Division" means the Division of Allied Health Professions of the Medical Board of California. "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," "psychoanalyst" or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, an institution accredited under subdivision (a) of Section 94310.1 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means approved under subdivision (b) of Section 94310.2 of the Education Code.

SEC. 2. Section 2909 of the Business and Professions Code is amended to read:

2909. Nothing in this chapter shall be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not offer to render or render psychological services as defined in Section 2903 to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:

(a) Persons who hold a valid and current credential as a school psychologist issued by the California Department of Education.

(b) Persons who hold a valid and current credential as a

psychometrist issued by the California Department of Education.

(c) Persons employed in positions as psychologists or psychological assistants, or in a student counseling service, by accredited or approved colleges, junior colleges or universities; federal, state, county or municipal governmental organizations which are not primarily involved in the provision of direct health or mental health services. However, those persons may, without obtaining a license under this act, consult or disseminate their research findings and scientific information to other such accredited or approved academic institutions or governmental agencies. They may also offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(d) Persons who meet the educational requirements of subdivision (d) of Section 2914 and who have one year or more of professional experience of a type which the board determines will competently and safely permit the person to engage in the activities regulated by this chapter, if they are employed by nonprofit community agencies which receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services. Those persons shall be registered by the agency with the board at the time of employment and shall be exempt from this chapter for a maximum period of two years from the date of registration.

(e) This section shall become operative January 1, 1984.

SEC. 3. Section 2913 of the Business and Professions Code is amended to read·

2913. A person other than a licensed psychologist may be employed by a licensed psychologist, by a licensed physician and surgeon who is board certified in psychiatry by the American Board of Psychiatry and Neurology, by a clinic which provides mental health services under contract pursuant to Section 5614 of the Welfare and Institutions Code, by a psychological corporation, by a licensed psychology clinic as defined in Section 1204.1 of the Health and Safety Code, or by a medical corporation to perform limited psychological functions provided that all of the following apply:

(a) The person is termed a "psychological assistant."

(b) The person (1) has completed a master's degree in psychology or education with the field of specialization in psychology or counseling psychology, or (2) has been admitted to candidacy for a doctoral degree in psychology or education with the field of specialization in psychology or counseling psychology, after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations, or (3) has completed a doctoral degree which qualifies for licensure under Section 2914, in an accredited or approved university, college, or professional school located in the United States or Canada.

(c) The person is at all times under the immediate supervision, as

defined in regulations adopted by the board, of a licensed psychologist, or board certified psychiatrist, who shall be responsible for insuring that the extent, kind, and quality of the psychological services he or she performs are consistent with his or her training and experience and be responsible for his or her compliance with this chapter and regulations duly adopted hereunder, including those provisions set forth in Section 2960.

(d) The licensed psychologist, board certified psychiatrist, contract clinic, psychological corporation, or medical corporation, has registered the psychological assistant with the board. The registration shall be renewed annually in accordance with regulations adopted by the board.

No licensed psychologist may register, employ, or supervise more than three psychological assistants at any given time unless specifically authorized to do so by the board. No board certified psychiatrist may register, employ, or supervise more than one psychological assistant at any given time. No contract clinic, psychological corporation, or medical corporation may employ more than 10 assistants at any one time. No contract clinic may register, employ, or provide supervision for more than one psychological assistant for each designated full-time staff psychiatrist who is qualified and supervises the psychological assistants. No psychological assistant may provide psychological services to the public for a fee, monetary or otherwise, except as an employee of a licensed psychologist, licensed physician, contract clinic, psychological corporation, or medical corporation.

(e) The psychological assistant shall comply with regulations that the board may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

(f) No person shall practice as a psychological assistant who is found by the board to be in violation of Section 2960 and the rules and regulations duly adopted thereunder.

SEC. 4. Section 2914 of the Business and Professions Code is amended to read:

2914. Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5.

(b) Possess an earned doctorate degree (1) in psychology, (2) in education psychology, (3) in education with the field of specialization in counseling psychology or educational psychology, or (4) possess an earned doctorate degree deemed equivalent by the board in regulations duly adopted under this chapter. This degree or training shall be obtained from an accredited or approved university, college, professional school, or any other educational institution approved by the board as offering a comparable program in regulations duly adopted under this chapter.

No educational institution shall be denied recognition as an accredited or approved academic institution solely because its program is not accredited by any professional organization of

psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or such suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

SEC. 5. Section 2920 of the Business and Professions Code is amended to read:

2920 The Board of Psychology of the Board of Medical Quality Assurance of the Department of Consumer Affairs shall administer this chapter. The board shall consist of eight members, three of whom shall be public members.

SEC. 6. Section 2921 of the Business and Professions Code is amended to read:

2921. Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No member may serve for more than two consecutive terms.

SEC. 7. Section 2922 of the Business and Professions Code is amended to read:

2922. In appointing the members of the board, except the public members, the Governor shall use his judgment to select psychologists who represent, as widely as possible, the varied professional interests of psychologists in California.

The Governor shall appoint one of the public members and the five licensed members of the board qualified as provided in Section 2923. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

SEC. 8. Section 2923 of the Business and Professions Code is amended to read:

2923. Each member of the board shall have all of the following qualifications:

(a) He or she shall be a resident of this state.

(b) Each member appointed, except the public members shall be a licensed psychologist.

The public members shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.

SEC. 9. Section 2924 of the Business and Professions Code is amended to read:

2924. The Governor has power to remove from office any member of the board for neglect of any duty required by this chapter, for incompetency, or for unprofessional conduct.

SEC. 10. Section 2925 of the Business and Professions Code is amended to read:

2925. The board shall elect annually a chairperson and vice chairperson from among its members.

SEC. 11. Section 2926 of the Business and Professions Code is amended to read:

2926. The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the chairman or at the written request of any two members of the board.

SEC. 12. Section 2928 of the Business and Professions Code is amended to read:

2928. The board shall administer and enforce this chapter except as to those acts and functions specifically vested in the division by this chapter and those acts and functions of the division shall in no way

be enlarged by the other chapters of this division.

SEC. 13. Section 2929 of the Business and Professions Code is amended to read:

2929. The board shall adopt a seal, which shall be affixed to all licenses issued by the division.

SEC. 14. Section 2930 of the Business and Professions Code is amended to read:

2930. The board shall from time to time adopt rules and regulations as may be necessary to effectuate this chapter. In adopting rules and regulations the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 15. Section 2931 of the Business and Professions Code is amended to read:

2931. The board shall examine and pass upon the qualifications of the applicants for a license as provided by this chapter.

SEC. 16. Section 2932 of the Business and Professions Code is amended to read:

2932. Five members of the board shall at all times constitute a quorum.

SEC. 17. Section 2933 of the Business and Professions Code is amended to read:

2933. Except as provided by Section 159.5, the division shall employ and shall make available to the board within the limits of the funds received by the division all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The division shall make all expenditures to carry out this chapter. The division may accept contributions to effectuate the purposes of this chapter.

SEC. 18 Section 2934 of the Business and Professions Code is amended to read:

2934. Notwithstanding Section 112, the board may issue, biennially, a current geographical directory of licensed psychologists. The directory may be sent to licensees and to other interested parties at cost.

SEC. 19 Section 2935 of the Business and Professions Code is amended to read:

2935. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 20. Section 2936 of the Business and Professions Code is amended to read:

2936. The board shall by rule or regulation, establish standards of ethical conduct relating to the practice of psychology.

The board shall periodically evaluate the relevancy and efficacy of the standards.

In establishing these standards, the board may consider codes of ethics of relevant professional organizations, information and complaints regarding issues of ethical conduct from consumers of

psychological services and other providers of mental health services. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology.

The adoption, amendment, or repeal of such rules or regulations shall be made in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location, a notice which reads as follows:

"NOTICE: The Department of Consumer Affairs receives questions and complaints regarding the practice of psychology. If you have any questions or complaints, you may contact this department by calling (insert appropriate regional number) or (insert appropriate telephone number), or by writing to the following address:

Board of Medical Quality Assurance
Allied Health Complaints
1430 Howe Avenue
Sacramento, California 95825"

SEC. 21. Section 2940 of the Business and Professions Code is amended to read:

2940. Each person desiring to obtain a license from the division shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter

The application shall be accompanied by the application fee prescribed by Section 2949. This fee shall not be refunded by the division.

SEC. 22. Section 2941 of the Business and Professions Code is amended to read:

2941. Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the division.

SEC. 23. Section 2942 of the Business and Professions Code is amended to read:

2942. The board may examine by written or oral examination or by both. The examination shall be given at least twice a year at the time and place and under supervision as the board may determine. A grade of 75 percent shall be a passing grade.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

SEC 24. Section 2943 of the Business and Professions Code is amended to read:

2943. The board may examine for knowledge in whatever

theoretical or applied fields in psychology as it deems appropriate. It may examine the candidate with regard to his or her professional skills and his or her judgment in the utilization of psychological techniques and methods.

SEC. 25. Section 2944 of the Business and Professions Code is amended to read:

2944. The board shall grade the written examination and keep the written examination papers for at least one year, unless a uniform examination is conducted pursuant to Section 2942.

SEC. 26. Section 2945 of the Business and Professions Code is amended to read:

2945. The board shall keep an accurate transcription or electronic recording of the oral examinations and keep a transcription or recording as a part of its records for at least one year following the date of examination.

SEC. 27. Section 2946 of the Business and Professions Code is amended to read:

2946. The board shall direct the division to grant a license without examination by the board to any person who, at the time of application is licensed or certified by a psychology licensing authority in another state if the requirements for obtaining a certificate or license in that state were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive those parts of the examination, including either the whole of the written or the oral examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered by those parts of the examination. The board at its discretion may waive the examination for diplomates of the American Board of Examiners in Professional Psychology or psychologists who have made a significant contribution to psychology and have had at least 10 years of experience.

SEC. 28. Section 2947 of the Business and Professions Code is amended to read.

2947. The board may appoint qualified persons to give the whole or any portion of any examination provided for in this chapter, who shall be designated as commissioners on examination. A commissioner on examination need not be a member of the board but he or she shall have the same qualifications as a member of the board, including those set forth in Chapter 6 (commencing with Section 450) of Division 1. The board may also appoint occasional professional commissioners for short-term specified periods to assist in its nonpolicy workload.

Public commissioners may examine and evaluate candidates in areas of knowledge such as the law, ethics, and awareness of community resources.

SEC. 29. Section 2948 of the Business and Professions Code is amended to read:

2948. The division shall issue, upon the recommendation and at the direction of the board, a license to all applicants who meet the requirements of this chapter and who pay to the division the initial license fee provided in Section 2949.

SEC. 30. Section 2960 of the Business and Professions Code is amended to read:

2960. The board may order the denial of an application for licensure, or issue a license with terms and conditions, or, as to any licensee, order the suspension for a period not exceeding one year, or the revocation of, or the imposition of probationary conditions upon, a licensee for any of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that such use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state of a license or certificate to practice psychology or as a psychological assistant issued by that state to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a

violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act or any act of sexual abuse, or sexual relations with a patient, or sexual misconduct which is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(o) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(p) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(q) Using any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjuction 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 2920.5.

SEC. 31. Section 2961 of the Business and Professions Code is amended to read:

2961. The board may deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing as provided in Section 2965.

SEC. 32. Section 2962 of the Business and Professions Code is amended to read:

2962. One year from the date of a revocation of a license under this article, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and may require an examination for that reinstatement.

SEC. 33. Section 2963 of the Business and Professions Code is amended to read:

2963. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions and duties of a psychologist or psychological assistant is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

SEC 34 Section 2964 of the Business and Professions Code is amended to read:

2964. Whenever the board orders a license revoked for cause, with the exception of nonpayment of fees, or restores a license, these facts shall be reported to all other state psychology licensing boards.

SEC. 35. Section 2965 of the Business and Professions Code is amended to read:

2965. The proceedings under this article shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 36. Section 2971 of the Business and Professions Code is amended to read:

2971. Whenever any person other than a licensed psychologist has engaged in any act or practice which constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7, Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued violation is not restrained or enjoined. On the written request of the board, or on its own motion, the Division of Allied Health Professions may commence action in the superior court under this section.

SEC 37. Section 2980 of the Business and Professions Code is amended to read·

2980. (a) There is in the State Treasury the Psychology Fund. The division shall report to the Controller at the beginning of each calender month for the month preceding the amount and source of all revenue received by it on behalf of the board, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into that fund. All revenue received by the board and the division from fees authorized to be charged relating to the practice of psychology shall be deposited into that fund as provided in this section.

(b) If on the effective date of this section, money expended in the administration and enforcement of this chapter for five fiscal years prior to the effective date of this section has exceeded revenue derived from fees authorized under this chapter, the State Controller shall transfer from the Psychology Fund to the Contingent Fund of the Board of Medical Quality Assurance within three years from the effective date of this section the amount that those expenditures exceeded that revenue.

SEC. 38. Section 2982 of the Business and Professions Code is amended to read:

2982. All licenses expire and become invalid at 12 midnight on the last day of February, 1980, and thereafter shall expire at 12 midnight of the legal birth date of the licensee during the second year of a two-year term, if not renewed.

The board shall establish by regulation procedures for the administration of the birth date renewal program, including but not limited to, the establishment of a pro rata formula for the payments of fees by licentiates affected by the implementation of that program and the establishment of a system of staggered license application

dates such that a relatively equal number of licenses expire annually.

To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

SEC. 39. Section 2983 of the Business and Professions Code is amended to read:

2983. Every person to whom a license is issued after December 31, 1968, shall, as a condition precedent to its issuance, and in addition to any application, examination or other fee, pay the prescribed initial license fee, if any. The board, may, by regulation provide for the waiver or refund of the initial license fee, however, where the license is issued less than 45 days before the date on which it will expire.

SEC. 40. Section 2984 of the Business and Professions Code is amended to read:

2984. Except as provided in Section 2985, a license which has expired may be renewed at any time within five years after its expiration on filing of application for renewal on a form prescribed by the division and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

SEC 41 Section 2986 of the Business and Professions Code is amended to read:

2986 A person who fails to renew his or her license within the five years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the requirements of this chapter provided that he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure.

(b) Establishes to the satisfaction of the board that with due regard for the public interest, he or she is qualified to practice psychology.

(c) Pays all of the fees that would be required if application for licensure was being made for the first time.

The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without examination pursuant to this section.

SEC. 42. Section 2987 of the Business and Professions Code is amended to read:

2987. The amount of the fees prescribed by this chapter shall be

determined by the board subject to the review and approval of the Board of Medical Quality Assurance, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars ($50).

(b) The examination fee for a psychologist shall not be more than one hundred fifty dollars ($150).

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued, except that 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 renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(d) The biennial renewal fee for a psychologist shall not be more than one hundred fifty dollars ($150).

(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by such supervisor, shall not be more than seventy-five dollars ($75)

(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars ($75).

(g) The duplicate license or registration fee is five dollars ($5).

(h) The delinquency fee is twenty-five dollars ($25).

(i) The endorsement fee is five dollars ($5).

SEC. 43. Section 2988 of the Business and Professions Code is amended to read:

2988. A licensed psychologist who for reasons, including but not limited to ill health or absence from the state, is not engaged in the practice of psychology, may apply to the board to request that his or her license be placed on an inactive status. A licensed psychologist who holds an inactive license shall pay a biennial renewal fee, fixed by the board, at not more than forty dollars ($40), shall otherwise be subject to this chapter and shall not engage in the practice of psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure may, upon their request and payment of the biennial active license renewal fee, have their license to practice psychology reinstated.

SEC. 44. Section 2989 of the Business and Professions Code is amended to read:

2989. The fees in this article shall be fixed by the board and shall be set forth with the regulations which are duly adopted under this chapter.

SEC. 45. Section 2995 of the Business and Professions Code is amended to read:

2995. A psychological corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are psychologists, podiatrists, registered

nurses, optometrists, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

With respect to a psychological corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Psychology of the Board of Medical Quality Assurance.

SEC. 46. Section 2999 of the Business and Professions Code is amended to read:

2999. The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a psychological corporation shall include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a deceased person, shall be sold to the corporation or to the remaining shareholders of that corporation within any time as those regulations may provide, and (b) that a psychological corporation shall provide adequate security by insurance or otherwise for claims against it by its patients or clients arising out of the rendering of professional services.

SEC 47. Section 1.5 of this bill incorporates amendments to Section 2902 of the Business and Professions Code proposed by both this bill and AB 184. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 2902 of the Business and Professions Code, and (3) this bill is enacted after AB 184, in which case Section 1 of this bill shall not become operative.

CHAPTER 889

An act to add Sections 18266.1, 18266.2, 18266.3, 18301, 18302, and 18303 to the Financial Code, relating to industrial loan companies.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 18266.1 is added to the Financial Code, to read:

18266.1. Whenever authorized by the commissioner, an industrial loan company may make loans and acquire obligations, the proceeds of which are used for home improvements which are primarily secured by real property having a market value of at least 100 percent of the principal amount owing on the loan being made by the industrial loan company or obligation being acquired by the industrial loan company and on prior encumbrances, except

nondelinquent tax liens, secured by the same real property. Home improvements means additions, alterations, or modifications to owner-occupied property consisting of one to four dwelling units and appurtenant buildings thereto or to the real property containing same. Home improvement loans subject to this section shall be made only by industrial loan companies whose thrift obligations are insured by the Federal Deposit Insurance Corporation.

SEC. 2. Section 18266.2 is added to the Financial Code, to read:

18266.2. An industrial loan company shall file a written request for authorization to conduct business under Section 18266.1. The request shall include the following information:

(a) A description of the company's proposed plan of business.

(b) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(c) Any other facts and circumstances bearing on the proposal that, in the opinion of the commissioner, may be relevant.

SEC. 3. Section 18266.3 is added to the Financial Code, to read:

18266.3. The commissioner shall approve the request made pursuant to Section 18266.2 within 30 days after filing unless the commissioner has ascertained that the company has failed to show either of the following:

(a) That the proposed plan of business has a reasonable promise of a successful operation.

(b) That the company has a person with the necessary business qualifications, experience or ability to direct and manage the operations of the plan of business.

SEC. 4. Section 18301 is added to the Financial Code, to read:

18301. (a) Whenever authorized by the commissioner, an industrial loan company whose thrift obligations are insured by the Federal Deposit Insurance Corporation may make a secured line of credit loan. Security for line of credit loans shall be of a kind and class that has been declared eligible by the commissioner.

(b) Line of credit loans authorized under Title VIII (Alternative Mortgage Transaction Party Act of 1982) of the Garn-St. Germain Depository Institutions Act of 1982 are not subject to subdivision (a).

(c) As used in this article, "line of credit loan" means a loan whereby a borrower requests and a company disburses loan proceeds in an installment or installments during the term of the loan by an advance or series of advances, whether or not the timing of the advance or advances is known on the date the loan is approved by the company.

(d) This section does not apply to secured line of credit lending activities engaged in on or before May 1, 1989, unless, after that date there is a change in the secured line of credit plan of business by the company.

SEC. 5. Section 18302 is added to the Financial Code, to read:

18302. An industrial loan company shall file a written request for authorization to conduct business under subdivision (a) of Section

18301. The request shall include all of the following information:

(a) A description of the company's proposed plan of business.

(b) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(c) Any other facts and circumstances bearing on the proposal that, in the opinion of the commissioner, may be relevant.

SEC. 6. Section 18303 is added to the Financial Code, to read:

18303. The commissioner shall approve the request made pursuant to Section 18302 within 30 days after filing unless the commissioner has ascertained that the company has failed to show either of the following:

(a) That the proposed plan of business has a reasonable promise of a successful operation.

(b) That the company has a person with the necessary business qualifications, experience, or ability to direct and manage the operations of the plan of business.

CHAPTER 890

An act to amend Sections 4004, 4005, 4152, and 4180 of the Fish and Game Code, relating to traps.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 4004 of the Fish and Game Code is amended to read:

4004. It is unlawful to do any of the following:

(a) Use a trap with saw-toothed or spiked jaws.

(b) Use or sell leghold steel-jawed traps with a spread of 5½ inches or larger without offset jaws.

(c) Use steel-jawed traps larger than size 1½ or with a spread larger than 4⅞ inches for taking muskrat.

(d) Set or maintain traps which do not bear a number or other identifying mark registered to the department or, in the case of a federal, state, county, or city agency, bear the name of that agency, except that traps set pursuant to Section 4152 or 4180 shall bear an identifying mark in a manner specified by the department. No registration fee shall be charged pursuant to this subdivision.

(e) Fail to visit and remove all animals from traps at least once daily. If the trapping is done pursuant to Section 4152 or 4180, the inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

(f) Use a steel leghold trap with a spread exceeding 7½ inches or killer-type trap of the conibear type that is larger than 10 inches by

10 inches.

(g) Set or maintain steel leghold traps within 30 feet of bait placed in a manner or position so that it may be seen by any soaring bird. As used in this subdivision, "bait" includes any bait composed of mammal, bird, or fish flesh, fur, hide, entrails, or feathers.

(h) Set or maintain steel leghold traps with a spread of 5½ inches or larger without a tension device.

SEC. 2. Section 4005 of the Fish and Game Code is amended to read:

4005. Every person, other than a fur dealer, who takes fur-bearing mammals or nongame mammals, designated by the commission, by means of a trap, or who sells raw furs of those mammals, shall procure a trapping license. The department shall develop standards that are necessary to ensure the competence and proficiency of applicants for a trapping license No person shall be issued a license until he or she has passed a test of his or her knowledge and skill in this field. Persons taking mammals in accordance with Section 4152 or 4180 are not required to procure a trapping license, but no raw furs so taken may be sold.

For purposes of this chapter, "raw fur" means any fur, pelt, or skin which has not been tanned or cured, but salt or sun cured pelts are raw furs.

Officers or employees of federal, county, or city agencies or the department, when acting in their official capacities, or officers or employees of the Department of Food and Agriculture when acting pursuant to the Food and Agricultural Code pertaining to pests or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, are exempt from the license requirement of this section.

SEC. 3. Section 4152 of the Fish and Game Code is amended to read:

4152. Nongame mammals and black-tailed jackrabbits, muskrats, and red fox squirrels which are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code by the owner or tenant of the premises or employees thereof, except that if leghold steel-jawed traps are used to take those mammals, the traps and the use thereof shall be in accordance with subdivisions (a), (b), and (d) of Section 4004. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city, officers or employees when acting in their official capacities pursuant to the provisions of the Food and Agricultural Code pertaining to pests, or pursuant to the provisions of Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from the requirements of Section 3007.

Traps used pursuant to this section shall be inspected and all animals in the trap shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap

or the owner of the land where the trap is set or an agent of either.

SEC. 4. Section 4180 of the Fish and Game Code is amended to read:

4180. Fur-bearing mammals which are injuring property may be taken at any time and in any manner in accordance with this code, except that if leghold steel-jawed traps are used to take those mammals, the traps and the use thereof shall be in accordance with subdivisions (a), (b), and (d) of Section 4004.

Traps used pursuant to this section shall be inspected and all animals in the trap shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.

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

CHAPTER 891

An act to amend Sections 20654, 20901, and 20932 of the Government Code, relating to the Public Employees' Retirement System, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 20654 of the Government Code is amended to read:

20654. Subject to regulations adopted by the board, a member may file an election with the board to redeposit in the retirement fund, in a lump sum or by installment payments, (1) an amount equal to the accumulated contributions that he or she has withdrawn at one or more terminations of service, or for one withdrawal at a time, but in reverse chronological order in which they occurred, and (2) an amount equal to the interest which would have been credited to his or her account to the date of completion of payments had the contributions not been withdrawn, and (3) if he or she elects to redeposit in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date

of the election to redeposit, as if the annual interest rate in effect on the date of the election to redeposit had been and continued to be in effect through the completion of the payments.

SEC. 2. Section 20901 of the Government Code is amended to read:

20901. Unless otherwise provided in this article, a member electing to receive service credit for time during which he or she was absent from state service shall contribute in a lump sum or by installments over such period and subject to such minimum payments as may be prescribed by regulations of the board an amount equal to (a) the contributions he or she would have made to the system for the period for which current service credit is granted, assuming that the rate of contribution under his or her employer's formula at the rate age applicable to him or her at the beginning of his or her first subsequent period of service in membership and his or her compensation earnable on that date had applied to him or her during the period for which credit is granted, plus (b) such added contributions as may be specially required under this article as a condition for crediting a particular absence, plus (c) the interest which would have accrued to such contributions if they had been on deposit at the beginning date of his or her first subsequent period of service in membership, from that date until the date of completion of payments. The beginning date of the first subsequent period of service for purposes of computation of contributions and interest shall be deemed to be the end of the period of service credited for a member who has no subsequent return to service. For a member who is subject to Sections 21251.146 and 21251.147, the service and contribution rate to be used for purposes of computation shall be deemed to be the service and contribution rate that would have been used had the member not been subject to Sections 21251.146 and 21251.147.

Service shall be credited as current or prior service, or both, as it would be credited if the member had been in state service during his or her absence. All contributions of a member under this article shall be considered to be and shall be administered as normal contributions.

SEC. 3. Section 20932 of the Government Code is amended to read:

20932. A member electing to receive credit for public service shall contribute in a lump sum or by installment payments over such period and subject to such minimum payments as may be prescribed by regulations of the board an amount equal to (a) the contributions he or she would have made to the system for the period for which current service credit is granted, assuming that the rate of contribution under his or her employer's formula at the rate age applicable to him or her at the beginning of his or her first subsequent period of service in membership and his or her compensation earnable on that date had applied to him or her during the period for which credit is granted, plus (b) such added

contribution as may be specially required under this article as a condition for crediting particular public service, plus (c) the interest which would have accrued to those contributions if they had been deposited at the beginning date of his or her first subsequent period of service in membership, from that date until the date of completion of payments, and (d) if he or she elects to contribute in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date of the election to receive credit. The beginning date of the first subsequent period of service for purposes of computation of contribution and interest shall be deemed to be the end of the period of service credited for a member who has no subsequent return to service. For a member who is subject to Sections 21251.146 and 21251.147, the service and contribution rate to be used for purposes of computation shall be deemed to be the service and contribution rate that would have been used had the member not been subject to Sections 21251.146 and 21251.147.

All contributions of a member under this article shall be considered to be and shall be administered as normal contributions.

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 serious concerns arising out of various recent changes in the federal income tax which substantially affect the public pension and retirement systems in the State of California may be remedied at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 892

An act to amend Section 50920 of the Government Code, to amend Sections 11732.5, 11734, 11751.1, 11751.3, 11751.35, and 11770 of, to add Section 11751.51 to, and to add and repeal Article 2.5 (commencing with Section 11745) of Chapter 3 of Part 3 of Division 2 of, the Insurance Code, and to amend Sections 110, 111, 112, 117, 122, 123.5, 129, 132a, 139.5, 3364, 3501, 3702.6, 4453, 4458.2, 4600, 4624, 4650, 4651, 4652, 4658, 4661.5, 4701, 4702, 4906, 5307.3, 5402, 5405.5, 5410, 5500, 5703.5, and 5908 of, to add Sections 28, 55.5, 62.5, 129.5, 139.2, 139.3, 3208.3, 3362.5, 4628, 4703.5, and 4903 4 to, to add Article 2 (commencing with Section 4061) to Chapter 7 of Part 1 of Division 4 of, to add Article 2.6 (commencing with Section 4635) to Chapter 2 of Part 2 of Division 4 of, to add Part 3.5 (commencing with Section 5270) to Division 4 of, to repeal Sections 4453.1 and 4460 of, and to repeal and add Sections 124, 139, 5401, and 5502 of, the Labor Code, relating to workers' compensation.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 50920 of the Government Code is amended to read:

50920. As used in this article, the term "peace officer" means a sheriff, undersheriff, deputy sheriff, constable, marshal, or deputy marshal of a county, city and county, or judicial district, or a marshal or police officer of a city or town, employed and compensated as such, whether the members are volunteer, partly paid, or fully paid, except those whose principal duties are clerical, such as stenographers, telephone operators, and other workers not engaged in law enforcement operations, or the protection or preservation of life or property, and not under suspension or otherwise lacking in good standing.

SEC. 2. Section 11732.5 of the Insurance Code is amended to read:

11732.5. (a) The expense provision included in the classification of risks and premium rates approved or issued by the commissioner shall be uniform as to all insurers and shall be applied uniformly to all insured employers.

(b) The uniform expense provision to be included in the classification of risks and premium rates shall be as follows:

Effective Date:	Expense Provision:
January 1, 1990	34 percent
January 1, 1991	33 percent
January 1, 1992	32.8 percent

(c) Subdivision (b) shall remain operative only until January 1, 1993.

SEC. 2.5. Section 11734 of the Insurance Code is amended to read:

11734. (a) The commissioner may change a classification or system previously approved or issued if he or she finds, based on credible actuarial and competent economic evidence submitted into the record at a public hearing, that a change is needed to assure that the classification of risks and premium rates meets the requirements of this article, including Section 11732. The order approving any revision shall include written findings specifying the facts relied upon by the commissioner and the grounds upon which the findings are based. The proceedings of the public hearing shall be recorded and transcribed. Any changes shall also be uniform as to all insurers affected.

(b) Prior to any public hearing required by subdivision (a), the commissioner shall make available to the public both of the following:

(1) A summary of the proposed revision.

(2) A summary of any information submitted concerning the proposed revision by a licensed rating organization or its public members.

SEC. 3. Article 2.5 (commencing with Section 11745) is added to Chapter 3 of Part 3 of Division 2 of the Insurance Code, to read:

Article 2.5. Workers' Compensation Rate Study Commission

11745. (a) There is in the Department of Insurance the Workers' Compensation Rate Study Commission, which shall be hereafter referred to in this article as the "commission." The commission shall consist of eight members, two of whom shall be appointed by the Senate Committee on Rules, two of whom shall be appointed by the Speaker of the Assembly, and four of whom shall be appointed by the Governor. Each member of the commission shall be, or shall have served as, the dean or its administrative equivalent of the school of business, public policy, or public administration at an accredited California university or be a tenured faculty member of the school of business, public policy, or public administration at an accredited California university. In no event shall a commission member have been, within the last 10 years, a full-time or part-time employee of other than an accredited educational institution. Acceptance of occasional, intermittent, outside income from consulting or public appearances shall not constitute full-time or part-time employment.

(b) The Governor shall summon the commission to its first meeting, whereupon, as its first order of business, the commission shall designate one of its members as chairperson.

(c) Members of the commission shall serve without compensation, but shall be reimbursed for all necessary expenses actually incurred in the performance of their duties, including per diem reimbursement

(d) All vacancies in commission membership shall be filled by whichever appointing authority appointed the person who vacated the position.

(e) The commission shall hold meetings as it deems necessary to fulfill its purpose and may conduct public hearings.

(f) The Department of Insurance shall provide staff and research assistance to the commission. The commission shall have the additional authority to contract with and engage the services of outside resources to conduct research, under the direction and control of the commission, necessary to the timely completion of its purpose. However, in the event the commission exceeds its budgetary authorization in determining its research needs, the planned research may be conducted only if the Department of Insurance determines sufficient private or public funds are available in the department's current budget to cover the additional costs imposed by the research.

11746. The commission shall evaluate, in its entirety, the present workers' compensation insurance ratemaking process and the

relative effectiveness of workers' compensation insurance ratemaking systems in other states, and other similar matters affecting workers' compensation insurance ratemaking as the commission deems appropriate. The commission shall include an analysis of all aspects of the current system by which minimum rates are established in California, including an analysis of the extent to which this system fosters or discourages competition between insurers. It shall include an analysis of the states which use an exclusive state fund to provide workers' compensation insurance to employers, and the advantages and disadvantages of establishing an exclusive state fund in California. It shall also include an analysis of whether the functions currently performed by a licensed rating organization should instead be performed by the Department of Insurance.

The commmission shall consider in its evaluation the extent to which the present California workers' compensation ratemaking system and proposed alternatives meet the following goals:

(a) Provides appropriate and expeditious claim services to injured employees.

(b) Assures security of the payment of benefits from the insurer to injured workers.

(c) Provides financial incentives to insured employers to maintain safe operations.

(d) Provides the lowest net cost to insured employers consistent with the protection and services provided and the losses and expenses incurred.

(e) Provides a fair and equitable distribution of the costs of the system to insured employers reflecting, to the extent consonant with sound principles of insurance, the actual losses and expenses of individual employers.

(f) Encourages availability of insurance to all sizes and classifications of employers to assure a stable, predictable, and competitive insurance market.

(g) A reasonable rate of return to insurers.

11747. (a) The commission shall transmit its final report to the Governor, the Legislature, and the Insurance Commissioner no later than June 30, 1991.

(b) The final report shall contain an analysis of the issues specified in Section 11746 and the results of the commission's evaluation and recommendations to attain the goals specified in Section 11746.

11748. (a) The commission shall remain in existence until 90 days after submission of its report for the purpose of presenting its findings and recommendations and responding to any questions from those to whom the report was transmitted.

(b) This article shall remain in effect only until September 28, 1991, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 4. Section 11751.1 of the Insurance Code is amended to read:

11751.1. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it shall do all of the following:

(a) Permit any insurer to become a member at a reasonable cost and without discrimination, or to withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member as a condition of membership to adhere to rates, greater than the minimum adequate rates approved by the commissioner.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members.

(d) Neither practice nor sanction any plan or act of boycott, coercion, or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution or articles of incorporation, agreement of association, or in its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting the organization may be served.

(g) Agree that the commissioner or his or her representative may attend all meetings of the organization or any of its committees.

(h) Agree to permit four members of the public, two representing organized labor and two representing insured employers, to serve on the managing or governing committee of the organization as specified in Section 11751.35.

(i) Maintain reasonable records of the experience of its members and of the data, statistics or information collected or used in connection with the rates, classifications, rating plans, rating systems, manual rules, and policy and endorsement forms used by its members so that these records will be available at all reasonable times to enable the commissioner to determine whether the rating organization and its members comply with the provisions of this chapter applicable to them. These records shall be maintained in an office within this state. The commissioner may prescribe a uniform system for the keeping of the records which shall be reasonably adapted to the rating organization and its members' method of operation and which shall be applicable to all rating organizations licensed under this article and their members.

SEC. 5. Section 11751.3 of the Insurance Code is amended to read:

11751.3. (a) Subject to the approval of the commissioner, a rating organization licensed under this article may adopt any reasonable constitution, articles of incorporation, or agreement of association,

and may make reasonable rules for the regulation of its members and the conduct of its business by bylaws or otherwise. In a rating organization of which the State Compensation Insurance Fund is a member, it shall be entitled without election to membership on the managing or governing committee and on the classification and rating committee thereof.

(b) In addition, after consultation with the California Labor Federation, AFL-CIO, other statewide organized labor organizations, and statewide associations representing business, the commissioner shall appoint two public members representing insured employers and two public members representing organized labor to serve on the managing or governing committee of a rating organization. The bylaws of a rating organization shall permit a public member from time to time to designate in his or her stead a representative from the same employer organization or an affiliated employee union, as the case may be, to attend and participate in any meeting of the governing committee of a rating organization.

SEC. 6. Section 11751.35 of the Insurance Code is amended to read:

11751.35. (a) Four members of the public, two representing organized labor and two representing insured employers, appointed pursuant to subdivision (b) of Section 11751.3, shall be entitled to serve on the managing or governing committee of a rating organization licensed under this article. The public members shall be entitled to vote on all issues involving rates, classifications, rating plans, rating systems, manual rules and policy, and endorsement forms which are properly brought before the committee.

(b) In the event one or more public members are unable or unwilling to complete their term, after consultation with the California Labor Federation, AFL-CIO, other statewide organized labor organizations, and statewide organizations representing business, as the case may be, the commissioner shall appoint a successor from organized labor or an insured employer to complete the unexpired term.

(c) The public members who serve on the governing committee of a rating organization licensed under this article together may, by a majority vote, retain experts who shall include a fellow of the Casualty Actuarial Society, to advise them on any matter specified in subdivision (a). The actuary hired may participate in all proceedings of the actuarial committee of the rating organization. The reasonable expense of retaining these experts shall not exceed one hundred thousand dollars ($100,000) per year and shall be paid from the budget of the department. The commissioner shall increase this amount annually to reflect any needed cost-of-living adjustments. The public members may submit information obtained from these experts, as well as any other information they deem appropriate, to the commissioner for his or her consideration in issuing or approving a change of a classification or system.

SEC. 7. Section 11751.51 is added to the Insurance Code, to read:

11751.51. (a) The commissioner shall, commencing January 1, 1990, require the licensed rating organization designated as his or her statistical agent to monitor and measure changes in the cost of the various components of workers' compensation which may be affected by the changes enacted in the 1989–90 Regular Session of the Legislature. This shall include, but not be limited to, the change in costs of providing medical treatment, temporary disability benefits, permanent disability benefits, vocational rehabilitation services, resolving medical disputes, evaluating permanent partial disability, and providing compensation for psychiatric injuries. The commissioner shall submit to the Governor and to the Legislature by April 1 the methodology proposed to be used not less than 60 days prior to the commencement of the collection of data for the purposes of this section. No later than January 1, 1993, the rating organization shall quantify any identified changes as a percentage of total incurred losses and shall report this percentage to the Insurance Commissioner. The rating organization shall continue to report annually through January 1, 1996.

(b) The commissioner shall have 60 days from the date the report is filed by the rating organization with his or her office to verify the methodology utilized, the accuracy and reliability of the results obtained, and the percentage calculated pursuant to this section, by the rating organization. The commissioner thereupon shall submit a report to the Governor, to the Legislature, and the Workers' Compensation Commission by April 1, which describes the methodology utilized, the accuracy and reliability of the results obtained, and the percentage calculated pursuant to this section.

SEC. 8. Section 11770 of the Insurance Code is amended to read:

11770. The State Compensation Insurance Fund is continued in existence, to be administered by its board of directors for the purpose of transacting workers' compensation insurance, and insurance against the expense of defending any suit for serious and willful misconduct, against an employer or his or her agent, and insurance to employees and other persons of the compensation fixed by the workers' compensation laws for employees and their dependents. Any appropriation made therefrom or thereto before the effective date of this code shall continue to be available for the purposes for which it was made

The board of directors of the State Compensation Insurance Fund is composed of five members, one of whom shall be from organized labor, appointed by the Governor. The Governor shall appoint the chairperson who shall serve at the pleasure of the Governor. The Director of Industrial Relations shall be an ex officio, nonvoting sixth member of the board, and shall not be counted as a member of the board for quorum purposes or any other purpose.

The term of office of the members of the board, other than that of the director, shall be five years and they shall hold office until the appointment and qualification of their successors. The term of office of the first additional member appointed pursuant to amendment of

this section effective January 1, 1990, shall expire on January 15, 1995. Commencing January 15, 1991, the terms of office of other members shall be extended to five years as each four-year term expires, so that one member's term of office expires January 15 of each year. Each member shall receive his or her actual and necessary traveling expenses incurred in the performance of his or her duty as a member and, except the Director of Industrial Relations, one hundred dollars ($100) for each day of his or her actual attendance at meetings of the board. In order to qualify for membership on the board, each member other than the director shall have been a policyholder or the employee or member of a policyholder in the State Compensation Insurance Fund for one year prior to his appointment, and must continue in this status during the period of his or her membership.

SEC. 8.5. Section 28 is added to the Labor Code, to read:

28. Whenever the term "independent medical examiner" is used in this code, the term shall mean "qualified medical evaluator."

SEC. 9. Section 55.5 is added to the Labor Code, to read:

55.5. (a) There is in the Department of Industrial Relations, a Health and Safety Commission, consisting of six members. The director shall appoint three members representing organized labor, including one worker who has been injured on the job, and three members representing employers. No action of the commission shall be valid unless concurred in by not less than two members representing organized labor and two members representing employers.

(b) The commission shall review and approve applications from employers and employee organizations for grants to assist in establishing effective occupational injury and illness prevention programs. The commission shall establish policies for the evaluation of these applications and shall give priority to applications proposing to target high-risk industries and occupations, such as those with high injury or illness rates, and those in which employees are exposed to one or more hazardous substance or conditions or where there is a demonstrated need for research to determine effective strategies for the prevention or occupational illnesses or injuries. The commission may utilize department staff it deems necessary.

(c) Civil and administrative penalties assessed pursuant to Sections 129.5 and 4624 shall be deposited in the Workplace Health and Safety Revolving Fund, which is hereby created in the State Treasury. Proceeds of the fund shall, when appropriated by the Legislature, be expended by the department, upon approval by the commission, for funding the grants under subdivision (b).

SEC. 9.5. Section 62.5 is added to the Labor Code, to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation provisions set forth in this division and Division 4 (commencing with Section 3200), other than the activities

financed pursuant to Section 3702.5, and shall not be used for any other purpose.

(b) The fund shall consist of money from the General Fund appropriated for these purposes, and assessments made pursuant to this section. Assessments may be levied only if the amount appropriated from the General Fund for the purposes specified in subdivision (a) exceeds fifty-six million fifty-seven thousand dollars ($56,057,000), adjusted annually for changes in the costs of living and population as provided in Article XIII B of the California Constitution.

(c) Whenever the total amount appropriated from the Workers' Compensation Administration Revolving Fund, as reflected in the Budget Act for a fiscal year, exceeds the General Fund appropriation in that fiscal year, as reflected in the Budget Act, and the General Fund appropriation meets the criteria of subdivision (b), the director shall levy an assessment upon all employers as defined in Section 3300 The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

SEC. 10. Section 110 of the Labor Code is amended to read·

110. As used in this chapter:

(a) "Appeals board" means the Workers' Compensation Appeals Board. The title of a member of the board is "commissioner."

(b) "Administrative director" means the Administrative Director of the Division of Workers' Compensation.

(c) "Division" means the Division of Workers' Compensation.

SEC. 11. Section 111 of the Labor Code is amended to read:

111. (a) The Workers' Compensation Appeals Board, consisting of seven members, shall exercise all judicial powers vested in it under this code. In all other respects, the Division of Workers' Compensation is under the control of the administrative director and, except as to those duties, powers, jurisdiction, responsibilities, and purposes as are specifically vested in the appeals board, the administrative director shall exercise the powers of the head of a department within the meaning of Article 1 (commencing with Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code with respect to the Division of Workers' Compensation which shall include supervision of, and responsibility for, personnel, and the coordination of the work of the division, except personnel of the appeals board.

(b) The administrative director shall prepare and submit, on March 1 of each year, a report to the Governor and the Legislature covering the activities of the division during the prior year. The report shall include recommendations for improvement and the need, if any, for legislation to enhance the delivery of compensation to injured workers. The report shall include data on penalties imposed on employers or insurers due to delays in compensation or notices, or both, by category of penalty imposed.

SEC. 12. Section 112 of the Labor Code is amended to read:

112. The members of the appeals board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members shall be six years and they shall hold office until the appointment and qualification of their successors.

Five of the members of the appeals board shall be experienced attorneys at law admitted to practice in the State of California. The other two members need not be attorneys at law. All members shall be selected with due consideration of their judicial temperament and abilities. Each member shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 13. Section 117 of the Labor Code is amended to read:

117. The administrative director may appoint an attorney licensed to practice law in the state as counsel to the division.

SEC. 14. Section 122 of the Labor Code is amended to read:

122. The Industrial Medical Council shall appoint a medical director who shall possess a physician's and surgeon's certificate granted under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. The medical director shall employ medical assistants who shall also possess physicians' and surgeons' certificates and other staff necessary to the performance of his or her duties and the duties of the council. The salaries for the medical director and his or her assistants shall be fixed by the Department of Personnel Administration, commensurate with the salaries paid by private industry to medical directors and assistant medical directors.

SEC. 15. Section 123.5 of the Labor Code is amended to read:

123.5. Workers' compensation judges employed by the administrative director pursuant to this chapter shall be taken from an eligible list of attorneys licensed to practice law in this state, having the qualifications prescribed by the State Personnel Board. In establishing eligible lists for this purpose, state civil service examinations shall be conducted in accordance with the State Civil Service Act (Part 2 (commencing with Section 189500) of Division 5 of Title 2 of the Government Code). Every workers' compensation judge shall maintain membership in the State Bar of California during his or her tenure.

A workers' compensation judge may not receive his or her salary as a workers' compensation judge while any cause before the workers' compensation judge remains pending and undetermined

for 90 days after it has been submitted for decision.

SEC. 16. Section 124 of the Labor Code is repealed.

SEC. 17. Section 124 is added to the Labor Code, to read:

124. (a) In administering and enforcing this division and Division 4 (commencing with Section 3200), the division shall protect the interests of injured workers who are entitled to the timely provision of compensation.

(b) There is within the division an Office of Benefit Assistance and Enforcement and an Office of Benefit Determination, each of which shall be headed by a deputy administrative director appointed by and serving at the pleasure of the administrative director. These offices shall have the following duties:

(1) The Office of Benefit Assistance and Enforcement shall provide those services previously performed by the Claims Bureau and the Information and Assistance Bureau and shall be responsible for the enforcement of the civil penalty provisions of Section 129.5. Any party may consult with, or seek the advice of, the office.

(2) The Office of Benefit Determination shall provide those services previously performed by the Disability Evaluation Bureau and the Rehabilitation Bureau. It shall coordinate its activities with the Office of Benefit Assistance and Enforcement in assuring the prompt delivery of compensation to injured workers and advise the Industrial Medical Council, on a form promulgated by the council, whether individual qualified medical evaluators have prepared formal medical evaluations which can be satisfactorily rated by the office.

(c) Forms and notices required to be given to employees by the division or the appeals board shall be in English and Spanish.

SEC. 18. Section 129 of the Labor Code is amended to read:

129. (a) To make certain that injured workers, and their dependents in the event of their death, receive promptly and accurately the full measure of compensation to which they are entitled , the Office of Benefit Assistance and Enforcement shall audit insurers, self-insured employers, and third-party administrators to determine if they have met their obligations under this code. At least half of the audit subjects shall be selected at random, and the remaining subjects shall be selected pursuant to subdivision (b). The results of audits of insurers shall be provided to the Insurance Commissioner and the results of audits of self-insured employers and third-party administrators shall be provided to the Director of Industrial Relations. Nothing in this section shall restrict the authority of the Director of Industrial Relations or the Insurance Commissioner to audit their licensees.

(b) The Office of Benefit Assistance and Enforcement shall establish priorities for audits based on information obtained from the Benefit Notice program established under Section 138.4, through information and assistance services and other factual information that indicates an insurer, self-insured employer, or third-party adminstrator is failing to meet its obligations under this division or

Division 4 (commencing with Section 3200) or the regulations of the administrative director.

(c) If, as a result of an audit, the Office of Benefit Assistance and Enforcement determines that any compensation, interest, or penalty is due and unpaid to an employee or dependent, the administrative director shall issue and cause to be served upon the insurer, self-insured employer, or third-party administrator a notice of assessment detailing the amounts due and unpaid in each case, and shall order the amounts paid to the person entitled thereto. The notice of assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code A copy of the notice of assessment shall also be sent to the affected employee or dependent.

If the amounts are not paid within 30 days after service of a notice of assessment, the employer shall also be liable for reasonable attorney's fees necessarily incurred by the employee or dependent to obtain amounts due. This 30-day period shall be tolled during any appeal to the administrative director under subdivision (e) of Section 129.5. The administrative director shall advise each employee or dependent still owed compensation after this 30-day period of his or her rights with respect to the commencement of proceedings to collect the compensation owed. Amounts unpaid because the person entitled thereto cannot be located shall be paid to the Workplace Health and Safety Revolving Fund.

(d) A determination by the Office of Benefit Assistance and Enforcement or the administrative director that an amount is or is not due to an employee or dependent shall not in any manner limit the jurisdiction or authority of the appeals board to determine the issue.

SEC. 19. Section 129.5 is added to the Labor Code, to read:

129.5. (a) The Office of Benefit Assistance and Enforcement shall assess an administrative penalty against an insurer, self-insured employer, or third-party administrator for any of the following:

(1) Failure to comply with the notice of assessment issued pursuant to subdivision (c) of Section 129 within 15 days of receipt.

(2) Failure to pay when due the undisputed portion of an indemnity payment, the reasonable cost of medical treatment of an injured worker, or a charge or cost of implementing an approved vocational rehabilitation plan.

(3) Failure to comply with any rule or regulation of the administrative director.

(b) The administrative director shall promulgate regulations establishing a schedule of violations and the amount of the administrative penalty to be imposed for each type of violation. The schedule shall provide for imposition of a penalty of up to one hundred dollars ($100) for each violation of the least serious type and for imposition of penalties in progressively higher amounts for more serious types of violations, with the penalty for the most serious types of violations to be set at up to five thousand dollars ($5,000) per

violation. The administrative director is authorized to impose penalties pursuant to rules and regulations which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation.

(2) The good faith of the insurer, self-insured employer, or third-party administrator.

(3) The history of previous violations, if any.

(4) The frequency of the violations.

(c) The notice of penalty assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. The notice shall be in writing and shall describe the nature of the violation, including reference to the statutory provision or rule or regulation alleged to have been violated. The notice shall become final and the assessment shall be paid unless contested within 15 days of receipt by the insurer, self-insured employer, or third-party administrator.

(d) In addition to the penalty assessment permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars ($100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed and has performed with a frequency as to indicate a general business practice any of the following:

(1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.

(2) Refused to comply with known and legally indisputable compensation obligations.

(3) Discharged or administered compensation obligations in a dishonest manner.

(4) Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

Upon a second or subsequent finding, the administrative director shall refer the matter to the Insurance Commissioner or Director of Industrial Relations and request that a hearing be conducted to determine whether the certificate of authority, certificate of consent to self-insure, or certificate of consent to administer claims of self-insured employer, as the case may be, should be revoked.

(e) An insurer, self-insured employer, or third-party administrator may file a written request for a conference with the administrative director within seven days after receipt of the notice of penalty assessment issued pursuant to subdivisions (a) or (d). Within 15 days of the conference, the administrative director shall issue a notice of findings and serve it upon the contesting party by registered or certified mail. Any amount found due by the administrative director shall become due and payable 30 days after receipt of the notice of findings. A writ of mandate may be taken

from the findings to the appropriate superior court upon the execution by the contesting party of a bond to the state in the principal sum that is double the amount found due and ordered by the administrative director, on the condition that the contesting party shall pay any judgment and costs rendered against it for the amount.

(f) Nothing in this section shall create nor eliminate a civil cause of action for the employee and his or her dependents.

(g) All moneys collected under this section shall be deposited in the State Treasury and credited to the Workplace Health and Safety Revolving Fund.

SEC. 20. Section 132a of the Labor Code is amended to read:

132a. It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1)

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before a workers' compensation judge, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made known his or her intention to testify in another employee's case before a workers' compensation judge, is guilty of a misdemeanor.

Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work

benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor.

SEC. 21. Section 139 of the Labor Code is repealed.

SEC. 22. Section 139 is added to the Labor Code, to read:

139. (a) There is within the division an Industrial Medical Council consisting of nine doctors of medicine, at least one of whom shall be a psychiatrist and at least one of whom shall specialize in occupational medicine, two doctors of osteopathy, two doctors of chiropractic, and one doctor of psychology, all of whom shall be licensed to practice in this state. The administrative director shall be an ex officio, nonvoting member of the council, and the medical director of the division shall serve as executive secretary of the council.

(b) The Governor shall appoint four doctors of medicine, two doctors of osteopathy, and one doctor of chiropractic to the council. The Senate Committee on Rules shall appoint the psychiatrist and the doctor of chiropractic. The Speaker of the Assembly shall appoint the occupational medicine specialist and the doctor of psychology. The Speaker of the Assembly and the Senate Committee on Rules, alternately, shall appoint the remaining doctor of medicine. The Speaker of the Assembly shall make the initial appointment of this member.

The term of office of members of the council shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the doctors of medicine appointed by the Governor shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993, and the initial terms of three of the doctors of medicine appointed by the Speaker of the Assembly shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993. The initial term of one doctor of osteopathy and the doctor of psychology shall both expire on December 31, 1991. Any vacancy shall be filled by the original appointing authority for the unexpired term.

(c) The nine doctors of medicine and the doctors of osteopathy of the council shall represent medical specialities concerned with the treatment of industrial injury and disease. The doctors of medicine shall be appointed after consultation with the statewide and local associations of the medical profession. The doctors of osteopathy and psychology shall be appointed after consultation with the statewide

associations of the osteopathic medical profession and psychologists. The doctors of chiropractic shall be appointed after consultation with statewide and local associations of the chiropractic profession.

(d) Any physician of a type which must be represented pursuant to subdivision (a) may be considered for appointment to the council if the following qualifications are met:

(1) A physician and surgeon shall be board certified in his or her specialty or, if a doctor of chiropractic, shall be certified in a chiropractic specialty recognized and approved by the California Chiropractic Association, the International Chiropractors Association of California, or the American Chiropractic Association, or if a psychologist, shall be board certified in clinical psychology, or hold a doctoral degree in psychology from an accredited university or professional school and have not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(2) The physician shall be experienced in treating and evaluating industrial injuries and shall maintain an active practice, of which at least 20 percent of the total practice time is devoted to direct patient treatment.

(e) In addition to the promulgation of rules and regulations under subdivision (i) of Section 139.2, members of the council shall, within the scope of each member's professional training, do all of the following:

(1) Maintain liaisons with the medical, osteopathic, chiropractic, and psychological professions.

(2) Counsel and assist the administrative director and perform other duties as the administrative director may request.

(3) Assist in recruiting physicians for the medical bureau of the division and recommend physicians, as specified in subdivision (b) of Section 139.2, for appointment as qualified medical evaluators.

(4) Assist in developing guidelines for the determination of disputed questions of clinical fact.

(5) Suggest standards for improving care furnished to injured employees.

(6) Undertake continuing studies of developments in the field of rehabilitation, and continuously inform treating physicians of these developments.

(7) Recommend reasonable levels of fees for physicians performing services under this division.

(8) In coordination with the administrative director, monitor and measure changes in the cost and frequency of the most common medical services.

(f) The council shall appoint an advisory committee on psychiatric injuries with both psychologists and psychiatrists as members and shall consider the advisory committee's recommendations concerning psychiatric injuries. The council may appoint advisory committees for other specialties as may be necessary to the performance of its duties.

(g) No action of the council shall be taken unless concurred in by not less than eight members present and voting at a meeting.

(h) Members of the council shall receive actual necessary traveling expenses and a per diem allowance of one hundred dollars ($100) for each day spent in meetings of the council.

SEC. 23. Section 139.2 is added to the Labor Code, to read:

139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues. The appointments shall be for four-year terms.

(b) The council shall appoint as qualified medical evaluators every physician, as defined in Section 3209.3, who is licensed to practice in this state and who meets the following requirements:

(1) Devotes at least 20 percent of total practice time to providing medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be a qualified medical evaluator.

(2) Is board certified or qualified for board certification in his or her specialty by an appropriate recognized board or, if a chiropractor, is certified in disability evaluation by an appropriate professional chiropractic association, or if a psychologist, is board certified in clinical psychology, or holds a doctoral degree in psychology from an accredited university or professional school and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, or served as an agreed medical evaluator on eight or more occassions prior to January 1, 1970.

(3) The council shall promulgate standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (1). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this paragraph.

(c) The evaluator, upon request, shall be reappointed if he or she meets the qualifications for appointment and meets all of the following criteria:

(1) Has completed formal medical evaluations within a reasonable time after assignment.

(2) Has not had more than 30 percent of his or her evaluations of unrepresented employees which were considered by a workers' compensation judge at a contested hearing rejected by the judge during the most recent four-year period during which the physician served as a qualified medical evaluator. If the judge does not rely on the qualfied medical evaluator, the judge shall make a specific finding to that effect, and shall give notice to the evaluator.

(3) Has completed within the previous 24 months at least eight hours of continuing education in disability evaluation approved by the Industrial Medical Council.

(4) Has not been terminated under subdivision (d) or terminated or suspended under subdivision (j) during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any of these criteria, the Industrial Medical Council may in its discretion reappoint or deny reappointment according to regulations promulgated by the council. In no event may a physician who has been terminated under subdivision (d) be reappointed.

(d) Except as provided in subdivisions (j) and (k), the evaluator shall not be terminated during his or her term of office unless his or her licensing authority has suspended, revoked, or terminated his or her license to practice in California.

(e) The Industrial Medical Council shall furnish a physician, upon request, a written statement of its reasons for termination of or for denying appointment or reappointment as a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the Industrial Medical Council shall review its decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(f) The council shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for formal medical evaluations.

(g) The medical director shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel pursuant to Section 4061 or 4062. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a formal medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request. The Industrial Medical Council shall promulgate a form which shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, and number of years in practice, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: "You have the right to consult with an attorney prior to selecting the doctor to prepare your evaluation. If your claim eventually goes to court, the judge will consider the evaluation prepared by the doctor you select to decide your claim." When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators of the appropriate specialty type as recognized by an appropriate, recognized board within the general

geographic area of the employee's residence, and shall have no authority to exclude qualified medical evaluators based on any other criteria. When the medical director determines that an employee has requested an evaluation by a type of specialist which is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(h) The medical director shall continuously review the quality of formal medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of qualified medical evaluations and determinations.

(i) After public hearing pursuant to Section 5307.4, the council shall promulgate rules and regulations concerning the following medical issues:

(1) Standards governing the time frames within which formal medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. The time frame for initial formal medical evaluations to be prepared and submitted shall be no more than 45 days after the evaluator has seen the employee or otherwise commenced the formal medical evaluation procedure. The council shall develop a time frame governing extension of the 45-day period in cases where the evaluator has not received test results or consulting physician's evaluations in time to meet the 45-day deadline. The council shall develop time frames governing availability of qualified medical evaluators. These time frames shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury. In order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomic loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by

medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of disputed medical issues specified in Sections 4061 and 4062.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(j) The Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (k), determines that a qualified medical evaluator:

(1) Has violated Section 139.3 on Section 4628.

(2) Has failed to follow the medical procedures established by the council pursuant to subdivision (i) of Section 139.2 in 10 or more formal medical evaluations during a 12-month period.

(3) Has been unavailable to conduct examinations for formal medical evaluations within the time frames established by the council pursuant to subdivision (i) of Section 139.2 on 10 or more occasions during a 12-month period.

(k) The council shall cite the qualified medical evaluator for a violation listed in subdivision (j) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (j), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training.

SEC. 23.5. Section 139.3 is added to the Labor Code, to read.

(a) Neither an agreed nor a qualified medical evaluator, nor a physician who consults with an agreed or qualified medical examiner, shall offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referred consultation.

(b) It shall not be unlawful for an agreed or qualified medical evaluator to refer a person to any laboratory, pharmacy, clinic, or health care facility solely because the qualified medical evaluator has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, but the referral shall be prohibited if there was no valid medical need for the referral.

(c) An agreed or qualified medical evaluator who refers to or seeks consultation from an organization in which the agreed or qualified medical examiner has a significant beneficial interest shall

disclose this interest to the parties in writing at the time of the referral and in the final medical evaluation. For the purposes of this section, the term "significant beneficial interest" shall have the same meaning as set forth in Section 654.2 of the Business and Professions Code.

(d) A physician serving as an agreed or qualified medical evaluator who is found to have committed a violation of this section may be terminated, suspended, or placed on probation by the Industrial Medical Council.

SEC. 24. Section 139.5 of the Labor Code is amended to read:

139.5. (a) The administrative director shall establish within the Office of Benefit Determination a vocational rehabilitation unit, which shall include appropriate professional staff, and which shall have the following duties:

(1) To foster, review, and approve vocational rehabilitation plans developed by a qualified rehabilitation representative of the employer, insurer, state agency, or employee.

(2) To develop rules and regulations, to be promulgated by the administrative director, which would expedite and facilitate the identification, notification and referral of industrially injured employees to vocational rehabilitation services.

(3) To coordinate and enforce the implementation of vocational rehabilitation plans.

(4) To develop a fee schedule, to be promulgated by the administrative director, governing reasonable fees for vocational rehabilitation services. The initial fee schedule promulgated under this paragraph shall be designed to reduce the cost of vocational rehabilitation services by 10 percent.

(5) To develop standards, to be promulgated by the administrative director, for governing the timeliness and the quality of vocational rehabilitation services.

(b) The salaries of the personnel of the vocational rehabilitation unit shall be fixed by the State Personnel Board.

(c) When an employee is determined to be medically eligible and chooses to enroll in a vocational rehabilitation program, he or she shall continue to receive temporary disability indemnity payments, and, after his or her medical condition becomes permanent and stationary, a maintenance allowance. The employee also shall receive living expenses necessitated by the vocational rehabilitation services, together with all reasonable and necessary vocational training, at the expense of the employer.

(d) The amount of the maintenance allowance due under subdivision (c) shall be two-thirds of the employee's average weekly earnings at the date of injury payable as follows:

(1) The amount the employee would have received as continuing temporary disability indemnity, but not more than two hundred thirty-five dollars ($235) a week for injuries occurring on or after January 1, 1990, and not more than two hundred forty-seven dollars ($247) a week for injuries occurring on and after January 1, 1991.

(2) At the employee's option, an additional amount from permanent disability indemnity due or payable, sufficient to provide the employee with a maintenance allowance equal to two-thirds of the employee's average weekly earnings at the date of injury subject to the limits specified in subdivision (a) of Section 4453 and the requirements of Section 4661.5. In no event shall temporary disability indemnity and a maintenance allowance by payable concurrently.

If the employer disputes the treating physician's determination of medical eligibility, the employee shall continue to receive that portion of the maintenance allowance payable under paragraph (1) pending final determination of the dispute. If the employee disputes the treating physician's determination of medical eligibility and prevails, the employee shall be entitled to that portion of the maintenance allowance payable under paragraph (1) retroactive to the date of the employee's request for vocational rehabilitation services.

(e) No provision of this section nor of any rule, regulation, or vocational rehabilitation plan developed or promulgated under this section nor any benefit provided pursuant to this section shall apply to an injured employee whose injury occurred prior to January 1, 1975. Nothing in this section shall affect any plan, benefit, or program authorized by this section as added by Chapter 1513 of the Statutes of 1965 or as amended by Chapter 83 of the Statutes of 1972.

(f) The time within which an employee may request vocational rehabilitation services is set forth in Sections 5405.5, 5410, and 5803.

SEC. 25. Section 3208.3 is added to the Labor Code, to read:

3208.3. (a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (i) of Section 139.2.

(b) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were responsible for at least 10 percent of the total causation from all sources contributing to the psychiatric injury.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

SEC 25.5.

SEC. 2. Section 3362 5 is added to the Labor Code, to read:

3362.5. Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, or a reserve police officer of a regional park district or a transit district, and is assigned specific police functions by that authority, the person is an employee of the county, city, city and county, town, or district for the purposes of this division while performing duties as a peace officer if the person is not performing services as a disaster service worker for purposes of Chapter 10 (commencing with Section 4351)

SEC. 26. Section 3364 of the Labor Code is amended to read:

3364. Notwithstanding subdivision (d) of Section 3352, a volunteer, unsalaried member of a sheriff's reserve in any county who is not deemed an employee of the county under Section 3362.5, shall, upon the adoption of a resolution of the board of supervisors declaring that such a member is deemed an employee of the county for the purposes of this division shall be entitled to the workers' compensation benefits provided by this division for any injury sustained by him or her while engaged in the performance of any active law enforcement service under the direction and control of the sheriff.

SEC. 26.5. Section 3501 of the Labor Code is amended to read:

3501. (a) A child under the age of 18 years, or over that age but physically or mentally incapacitated from earning shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent, there being no surviving totally dependent parent.

(b) A spouse to whom a deceased employee is married at the time of death shall be conclusively presumed to be wholly dependent for support upon the deceased employee if the surviving spouse earned thirty thousand dollars ($30,000) or less in the twelve months immediately preceding the death.

SEC. 27. Section 3702.6 of the Labor Code is amended to read:

3702.6. The Director of Industrial Relations shall establish an audit program addressing the adequacy of estimates of future liability of claims for all self-insured employers, except the state, and shall ensure that all self-insured employers are audited within a three-year cycle by the Office of Self Insurance Plans.

SEC. 28. Article 2 (commencing with Section 4061) is added to Chapter 7 of Part 1 of Division 4 of the Labor Code, to read:

Article 2. Determination of Medical Issues

4061. (a) Together with the last payment of temporary disability indemnity, the employer shall, in a form prescribed by the administrative director pursuant to Section 138.4, provide the employee one of the following:

(1) Notice that no permanent disability indemnity will be paid because the employer alleges the employee has no permanent impairment or limitations resulting from the injury. The notice shall include information concerning how the employee may obtain a formal medical evaluation pursuant to subdivision (c) if he or she disagrees with the position taken by the employer.

(2) Notice that permanent disability indemnity may be or is payable, but that the amount cannot be determined because the employee's medical condition is not yet permanent and stationary. The notice shall advise the employee that his or her medical

condition will be monitored until it is permanent and stationary, at which time the necessary evaluation will be performed to determine the existence and extent of permanent impairment and limitations for the purpose of rating permanent disability and to determine the need for continuing medical care. If an employee is provided notice pursuant to this paragraph and the employer later takes the position that the employee has no permanent impairment or limitations resulting from the injury, the employer shall, within 14 days of the determination to take this position, provide the employee with the notice specified in paragraph (1).

(3) Notice that permanent disability indemnity may be or is payable and that the employer has received information indicating that the employee's condition is now permanent and stationary.

(b) Each notice required by subdivision (a) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an attorney.

(c) If the employee requests a formal medical evaluation after the employer notifies the employee that no permanent disability indemnity will be paid pursuant to paragraph (1) of subdivision (a), and the employee is represented by an attorney, the employer shall seek agreement with the employee on a physician to prepare a formal medical evaluation of the employee's permanent impairment and limitations and any need for continuing medical care resulting from the injury If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed to by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. After the period to reach agreement has expired, each party may select a qualified medical evaluator to conduct the formal medical evaluation. The parties may not obtain reports from more than one qualified medical evaluator for each appropriate medical specialty or subspeciality. Each report shall be reasonable and necessary for a complete evaluation. This limitation shall not apply to the following:

(1) Reports by treating physicians.

(2) Where the appeals board determines there is good cause to permit a party to obtain an evaluation from another physician.

If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the formal medical evaluation. The employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a formal medical evaluation of the employee's permanent impairment and limitations and any need for continuing medical care resulting from the injury.

(d) When the employer has reason to believe that the employee has or may have permanent impairment or limitations, the employer

shall, within five working days after receipt of information indicating the employee's medical condition is permanent and stationary, serve on the employee an explanation and description, as prescribed by the administrative director under Section 138.4, of the procedures for evaluation of permanent impairment and limitations and any need for continuing medical care resulting from the injury. If the employee is represented by an attorney, the employee and employer shall seek agreement on a physician to evaluate the existence and extent of permanent impairment and limitations and any need for continuing medical care resulting from the injury. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. After the period to reach agreement has expired, each party may select a qualified medical evaluator to conduct the formal medical evaluation. The parties may not obtain reports from more than one qualified medical evaluator for each appropriate medical speciality or subspeciality. Each report shall be reasonable and necessary for a complete evaluation. This limitation shall not apply to the following:

(1) Reports by treating physicians

(2) Where the appeals board determines there is good cause to permit a party to obtain an evaluation from another physician.

If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the formal medical evaluation. The employer shall immediately request the medical director, on a form prescribed for that purpose, to assign a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a formal medical evaluation of permanent impairment and limitations and any need for continuing medical care resulting from the injury

(e) The employee shall be responsible for making an appointment with the agreed or qualified medical evaluator. At the appointment, the evaluator shall give the employee a brief description of his or her education and training and shall give the employee a brief opportunity to ask questions concerning the evaluation process and the evaluator's background. The employee shall then participate in the evaluation as requested by the evaluator unless the employee has good cause to discontinue the evaluation. For purposes of this subdivision, "good cause" shall include evidence that the evaluator is biased against the employee because of his or her race, sex, national origin, religion, or sexual preference or evidence that the evaluator has requested the employee to submit to an unnecessary medical examination or procedure. If the employee terminates the evaluation, he or she shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a formal medical evaluation. If the appeals board subsequently determines that the employee did not have good

cause to terminate the evaluation, the cost of the evaluation shall be deducted from any award the employee obtains.

(f) Upon selection or assignment pursuant to subdivisions (c) or (d), the medical evaluator shall perform a formal medical evaluation according to the procedures promulgated by the Industrial Medical Council under paragraphs (2) and (3) of subdivision (i) of Section 139.2 and summarize the medical findings on a form prescribed by the Industrial Medical Council.

(g) The agreed or qualified medical evaluator shall consult with a physician in an appropriate specialty who is a qualified medical evaluator or who is eligible for appointment as a qualified medical evaluator when reasonably necessary to produce a formal medical evaluation which meets the standards promulgated by the Industrial Medical Council. The agreed or qualified medical evaluator may also consult with a physician who is not a qualified medical evaluator, regardless of whether or not the physician is licensed to practice in California only, if the physician possesses necessary expertise in a specialty which does not normally treat without which a complete and accurate formal medical evaluation cannot be obtained. If the employee or the employer believes that the evaluator has not consulted with a physician or physicians whose expertise is necessary to provide a complete and accurate evaluation, the employee or the employer may request that the medical director direct the evaluator to consult with a physician in an appropriate specialty to address issues outside the expertise of the evaluator. This request shall be in writing, shall specify the reasons for the request, and shall be served on the other party. The medical director shall grant the employer's or employee's request if the consultation requested is necessary to provide a complete and accurate evaluation The Industrial Medical Council shall adopt a regulation determining how long the medical director shall have to grant or deny these requests.

(h) The agreed or qualified medical evaluator shall serve the formal medical evaluation and the summary form on the employee, employer, and the Office of Benefit Determination. Within 20 days of receipt of the formal medical evaluation, the Office of Benefit Determination shall calculate the permanent disability rating according to Section 4660 and serve the rating on the employee and employer.

(i) Any formal medical evaluation concerning an unrepresented employee which indicates that part or all of an employee's permanent impairment or limitations may be subject to apportionment pursuant to Sections 4663 or 4750 shall first be submitted by the Office of Benefit Determination to a workers' compensation judge who may refer the report back to the agreed or qualified medical evaluator for correction or clarification if the judge determines the proposed apportionment is inconsistent with the law.

(j) Within 30 days of receipt of the rating, if the employee is unrepresented, the employee or employer may request that the Office of Benefit Determination reconsider the recommended

rating or obtain additional evaluations from an agreed or qualified medical evaluator to address issues not addressed or not completely addressed in the original formal medical evaluation or not prepared in accord with the procedures of the Industrial Medical Council promulgated under paragraph (2) or (3) of subdivision (i) of Section 139.2. This request shall be in writing, shall specify the reasons the rating should be reconsidered, and shall be served on the other party. If the administrative director finds the formal medical evaluation is not complete or not in compliance with the required procedures, the administrative director shall return the report to the agreed or qualified medical evaluator for appropriate action as the administrative director instructs. Upon receipt of the agreed or qualified medical evaluator's final formal medical evaluation and summary form, the Office of Benefit Determination shall recalculate the permanent disability rating according to Section 4669 and serve the rating, the formal medical evaluation, and the summary form on the employee and employer.

(k) If a formal medical evaluation from an agreed medical evaluator or a qualified medical evaluator selected from a three-member panel resolves any issue so as to require an employer to provide compensation, the employer shall commence the payment of compensation or file an application for adjudication of claim. If the employee and employer agree to a stipulated findings and award as provided under Section 5702 or to compromise and release the claim under Chapter 2 (commencing with Section 5000) of Part 3, or if the employee wishes to commute the award under Chapter 3 (commencing with Section 5100) of Part 3, the appeals board shall first determine whether the agreement or commutation is in the best interests of the employee and whether the proper procedures have been followed in determining the permanent disability rating. The Office of Benefit Determination shall promulgate a form to notify the employee, at the time of service of any rating under this section, of the options specified in this subdivision, the potential advantages and disadvantages of each option, and the procedure for disputing the rating.

(*l*) No issue relating to the existence or extent of permanent impairment and limitations or the need for continuing medical care resulting from the injury may be the subject of an application for adjudication of claim unless there has first been a finding on the issue by an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations or need for continuing medical care resulting from the injury shall be obtained prior to service of the formal medical evaluation on the employee and employer if the employee is unrepresented, or prior to the attempt to select an agreed medical evaluator if the employee is represented. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. However, the testimony,

records, and reports offered by the treating physician or physicians who treated the employee for the injury and formal medical evaluations prepared by a qualified medical evaluator selected by an unrepresented employee from a three-member panel shall be admissible.

4062. (a) This section shall apply only to employees who are represented by an attorney.

(b) If either the employee or employer objects to a medical determination made by the treating physician concerning the permanent and stationary status of the employee's medical condition, the employee's preclusion or likely preclusion to engage in his or her usual occupation, the extent and scope of medical treatment, or the existence of new and further disability, the objecting party shall notify the other party in writing of the objection. Parties shall seek agreement with the other party on a physician to prepare a report resolving the disputed issue. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. After the period to reach agreement has expired, each party may select a qualified medical evaluator to conduct the formal medical evaluation. The parties may not obtain reports from more than one qualified medical evaluator for each appropriate medical specialty or subspecialty. Each report shall be reasonable and necessary for a complete evaluation. This limitation shall not apply to the following:

(1) Reports by treating physicians.

(2) Where the appeals board determines there is good cause to permit a party to obtain an evaluation from another physician.

(c) The agreed or qualified medical evaluator shall consult with a physician in a appropriate specialty who is a qualified medical evaluator or who is eligible for appointment as a qualified medical evaluator when reasonably necessary to produce a formal medical evaluation which meets the standards promulgated by the Industrial Medical Council. The agreed or qualified medical evaluator may also consult with a physician who is not a qualified medical evaluator, regardless of whether or not the physician is licensed to practice in California, only if the physician possesses necessary expertise in a specialty which does not normally treat without which a complete and accurate formal medical evaluation cannot be obtained. If the employee or the employer believes that the evaluator has not consulted with a physician or physicians whose expertise is necessary to provide a complete and accurate evaluation, the employee or the employer may request that the medical director direct the evaluator to consult with a physician in an appropriate specialty to address issues outside the expertise of the evaluator. This request shall be in writing, shall specify the reasons for the request, and shall be served on the other party. The medical director shall grant the employer's

or employee's request if the consultation requested is necessary to provide a complete and accurate evalulation. The Industrial Medical Council shall adopt a regulation determining how long the medical director shall have to grant or deny such requests.

(d) Upon completing a determination of the disputed medical issue, the agreed or qualified medical evaluator shall summarize the medical findings on a form prescribed by the Industrial Medical Council and serve the formal medical evaluation and the summary form on the employee, employer, and administrative director.

(e) No medical issue specified in subdivision (a) may be the subject of an application for adjudication of claim unless there has first been an evaluation by an agreed or qualified medical evaluator.

(f) With the exception of a report or reports prepared by the treating physician or physicians, no report determining disputed medical issues set forth in subdivision (b) shall be obtained prior to service of the formal medical evaluation of the agreed or qualified medical evaluator on the employee and employer. Reports obtained in violation of this prohibition shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. However, the testimony, records, and reports offered by the treating physician or physicians who treated the employee for the injury shall be admissible.

4062 1. If an employee is not represented by an attorney, the employer shall not seek agreement with the employee on an agreed medical evaluator, nor shall an agreed medical evaluator prepare the formal medical evaluation on any issues in dispute.

4062.2. (a) As part of their agreement on an evaluator, the parties shall agree what information is to be provided to the agreed medical evaluator. Except as provided in subdivision (b), any party may provide to the qualified medical evaluator selected by an unrepresented worker from a three-member panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(b) Information which a party proposes to provide to the qualified medical evaluator shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

(c) In the formal medical evaluation, the agreed or qualified medical evaluator shall identify the following:

(1) All information received from the parties.

(2) All information reviewed in preparation of the report.

(3) All information relied upon in the formulation of his or her opinion.

(d) All communications with an agreed or qualified medical evaluator before a formal medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the agreed or qualified medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

(e) Ex parte communication with the agreed or qualified medical evaluator is prohibited. If a party communicates with an agreed or qualified medical evaluator in violation of subdivision (d), the aggrieved party may elect to terminate the formal medical evaluation and seek a new evaluation from another qualified medical evaluator, or proceed with the initial evaluation. The party making the prohibited communication shall be subject to being charged with contempt before the appeals board and shall be liable for the costs incurred by the aggrieved party as a result of the prohibited communication, including the cost of the formal medical evaluation, additional discovery costs, and attorney's fees for related discovery.

4062.5. If a qualified medical evaluator selected by an unrepresented employee from a three-member panel fails to complete the formal medical evaluation within the time frames established by the Industrial Medical Council pursuant to paragraph (1) of subdivision (i) of Section 139.2, the employee shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a formal medical evaluation. Neither the employee nor the employer shall have any liability for payment for the formal medical evaluation which was not completed within the required time frames unless the employee, on a form prescribed by the Industrial Medical Council, waives his or her right to a new evaluation and elects to accept the original evaluation even though it was not completed within the required time frames.

4063. If a formal medical evaluation from an agreed medical evaluator or a qualified medical evaluator selected from a three member panel resolves any issue so as to require an employer to provide compensation, the employer shall commence the payment of compensation or file an application for adjudication of claim.

4064. (a) The employer shall pay the cost of medical evaluations reasonably, actually, and necessarily incurred, pursuant to subdivisions (c) and (d) of Section 4061 or subdivision (b) of Section 4062. The employer also shall pay the cost of rebuttal reports reasonably, actually, and necessarily incurred by an unrepresented employee to rebut the findings of the qualified medical evaluator selected from a three-member panel, provided, however, that the employee may not obtain rebuttal reports from more than one qualified medical evaluator for each appropriate medical specialty or subspecialty.

(b) The employer shall also pay the cost of consultations with other physicians in other specialties requested by the evaluators in connection with the evaluations and reports in subdivision (a).

(c) If an unrepresented employee obtains an attorney after the

evaluation in subdivision (a) (2) has been completed, the employee shall be entitled to the same reports at employer expense as an employee who has been represented from the time the dispute arose.

(d) Subject to Section 4906, if an employer files an application for adjudication and the employee is unrepresented at the time the application is filed, the employer shall be liable for any attorney's fees incurred by the employee in connection with the application for adjudication if the employee does not obtain a rebuttal report.

4065. The cost of medical evaluations obtained by the employee for the purpose of determining medical issues other than those specified in this article shall be governed by Article 2.5 (commencing with Section 4620).

4066. When the employer files an application for adjudication of claim contesting the formal medical evaluation prepared by an agreed medical evaluator under this article, regardless of outcome, the workers' compensation judge or the appeals board shall assess the employee's attorney's fees against the employer, subject to Section 4906.

4067. If the jurisdiction of the appeals board is invoked pursuant to Section 5803 upon the grounds that the effects of the injury have recurred, increased, diminished, or terminated, a formal medical evaluation shall be obtained pursuant to this article.

When an agreed or qualified medical evaluator has previously made a formal medical evaluation of the same or similar issues, the subsequent or additional formal medical evaluation shall be conducted by the same agreed or qualified medical evaluator, unless the workers' compensation judge has made a finding that he or she did not rely on the prior evaluator's formal medical evaluation or the prior evaluator is no longer qualified or readily available to prepare a formal medical evaluation, in which case Sections 4061 or 4062, as the case may be, shall apply as if there had been no prior formal medical evaluation

4067.5. This article shall become operative on January 1, 1991.

SEC. 29. Section 4453 of the Labor Code is amended to read:

4453. (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at.

(1) Not less than one hundred twenty-six dollars ($126) nor more than two hundred ninety-four dollars ($294), for injuries occurring on and after January 1, 1983.

(2) Not less than one hundred sixty-eight dollars ($168) nor more than three hundred thirty-six dollars ($336), for injuries occurring on and after January 1, 1984.

(3) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and, for temporary disability, not less than the lessor of one hundred forty-seven dollars ($147) or, if his or her average weekly earnings are between ninety-nine dollars ($99) and

one hundred thirteen dollars ($113), 1.5 times the employee's average weekly earnings, nor more than three hundred ninety-nine dollars ($399) for injuries occurring on and after January 1, 1990.

(4) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and not less than 1.5 times the employee's average weekly earnings from all employers if his or her average weekly earnings are less than one hundred eighty-nine dollars ($189) for temporary disability, nor more than five hundred four dollars ($504), for injuries occurring on and after January 1, 1991.

(b) In computing average annual earnings for purposes of permanent partial disability indemnity, except as provided in Section 4659, the average weekly earnings shall be taken at:

(1) Not less than seventy-five dollars ($75) nor more than one hundred ninety-five dollars ($195), for injuries occurring on and after January 1, 1983.

(2) Not less than one hundred five dollars ($105) nor more than two hundred ten dollars ($210), for injuries occurring on and after January 1, 1984.

(c) Between the limits specified in subdivisions (a) and (c), the average weekly earnings, except as provided in Sections 4456 to 4459, shall be arrived at as follows:

(1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.

(2) Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week; but the earnings from employments other than the employment in which the injury occurred shall not be taken at a higher rate than the hourly rate paid at the time of the injury.

(3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments.

(d) Every computation made pursuant to this section beginning January 1, 1990, shall be made only with reference to temporary disability or the permanent disability resulting from an original

injury sustained after January 1, 1990. However, all rights existing under this section on January 1, 1990, shall be continued in force. Except as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

SEC. 30. Section 4453.1 of the Labor Code is repealed.

SEC. 30.5. Section 4458.2 of the Labor Code is amended to read:

4458.2. If an active peace officer of any department as described in Section 3362 suffers injury or death while in the performance of his or her duties as a peace officer, or if a person engaged in the performance of active law enforcement service as described in Section 3366 suffers injury or death while in the performance of that active law enforcement service, or if a person registered as a reserve peace officer of any regularly organized police or sheriff's department as described in Section 3362.5 suffers injury or death while in the performance of his or her duties as a peace officer, then, irrespective of his or her remuneration from this or other employment or from both, his or her average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his or her average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

SEC. 31. Section 4460 of the Labor Code is repealed.

SEC. 31.5. Section 4600 of the Labor Code is amended to read:

4600. Medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, which is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers'

compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

This section shall become operative on July 1, 1984.

SEC. 32. Section 4624 of the Labor Code is amended to read:

4624. (a) Annually, commencing on November 1, 1986, the administrative director shall publish the range of fees for initial comprehensive industrial medical-legal reports charged by independent medical examiners, agreed medical examiners, and physicians examining for either the applicant or defendant for the 12 months ending the previous June 30.

(b) The range of charges shall be shown by five specialty categories: orthopedics, internal medicine and cardiology, neurology, psychiatry, and all others. The 80th percentile of these charges, adjusted by multiplying the 80th percentile by one plus one-half of the percentage change in the Physician Fee Index published by the California Medical Association for the 12 months ending the previous June 30, shall be shown in all instances.

(c) Charges of all physicians providing initial comprehensive industrial medical-legal reports shall be rebuttably presumed reasonable if the charges do not exceed the 80th percentile of fees in the appropriate specialty as established in subdivision (b). Charges exceeding the 80th percentile for the involved specialty may be found reasonable if accompanied by supporting information provided by the physician.

(d) For the 12-month period ending October 31, 1989, the administrative director shall select the percentile that most closely approximates a 10-percent reduction from the eightieth percentile of fees in effect for the 12-month period ending October 31, 1988. Charges for medical legal reports which do not exceed the percentile selected by the administrative director shall be rebuttably presumed reasonable during the 12-month period beginning January 1, 1990. Charges exceeding the selected percentile may be found reasonable if accompanied by supporting information provided by the physician.

(e) The percentile selected pursuant to subdivision (d) shall establish the level of fees rebuttably presumed to be reasonable for each 12-month period subsequent to October 31, 1990.

SEC. 32.5. Section 4628 is added to the Labor Code, to read:

4628. (a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

(1) Taking a complete history.

(2) Reviewing and summarizing prior medical records.

(3) Composing and drafting the conclusions of the report.

(b) The report shall disclose the name and qualifications of any person who administers, diagnostic studies.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline with the patient and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board.

(g) A medical-legal report of any physician who is assessed a civil penalty under this section shall not be admissible in any proceeding of the appeals board.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

SEC. 33. Article 2.6 (commencing with Section 4635) is added to Chapter 2 of Part 2 of Division 4 of the Labor Code, to read:

Article 2 6. Vocational Rehabilitation

4635. As used in this article:

(a) "Qualified injured worker" means an employee who meets both of the following requirements:

(1) The employee's expected permanent disability as a result of the injury, whether or not combined with the effects of a prior injury or disability, if any, permanently precludes, or is likely to preclude, the employee from engaging in his or her usual occupation or the

position in which he or she was engaged at the time of injury, hereafter referred to as "medical eligibility."

(2) The employee can reasonably be expected to return to suitable gainful employment through the provision of vocational rehabilitation services, hereafter referred to as "vocational feasibility."

(b) "Qualified rehabilitation representative" means a person capable of developing and implementing a vocational rehabilitation plan and whose experience and regular duties involve the evaluation, counseling, or placement of disabled persons, and who is familiar with this article.

(c) "Independent vocational evaluator" means a qualified rehabilitation representative, who, in addition to the requirements of subdivision (b), has one of the following qualifications:

(1) A doctorate or master's degree in vocational counseling or its equivalent and one or more years full-time experience in vocational counseling of industrially injured employees.

(2) A doctor of medicine degree and one or more years full-time experience in psychiatric or psychological evaluation of disabled adults in relation to rehabilitation counseling.

(3) A doctorate or master's degree in counseling or psychology or their equivalent and two or more years full-time employment using rehabilitation counseling techniques and conducting vocational evaluations or psychological assessments of disabled adults under the direct supervision of an independent vocational evaluator.

(4) A baccalaureate degree in any field and three or more years full-time employment using rehabilitation counseling techniques and conducting vocational evaluations or psychological assessments of disabled adults under the direct supervision of an independent vocational evaluator.

(d) "Vocational rehabilitation services" means those services required to determine if an employee can reasonably be expected to return to suitable gainful employment and those services reasonably necessary to provide an employee with the opportunity to return to suitable gainful employment. These services may include, but are not limited to, vocational and medical evaluation, counseling, job analysis, job modification assistance, retraining, including on-the-job training or training for alternative employment, formal training, academic instruction, and job placement assistance.

(e) "Vocational rehabilitation plan" means the written description of and rationale for the manner and means by which it is proposed that a qualified injured worker may be returned to suitable gainful employment. The plan may contemplate modification of the employee's occupation at the time of injury, provision for alternative work with the same employer, direct job placement assistance, on-the-job training, formal training, academic instruction, job placement assistance, or self-employment. The plan shall specify the anticipated completion date of vocational rehabilitation services and the amount and source of payments to be

made to the qualified injured workers during the pendency of the plan. The plan shall also define the responsibilities of the employee, employer, qualified rehabilitation representative, and any other parties in implementing the plan.

(f) "Suitable gainful employment" means that employment or self-employment which is reasonably attainable and which offers an opportunity to restore the employee as soon as practicable and as near as possible to maximum self-support, due consideration being given to the employee's qualifications, likely permanent disability, vocational interests and aptitudes, preinjury earnings and future earning capacity, and the present and projected labor market. No one factor shall be considered solely in determining suitable gainful employment.

4636. (a) When aggregate total disability continues for 90 days, the employer immediately shall assign a qualified rehabilitation representative who shall meet with the employee and explain the employee's rights and obligations pertaining to vocational rehabilitation, the nature and scope of vocational rehabilitation services to which the employee may be entitled, the maintenance allowance payable under Section 139.5, and the effect of any delay in the treating physician's determination of medical eligibility. When aggregate total disability exceeds 90 days and the employee has not previously been identified as meeting the medical eligibility requirements of paragraph (1) of subdivision (a) of Section 4635, the qualified rehabilitation representative shall provide the employee's treating physician with a job description, developed jointly with the employee, and the physical requirements of the employee's duties at the time of injury in the form and manner prescribed by the administrative director, and request the treating physician to determine the employee's medical eligibility for vocational rehabilitation services. The treating physician's determination of medical eligibility shall take into account the employee's current and probable future medical condition, an estimate of the employee's current and potential functional limitations, the ability of the employee to accept and participate in vocational rehabilitation services if and when indicated, recommendations for subsequent evaluation or services, if any, the ability of the employee to engage in light work in a modified or alternative capacity, if available, and other information as may reasonably be prescribed by rules and regulations of the administrative director.

(b) If the employee's treating physician is unable to make the assessment of medical eligibility at the time of initial contact by the qualified rehabilitation representative, the qualified rehabilitation representative shall continue to monitor the employee's recovery and request the treating physician to report as soon as the physician is able to determine whether the employee is medically eligible for vocational rehabilitation services. The treating physician shall report no less frequently than every 60 days thereafter. The report also shall include an opinion concerning the physical capabilities of the

employee at the time of each report. The reports shall continue to be made until the physician provides a report concluding one of the following:

(1) The employee is released to return to work at his or her usual occupation or, if the employee was engaged in another occupation at the time of injury, the occupation the employee was engaged in at the time of injury.

(2) The employee's permanent disability as the result of the injury, whether or not combined with the effects of a prior injury or disability, if any, permanently precludes, or is likely to preclude, the employee from engaging in the employee's usual occupation or the occupation in which the employee was engaged at the time of injury.

(c) When aggregate total disability exceeds 365 days and the employee has not been previously identified as medically eligible for vocational rehabilitation, there shall be a rebuttable presumption that the employee is medically eligible for vocational rehabilitation services.

(d) Immediately upon receipt of the treating physician's final report required by this section, the employer shall provide a copy to the employee together with notice of the procedure to be followed in contesting the treating physician's determination. The notice shall be in writing in the form and manner prescribed by the administrative director, and shall include advice that the employee may be eligible for services if the employee is unable to return either to his or her usual occupation or the occupation in which he or she was engaged at the time of injury.

4637. (a) When an employer receives a physician's report indicating an employee meets the requirements of paragraph (1) of subdivision (a) of Section 4635, the employer, within 10 days of knowledge, shall notify the employee of his or her medical eligibility for vocational rehabilitation services. The notice shall be in writing, in the form and manner prescribed by the administrative director, with a copy forwarded to the vocational rehabilitation unit within the Office of Benefit Determination. The notice shall include all of the following:

(1) An explanation of vocational rehabilitation services available to the employee, including the maintenance allowance payable under Section 139.5 and the effect of any delay in the acceptance of vocational rehabilitation services.

(2) Instructions as to how the employee may apply for vocational rehabilitation services.

(3) Notice that failure to apply within 90 days of receipt of notice of medical eligibility may terminate the employee's entitlement to vocational rehabilitation services, unless the treating physician determines that the employee is medically unable to participate in the provision of vocational rehabilitation services except as otherwise provided by Section 5410.

(4) Notice of the employee's right to an agreed upon qualified rehabilitation representative and to request a preliminary evaluation

of vocational feasibility prior to any acceptance or rejection of vocational rehabilitation services and the right to request a change of qualified rehabilitation representative pursuant to Section 4640.

(5) Notice that vocational rehabilitation services may not be settled or otherwise converted to cash payments.

Immediately thereafter, unless the employee's medical condition precludes participation or the employee declines to accept vocational rehabilitation services, the employer shall assign a qualified rehabilitation representative, selected in agreement with the employee, to determine if the employee meets the vocational feasibility requirements of paragraph (2) of subdivision (a) of Section 4635. If agreement cannot be reached, a qualified rehabilitation representative shall be selected pursuant to Section 4640.

(b) If an employee is notified of his or her potential entitlement to vocational rehabilitation services pursuant to subdivision (a) and it is subsequently determined that the employee is not a qualified injured worker, the employer shall notify the employee, in the form and manner prescribed by the administrative director, that he or she is not entitled to further vocational rehabilitation services, the reasons therefor, and the procedure to be followed in contesting the determination.

4638. (a) If the employee is determined to be a qualified injured worker, the qualified rehabilitation representative and the employee, jointly, shall develop an agreed-upon vocational rehabilitation plan.

Vocational rehabilitation plans which utilize an employee's transferable skills and experience in modified or alternative work with the same or a similar employer, where the qualified injured worker will have wages, hours, and working conditions similar to those at the time of injury, shall be preferable to plans that propose training for an occupation in which the employee has no skills or experience if the employee has the skills necessary to compete for other available employment at wages similar to those at the time of injury if the modified or alternative work later becomes unavailable. In furtherance of this policy, an insured employer in whose employment the injury occurred shall receive a refund payable in the same manner as a return of a standard insurance premium from the insurer when the employer, pursuant to a vocational rehabilitation plan, returns the qualified injured worker to modified or alternative work at the employer's place of employment for 12 consecutive months. The refund shall be equal to the wages of the qualified injured worker for that 12-month period divided by 100 and then multiplied by the standard premium rate applicable to the employee's occupational classification. During and after the 12-month period, the qualified injured worker shall be protected against discrimination pursuant to Section 132a.

(b) Within 90 days after determination of the employee's vocational feasibility, the employer shall do either of the following:

(1) Submit a vocational rehabilitation plan agreed to by the employee to the Office of Benefit Determination for review and approval.

(2) Request the Office of Benefit Determination to resolve any dispute concerning the provision of vocational rehabilitation services.

4639. (a) If the employer fails to assign a qualified rehabilitation representative as required by Section 4636, fails to notify the employee of possible entitlement to these services pursuant to Section 4637, or fails to provide timely vocational rehabilitation services, the employee may request the Office of Benefit Determination to authorize the provision of vocational rehabilitation services at the expense of the employer. The Office of Benefit Determination shall immediately advise the employer of the receipt of the request.

(b) If the employer, within 20 days of receipt of the office's notification, fails either to agree to provide vocational rehabilitation services or to demonstrate that the employee is not a qualified injured worker, the office shall authorize the provision of vocational rehabilitation services through a qualified rehabilitation representative of the employee's choice or, at the employee's request, through an independent vocational evaluator.

4640. Nothing in this article shall preclude the employee and the employer from agreeing to a change of a qualified rehabilitation representative. If agreement cannot be reached, the employee or employer may request the Office of Benefit Determination to assign an independent vocational evaluator to provide vocational rehabilitation services if it finds it to be in the best interests of the employee.

4641 Nothing in this article shall require an employee to accept the provision of vocational rehabilitation services. The administrative director shall prescribe by rule and regulation the form and manner by which an employee may decline participation.

The rules and regulations shall require all of the following:

(a) A complete written description of the employee's rights, benefits, and protections to enable the employee to make an informed decision concerning the declination of vocational rehabilitation services.

(b) Notice of the employee's right to consult with the Office of Benefit Determination or an attorney.

(c) The declination of vocational rehabilitation services shall be in writing in 10-point boldface type and shall be signed by the employee and his or her representative, if any.

(d) The written information and declination form shall be bilingual as needed.

4642. If the employer fails to assign a qualified rehabilitation representative or to commence vocational rehabilitation services in a timely manner as required by Section 4637, or otherwise causes any delay in the provision of vocational rehabilitation services, the full

maintenance allowance shall be paid in its entirety by the employer, notwithstanding paragraph (2) of subdivision (d) of Section 139.5, for the period of the delay.

4643. If the employee unreasonably fails to cooperate in the provision of vocational rehabilitation services, unreasonably fails to cooperate in the development or implementation of a vocational rehabilitation plan, or unreasonably fails to cooperate in completing an approved vocational rehabilitation plan, the employee shall not be entitled to receive that portion of the maintenance allowance payable under paragraph (1) of subdivision (d) of Section 139.5 for the period of unreasonable failure The employer shall provide the employee with written notice of the employer's intention to withhold payment, the reasons therefor, and the employee's right to object thereto within 10 days of the date the notice was received or served.

If the employee objects to the employer's stated intention to withhold payment, the Office of Benefit Determination shall conduct an expedited conference to determine if the employee is entitled to receive the payments. A copy of the determination shall be served by certified mail on the employee and employer within 10 days of the employee's objection. The employer shall continue payment of that portion of the maintenance allowance due under paragraph (1) of subdivision (d) of Section 139.5 until receipt of the determination.

4644. (a) The liability of the employer for vocational rehabilitation services shall terminate when any of the following events occur:

(1) An employee who has received notice of potential eligibility to participate in a rehabilitation plan under Section 4637 declines vocational rehabilitation services in the form and manner prescribed by the administrative director.

(2) A qualified injured worker completes an approved vocational rehabilitation plan except as otherwise provided in subdivisions (c) and (d).

(3) The qualified injured worker unreasonably failed to complete an approved vocational rehabilitation plan.

(4) An employee has not requested vocational rehabilitation services within 90 days of the notification that the employee is medically eligible for vocational rehabilitation services. The liability of the employer for vocational rehabilitation services shall not terminate under this paragraph unless the employer, not earlier than 45 days nor later than 70 days after the employee's receipt of the notice required by Section 4637, reminds the employee of his or her right to vocational rehabilitation services or until the 21st day after the employee receives the reminder notification. The reminder notification shall be in writing, in the form and manner prescribed by the administrative director, and shall be served by certified mail. The provisions of this paragraph shall not apply if the employee shows he or she was unable to comprehend the consequences of

failing to timely request vocational rehabilitation services, or that, because of conditions beyond the control of the employee, the employee was unable to exercise his or her right to accept or decline vocational rehabilitation services.

(b) Nothing in this article shall preclude the deferral or interruption of vocational rehabilitation services upon agreement of the employee and employer or, if no agreement can be reached, upon a good cause determination by the administrative director.

(c) If a vocational rehabilitation plan has been commenced or completed, the employee shall be entitled to additional vocational rehabilitation services if the plan is determined to be inappropriate due to one of the following:

(1) A change in the employee's medical condition that precludes pursuit of or engagement in the plan occupation.

(2) Facts which with reasonable diligence could not have been reasonably discovered or were not available to the employee or employer at commencement of the plan.

(3) Failure by the employer to provide timely all services required by this article and the vocational rehabilitation plan when the plan has not been completed.

(4) Circumstances beyond the control of the employee or employer which render the plan inappropriate.

(d) Notwithstanding paragraph (2) of subdivision (a), if a qualified injured worker returns to modified or alternative work with the same employer or to work with a different employer as a result of direct job placement assistance and that employment terminates, other than for cause, within 12 months of the date the employee was employed at the modified or alternative work, and if that work is unavailable in the labor market, the employer shall be liable, subject to Section 4642, for additional vocational rehabilitation services. To qualify for additional vocational rehabilitation services, the employee shall demonstrate an inability to obtain suitable gainful employment with his or her existing skills.

4645. (a) All disputed matters regarding the provision of vocational rehabilitation services shall be submitted initially to the Office of Benefit Determination for its recommendation except as otherwise provided in this section.

(b) Where the question of entitlement to vocational rehabilitation services is first raised before a workers' compensation judge and there are good faith issues which, if resolved against the employee, would defeat his or her right to all compensation, the judge shall determine the issues and, if appropriate, refer the question of entitlement to vocational rehabilitation services to the Office of Benefit Determination for its recommendation.

(c) Where the question of entitlement to vocational rehabilitation services is first raised before a workers' compensation judge and there are no issues which would bar the employee's right to compensation, the judge shall refer the question of entitlement to the vocational rehabilitation services to the Office of Benefit

Determination for its recommendations before entering a finding, decision, or award on the issue of vocational rehabilitation.

(d) Any determination or recommendation of the Office of Benefit Determination shall be binding unless a petition is filed with the appeals board within 20 days after service of the determination or recommendation. Nothing in this section shall affect an employee's rights pursuant to Sections 5405.5, 5410, and 5803.

4646. Settlement or commutation of vocational rehabilitation services shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3 except upon a finding by a workers' compensation judge that there are good faith issues which, if resolved against the employee, would defeat the employee's right to all compensation under this division.

4647. The administrative director shall appoint an advisory committee to assist the vocational rehabilitation unit within the Office of Benefit Determination in recommending forms, procedures, and rules and regulations consistent with the effective administration of this article. Members of the advisory committee shall include two representatives each of employees, employers, insurers, and providers of vocational rehabilitiation services.

SEC. 34. Section 4650 of the Labor Code is amended to read:

4650 (a) If an injury causes temporary disability, the first payment of temporary disability indemnity shall be made not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid, unless liability for the injury is earlier denied.

(b) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity. Where the extent of permanent disability cannot be determined at the date of last payment of temporary disability indemnity, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined until that amount has been paid.

(c) Payment of temporary or permanent disability indemnity subsequent to the first payment shall be made as due every two weeks on the day designated with the first payment unless the employer continues the employee's wages under a salary continuation plan.

(d) If any indemnity payment is not made timely as required by this section, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee. No increase shall apply to any payment due prior to or within 14 days after the date the claim form was submitted to the employer under Section 5401. No increase shall apply when, within the 14-day period specified under subdivision (a), the employer is unable to determine whether temporary disability payments are owed and advises the

employee, in the manner prescribed in regulations adopted pursuant to Section 138.4, why payments cannot be made within the 14-day period, what additional information is required to make the decision whether temporary disability payments are owed, and when the employer expects to have the information required to make the decision.

SEC. 35. Section 4651 of the Labor Code is amended to read:

4651. No disability indemnity payment shall be made by any written instrument unless it is immediately negotiable and payable in cash, on demand, without discount at some established place of business in the state.

Nothing in this section shall prohibit an employer from depositing the disability indemnity payment in an account in any bank, savings and loan association or credit union of the employee's choice in this state, provided the employee has voluntarily authorized the deposit.

SEC. 36. Section 4652 of the Labor Code is amended to read:

4652. Except as otherwise provided by Section 4650.5, no temporary disability indemnity is recoverable for the disability suffered during the first three days after the employee leaves work as a result of the injury unless temporary disability continues for more than 14 days or the employee is hospitalized as an inpatient for treatment required by the injury, in either of which cases temporary disability indemnity shall be payable from the date of disability. For purposes of calculating the waiting period, the day of the injury shall be included unless the employee was paid full wages for that day.

SEC. 37. Section 4658 of the Labor Code is amended to read:

4658. (a) For injuries occurring prior to January 1, 1990, if the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	3
10–19.75	4
20–29.75	5
30–49.75	6
50–69.75	7
70–99.75	8

The number of weeks for which payments shall be allowed set

forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks

Column 1—Percentage of permanent disability incurred:	Column 2—Cumulative number of benefit weeks:
5	15.00
10	30.25
15	50.25
20	70.50
25	95.50
30	120.75
35	150.75
40	180.75
45	210.75
50	241.00
55	276.00
60	311.00
65	346.00
70	381.25
75	421.25
80	461.25
85	501.25
90	541.25
95	581.25
100	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(b) This subdivision shall apply to injuries occurring between January 1, 1990, and December 31, 1990. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1 - Range of percentage of permanent disability incurred:	Column 2
Under 10	3.0
10-19.75	4.0
20-24.75	5.0
25-29.75	5.5
30-49.75	6.5
50-69.75	7.5
70-99.75	8.5

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability. The following schedule is illustrative of the aggregate amount of permanent partial disability compensation for an employee with average weekly earnings of two hundred ten dollars ($210):

Column 1 - Range of percentage of permanent disability incurred:	Column 2
5	$ 2,100.00
10	$ 4,235.00
15	$ 7,035.00
20	$ 9,870.00
25	$13,387.50
30	$17,272.50
35	$21,822.50
40	$26,372.50
45	$30,922.50
50	$35,507.50
55	$40,757.50
60	$46,007.50
65	$51,257.50
70	$56,542.50
75	$62,492.50
80	$68,442.50
85	$74,392.50
90	$80,342.50
95	$86,292.50

(2) Two-thirds of the average weekly earnings for four weeks for

each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75), but not more than two hundred thirty-five dollars ($235) a week for injuries occurring on or after January 1, 1990, and not more than two hundred forty-seven dollars ($247) a week for injuries occurring on and after January 1, 1991.

(c) This subdivision shall apply to injuries occurring between January 1, 1991, and December 31, 1991. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1 - Range of percentage of permanent disability incurred:	Column 2
Under 10	3.0
10-19.75	4.0
20-24.75	5.0
25-29.75	6.0
30-49.75	7.0
50-69.75	8.0
70-99.75	9.0

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability. The following schedule is illustrative of the aggregate amount of permanent partial disability compensation for an employee with average weekly earnings of two hundred ten dollars ($210):

Column 1 - Range of percentage of permanent disability incurred:	Column 2
5	$ 2,100
10	$ 4,235
15	$ 7,035
20	$ 9,870
25	$13,405
30	$17,640
35	$22,540
40	$27,440

45	$32,340
50	$37,275
55	$42,075
60	$48,475
65	$54,075
70	$59,710
75	$66,010
80	$70,610
85	$72,310
90	$84,910
95	$91,210

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(d) This subdivision shall apply to injuries occurring on and after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1 - Range of percentage of permanent disability incurred:	Column 2
Under 10	3.0
10-19.75	4.0
20-24.75	5.0
25-29.75	6.5
30-49.75	7.5
50-69.75	8.5
70-99.75	9.5

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability. The following schedule is illustrative of the aggregate amount of permanent partial disability compensation for an employee with average weekly earnings of two hundred ten dollars ($210).

Column 1 - Range of percentage of permanent disability incurred:	Column 2
5	$ 2,100.00
10	$ 4,235.00
15	$ 7,035.00
20	$ 9,870.00
25	$13,422.50
30	$18,007.50
35	$23,257.50
40	$28,507.50
45	$33,757.50
50	$39,042.50
55	$44,992.50
60	$50,942.50
65	$56,892.50
70	$62,877.50
75	$69,527.50
80	$76,177.50
85	$82,827.50
90	$89,477.50
95	$96,127.50

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

SEC. 38. Section 4661.5 of the Labor Code is amended to read:

4661.5. Notwithstanding any other provision of this division, when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the temporary disability indemnity average weekly earnings amount specified in Section 4453 in effect on the date each temporary total disability payment is made unless computing the payment on this basis produces a lower payment because of a reduction in the minimum average weekly earnings applicable under Section 4453.

SEC 39. Section 4701 of the Labor Code is amended to read:

4701. When an injury causes death, either with or without disability, the employer shall be liable, in addition to any other benefits provided by this division, for all of the following:

(a) Reasonable expenses of the employee's burial, not exceeding two thousand dollars ($2,000) and for injuries occurring on and after

January 1, 1991, not exceeding five thousand dollars ($5,000).

(b) A death benefit, to be allowed to the dependents when the employee leaves any person dependent upon him or her for support.

SEC. 40. Section 4702 of the Labor Code is amended to read:

4702. (a) Except as otherwise provided in this section and Sections 4553, 4554, 4557, and 4558, the death benefit in cases of total dependency, when added to all accrued disability indeminity, shall be as follows:

(1) In the case of two or more total dependents and regardless of the number of partial dependents, ninety-five thousand dollars ($95,000), or for injuries occurring on and after January 1, 1991, one hundred fifteen thousand dollars ($115,000).

(2) In the case of one total dependent and one or more partial dependents, seventy thousand dollars ($70,000), or for injuries occurring on and after January 1, 1991, ninety-five thousand dollars ($95,000), plus four times the amount annually devoted to the support of the partial dependents, but not more than a total of ninety-five thousand dollars ($95,000), or for injuries occurring on and after January 1, 1991, one hundred fifteen thousand dollars ($115,000).

(3) In the case of one total dependent and no partial dependents, seventy thousand dollars ($70,000), or for injuries occurring on and after January 1, 1991, ninety-five thousand dollars ($95,000).

(4) In the case of no total dependents and one or more partial dependents, four times the amount annually devoted to the support of the partial dependents, but not more than seventy thousand dollars ($70,000), or for injuries occurring on and after January 1, 1991, a total of ninety-five thousand dollars ($95,000).

(b) The death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

(c) Unless otherwise specified, every computation made pursuant to this section shall be made only with reference to death resulting from an original injury sustained on and after January 1, 1990. However, all rights presently existing under this section shall be continued in force.

SEC. 41. Section 4703.5 is added to the Labor Code, to read:

4703.5. In addition to payment of the amount specified in Section 4702, and notwithstanding the maximum limitations specified in Sections 4702 and 4703, in the case of one or more totally dependent minor children, payment of death benefits shall continue until the youngest child attains age 18 in the same manner and amount as temporary total disability indemnity would have been paid to the employee, except that no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

SEC. 42. Section 4903.4 is added to the Labor Code, to read:

4903.4. When a dispute arises concerning a lien for expenses

incurred by or on behalf of the injured employee as provided by Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, the appeals board shall resolve the dispute in a separate proceeding, which may include binding arbitration upon agreement of the employer, lien claimant, and the employee, if the employee remains a party to the dispute, according to the rules of practice and procedure.

SEC. 43. Section 4906 of the Labor Code is amended to read:

4906. (a) No charge, claim, or agreement for the legal services or disbursements mentioned in subdivision (a) of Section 4903, or for the expense mentioned in subdivision (b) of Section 4903, is enforceable, valid, or binding in excess of a reasonable amount.

(b) No attorney or agent shall demand or accept any fee from an employee or dependent of an employee for the purpose of representing the employee or dependent of an employee in any proceeding of the division, appeals board, or any appellate procedure related thereto until the amount of the fee has been approved or set by the appeals board.

(c) Any fee agreement shall be submitted to the appeals board for approval within 10 days after the agreement is made.

(d) In establishing a reasonable attorney's fee, consideration shall be given to the responsibility assumed by the attorney, the care excercised in representing the applicant, the time involved, and the results obtained.

(e) At the initial consultation, an attorney shall furnish the employee a written disclosure form promulgated by the administrative director which shall clearly and prominently describe the procedures available to the injured employee or his or her dependents. The disclosure form shall describe this section, the range of attorney's fees customarily approved by the appeals board, and the attorney's fees provisions of Section 4064 and the extent to which an employee may receive compensation without incurring attorney's fees. The disclosure form shall include the telephone number of the Office of Benefit Assistance and Enforcement together with the statement that the employee may receive answers at that number to questions concerning entitlement to compensation or the procedures to follow to receive compensation. A copy shall be signed by the employee and the attorney and sent to the employer by the attorney.

SEC. 44. Part 3.5 (commencing with Section 5270) is added to Division 4 of the Labor Code, to read:

PART 3.5. ARBITRATION

5270. This part shall apply only in cases where the injured employee or dependent is represented by an attorney.

5270.5. (a) The presiding workers' compensation judge at each district office shall prepare a list of all eligible attorneys who apply to be placed on the list of eligible arbitrators. Attorneys are eligible

to become arbitrators if they are active members of the California State Bar Association and are one of the following:

(1) A certified specialist in workers' compensation, or eligible to become certified.

(2) A retired workers' compensation judge.

(3) A retired appeals board member.

(4) An attorney who has been certified to serve as a judge pro tempore.

(b) No attorney shall be included in a panel of arbitrators, if he or she has served as a judge in any proceeding involving the same case, or has represented, or whose firm has represented, any party in the same case.

5271. (a) The parties to a dispute submitted for arbitration may select any eligible attorney from the list prepared by the presiding workers' compensation judge to serve as arbitrator.

(b) If the parties cannot select an arbitrator by agreement, either party may request the presiding workers' compensation judge to assign a panel of five arbitrators selected at random from the list of eligible attorneys.

(c) No more than three arbitrators on a five-member panel may be defense attorneys, no more than three may be applicant's attorneys, and no more than two may be retired workers' compensation judges or appeals board members.

(d) A party may petition the presiding workers' compensation judge to remove a member from the panel pursuant to Section 170.1 of the Code of Civil Procedure. The presiding workers' compensation judge shall choose another eligible attorney to replace any member removed under this subdivision.

(e) From the five-member panel, each party shall strike two members, and the remaining attorney shall serve as arbitrator.

5272 Arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge, as set forth in Chapter 1 (commencing with Section 5300) of Part 4, except for the following:

(a) Arbitrators shall have no power to order the injured worker to be examined by a qualified medical evaluator pursuant to Sections 5701 and 5701.5.

(b) Arbitrators shall not have power of contempt.

5273. (a) In disputes between an employee and an employer, the employer shall pay all costs related to the arbitration proceeding, including use of facilities, hearing reporter per diems and transcript costs.

(b) In all other disputes, the costs of the arbitration proceedings, including the arbitrator's compensation, shall be paid as follows:

(1) By the parties equally in any dispute between an employer and an insurer, or an employer and a lien claimant.

(2) By the parties equally in proceedings subject to Sections 5000.5 and 5500.5.

(3) By the dependents in accordance with their proportionate

share of death benefits, where there is no dispute as to the injury causing death.

(c) Disputes regarding the costs or fees for arbitration shall be within the exclusive jurisdiction of the appeals board, and shall be determined initially by the presiding judge of the district office.

5275. (a) Disputes involving the following issues shall be submitted for arbitration:

(1) Insurance coverage.

(2) Right of contribution in accordance with Section 5500.5.

(3) Permanent disability, where an informal rating has indicated that the permanent disability will be 15 percent standard or less, and the presiding judge determines that the case will not be set for hearing within 110 calendar days from the date of the filing of the application for adjudication.

(4) Permanent disability, where an informal rating has indicated that the permanent disability will be 20 percent standard or less, and the presiding judge determines that the case will not be set for hearing within 150 calendar days from the date of the filing of the application for adjudication.

(b) Paragraphs (3) and (4) of subdivision (a) shall not be applicable if the applicant has requested and received a continuance or delay in the time periods for proceedings set forth in Section 5502.

(c) Paragraphs (3) and (4) of subdivision (a) shall become operative on January 1, 1991, and shall become inoperative on January 1, 1994.

(d) By agreement of the parties, any issue arising under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) may be submitted for arbitration.

5276. (a) Arbitration proceedings may commence at any place and time agreed upon by all parties.

(b) If the parties cannot agree on a time or place to commence arbitration proceedings, the arbitrator shall order the date, time and place for commencement of the proceeding. Unless all parties agree otherwise, arbitration proceedings shall commence not less than 30 days nor more than 60 days from the date an arbitrator is selected.

(c) Ten days before the arbitration, each party shall submit to the arbitrator and serve on the opposing party reports, records and other documentary evidence on which that party intends to rely. If a party intends to rely upon excerpts of records or depositions, only copies of the excerpts shall be submitted to the arbitrator.

5277. (a) The arbitrator's findings and award shall be served on all parties within 30 days of submission of the case for decision.

(b) The arbitrator's award shall comply with Section 5313 and shall be filed with the appeals board office pursuant to venue rules published by the appeals board.

(c) The findings of fact, award, order, or decison of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation judge.

(d) Use of an arbitrator for any part of a proceeding or any issue

shall not bind the parties to the use of the same arbitrator for any subsequent issues or proceedings.

(e) Unless all parties agree to a longer period of time, the failure of the arbitrator to submit the decision within 30 days shall result in forfeiture of the arbitrator's fee and shall vacate the submission order and all stipulations.

(f) The presiding workers' compensation judge may submit supplemental proceedings to arbitration pursuant to this part.

SEC. 44.5. Section 5307.3 of the Labor Code is amended to read:

5307.3. The administrative director may adopt, amend, or repeal any rules and regulations that are reasonably necessary to enforce this division, except where this power is specifically reserved to the appeals board or the Industrial Medical Council.

No rule or regulation of the administrative director pursuant to this section shall be adopted, amended, or rescinded without public hearings. Any written request filed with the administrative director seeking a change in its rules or regulations shall be deemed to be denied if not set by the administrative director for public hearing to be held within six months of the date on which the request is received by the administrative director.

SEC 45. Section 5401 of the Labor Code is repealed.

SEC. 46. Section 5401 is added to the Labor Code, to read:

5401. (a) Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, the employer shall provide a claim form and a notice of potential eligibility for benefits under this division to the injured employee, or in the case of death, to his or her dependents. The claim form shall request the injured employee's name and address, the time and place where the injury occurred, and the nature of the injury. The notice shall include a description of the procedures and assistance available to the employee on his or her own behalf, the procedure to be used to commence proceedings for the collection of compensation for the purposes of this chapter, the telephone number of the Office of Benefit Assistance and Enforcement, and a statement that the employee has a right to consult an attorney or the Office of Benefit Assistance and Enforcement, or both, for assistance. Claims forms shall be available at district offices of the Employment Development Department and the Office of Benefit Assistance and Enforcement. Claims forms may be made available to the employee from any other source.

(b) The completed claim form shall be filed with the employer by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent. A dated copy of the completed form shall be provided by the employer to the employer's insurer and to the employee, dependent, or agent who filed the claim form.

(c) The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (c) of Section 4650, or request for a medical evaluation

under Section 4061 or 4062. Filing of the claim form with the employer shall constitute commencement of proceedings for the purposes of this chapter and shall establish the jurisdiction of the appeals board. After filing of the claim form, the parties shall have the right to commence discovery, including subpoena of records and deposition of witnesses, and lien claimants shall have the right to commence proceedings by filing an application for adjudication of claim. The parties shall also have the right to receive copies of the records of the treating physician or physicians.

SEC 47. Section 5402 of the Labor Code is amended to read:

5402. Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400. If liability is not rejected within 90 days after the date of written claim under Section 5401, the injury shall be presumed compensable under this division. The presumption is rebuttable only by evidence discovered subsequent to the 90-day period.

SEC. 48. Section 5405.5 of the Labor Code is amended to read:

5405.5. Except as otherwise provided in Sections 4644 and 5410, the period within which an employee may request vocational rehabilitation benefits provided by Article 2.6 (commencing with Section 4635) of Part 2 of Chapter 2 is one year from the date of the last finding of permanent disability by the appeals board, or one year from the date the appeals board approved a compromise and release of other issues.

SEC. 49. Section 5410 of the Labor Code is amended to read:

5410. Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation, including vocational rehabilitation services, within five years after the date of the injury upon the ground that the original injury has caused new and further disability or that the provision of vocational rehabilitation services has become feasible because the employee's medical condition has improved or because of other factors not capable of determination at the time the employer's liability for vocational rehabilitation services otherwise terminated. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

SEC. 50. Section 5500 of the Labor Code is amended to read:

5500. (a) No pleadings other than the application and answer shall be required. Both shall be in writing and shall conform to forms prescribed by the appeals board in its rules of practice and procedure, simply but clearly and completely delineating all relevant matters of agreement and all issues of disagreement within the jurisdiction of the appeals board, and providing for the furnishing of such additional information as the appeals board may properly determine necessary to expedite its hearing and determination of

the claim.

(b) An application for adjudication of claim may be filed at any time there is a bona fide dispute after service of the claim form required by Section 5401. The application shall specify the nature of the dispute, the action being requested of the appeals board, the efforts previously made to resolve the issues in dispute, and shall be accompanied by medical reports or other documents indicating the basis of the dispute and supporting the action requested.

SEC. 51. Section 5502 of the Labor Code is repealed.

SEC. 52. Section 5502 is added to the Labor Code, to read:

5502. (a) Except as provided in subdivision (b), the hearing shall be held not less than 10 days, and not more than 60 days, after the date the application is filed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the application is filed if the issues in dispute are any of the following.

(1) The employee's entitlement to medical treatment pursuant to Section 4600.

(2) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(3) The employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee.

(4) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(5) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The administrative director shall report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor.

(d) (1) In all cases in which the applicant is represented by an attorney, a mandatory settlement conference shall be conducted by a referee not less than 10 days, and not more than 30 days, after the filing of an application for adjudication of claim. If the dispute is not resolved, the regular hearing shall be held within 75 days after the application for adjudication is filed.

(2) The settlement conference shall be conducted by a referee who is eligible to be a workers' compensation judge or eligible to be an arbitrator under Section 5270. At the mandatory settlement conference, the referee shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial.

(3) Ten days before the mandatory settlement conference, the

parties shall file a conference statement noting the specific issues in dispute, listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(4) The workers' compensation judge may conduct a conference only in cases in which the applicant is not represented by an attorney.

(5) In cases in which the applicant is not represented by an attorney the workers' compensation judge assigned to hear a case may conduct a conference not less than 10 days, and not more than 30 days, after the filing of an application for adjudication of claims. If the dispute is not resolved, the regular hearing shall be held within 75 days after the application for adjudication is filed.

(e) Subdivision (d) shall become operative on January 1, 1991, and shall become inoperative on January 1, 1994.

SEC. 53. Section 5703.5 of the Labor Code is amended to read:

5703.5. (a) The appeals board, at any time after an application is filed and prior to the expiration of its jurisdiction may, upon the agreement of a party to pay the cost, direct the injured employee to be examined by a qualified medical evaluator selected by the appeals board, or a physician agreed upon by the parties to report, within the scope of the qualified medical evaluator's or the physician's professional training, upon any clinical question, other than those issues specified in Sections 4061 and 4062, then at issue before the appeals board.

(b) The administrative director or his or her designees, upon the submission of a matter to an information and assistance officer, may, upon the agreement of a party to pay the cost, and with the consent of the injured employee and his or her representative, if any, direct the injured employee to be examined by a qualified medical evaluator selected by the medical director, a physician agreed upon by the parties to report, within the scope of the qualified medical evaluator's or the physician's professional training, upon any clinical question, other than those issues specified in Sections 4061 and 4062, then pertinent to the investigation of the information and assistance officer.

SEC. 54. Section 5908 of the Labor Code is amended to read.

5908. (a) After the taking of additional evidence and a consideration of all of the facts the appeals board may affirm, rescind, alter, or amend the original order, decision, or award. An order, decision, or award made following reconsideration which affirms, rescinds, alters, or amends the original order, decision, or award shall be made by the appeals board but shall not affect any right or the enforcement of any right arising from or by virtue of the original order, decision, or award, unless so ordered by the appeals board.

(b) In any case where the appeals board rescinds or reduces an

order, decision, or award on the grounds specified in paragraph (b) of Section 5903, the appeals board shall refer the case to the Bureau of Fraudulent Claims pursuant to Article 4 (commencing with Section 12990) of Chapter 2 of Division 3 of the Insurance Code, if the employer is insured, or to the district attorney of the county in which the fraud occurred if the employer is self-insured.

SEC. 55. The Department of Industrial Relations shall contract for a study to establish workload standards for the following functions: judicial teams (judges and clerical staff), conference referees, auditors, disability evaluators, rehabilitation staff, information and assistance officers, and staff functions related to the Industrial Medical Council, including administration of the qualified medical evaluator panel. Once established, the department shall periodically update the standards, as needed.

The department shall submit the request for proposal for the contract to an advisory committee for review not less than 30 days prior to issuing the request for proposal. The advisory committee shall consist of the Legislative Analyst, the Chairs of the Assembly Finance and Insurance Subcommittee on Health and Workers' Compensation and Senate Industrial Relations Committee, and the Director of Finance and the Director of Industrial Relations.

The department shall submit proposed workload standards based on the contractor's report by no later than January 1, 1991. The department shall include in its annual proposed budget for number of positions identified as necessary in the workload standards.

SEC. 56. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 57. This act shall be known, and may be cited, as the Margolin-Bill Greene Workers' Compensation Reform Act of 1989.

CHAPTER 893

An act to amend Sections 139.5, 4453, 4658, and 5703.5 of, and to add Section 4064 to, the Labor Code, relating to workers' compensation, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 139.5 of the Labor Code is amended to read:

139.5. (a) The administrative director shall establish within the Office of Benefit Determination a vocational rehabilitation unit, which shall include appropriate professional staff, and which shall have the following duties:

(1) To foster, review, and approve vocational rehabilitation plans developed by a qualified rehabilitation representative of the employer, insurer, state agency, or employee.

(2) To develop rules and regulations, to be promulgated by the administrative director, which would expedite and facilitate the identification, notification and referral of industrially injured employees to vocational rehabilitation services.

(3) To coordinate and enforce the implementation of vocational rehabilitation plans.

(4) To develop a fee schedule, to be promulgated by the administrative director, governing reasonable fees for vocational rehabilitation services. The initial fee schedule promulgated under this paragraph shall be designed to reduce the cost of vocational rehabilitation services by 10 percent.

(5) To develop standards, to be promulgated by the administrative director, for governing the timeliness and the quality of vocational rehabilitation services.

(b) The salaries of the personnel of the vocational rehabilitation unit shall be fixed by the State Personnel Board.

(c) When an employee is determined to be medically eligible and chooses to enroll in a vocational rehabilitation program, he or she shall continue to receive temporary disability indemnity payments, and, after his or her medical condition becomes permanent and stationary, a maintenance allowance. The employee also shall receive living expenses necessitated by the vocational rehabilitation services, together with all reasonable and necessary vocational training, at the expense of the employer.

(d) The amount of the maintenance allowance due under subdivision (c) shall be two-thirds of the employee's average weekly earnings at the date of injury payable as follows:

(1) The amount the employee would have received as continuing temporary disability indemnity, but not more than two hundred forty-six dollars ($246) a week for injuries occurring on or after

January 1, 1990.

(2) At the employee's option, an additional amount from permanent disability indemnity due or payable, sufficient to provide the employee with a maintenance allowance equal to two-thirds of the employee's average weekly earnings at the date of injury subject to the limits specified in subdivision (a) of Section 4453 and the requirements of Section 4661.5. In no event shall temporary disability indemnity and a maintenance allowance by payable concurrently.

If the employer disputes the treating physician's determination of medical eligibility, the employee shall continue to receive that portion of the maintenance allowance payable under paragraph (1) pending final determination of the dispute. If the employee disputes the treating physician's determination of medical eligibility and prevails, the employee shall be entitled to that portion of the maintenance allowance payable under paragraph (1) retroactive to the date of the employee's request for vocational rehabilitation services.

(e) No provision of this section nor of any rule, regulation, or vocational rehabilitation plan developed or promulgated under this section nor any benefit provided pursuant to this section shall apply to an injured employee whose injury occurred prior to January 1, 1975. Nothing in this section shall affect any plan, benefit, or program authorized by this section as added by Chapter 1513 of the Statutes of 1965 or as amended by Chapter 83 of the Statutes of 1972.

(f) The time within which an employee may request vocational rehabilitation services is set forth in Sections 5405.5, 5410, and 5803.

SEC. 2. Section 4064 is added to the Labor Code, to read:

4064. (a) The employer shall pay the cost of medical evaluations reasonably, actually, and necessarily incurred, pursuant to subdivisions (c) and (d) of Section 4061 or subdivision (b) of Section 4062. The employer also shall pay the cost of rebuttal reports reasonably, actually, and necessarily incurred by an unrepresented employee to rebut the findings of the qualified medical evaluator selected from a three-member panel, provided, however, that the employee may not obtain rebuttal reports from more than one qualified medical evaluator for each appropriate medical specialty or subspecialty.

(b) The employer shall also pay the cost of consultations with other physicians in other specialties requested by the evaluators in connection with the evaluations and reports in subdivision (a).

(c) If an unrepresented employee obtains an attorney after the formal medical evaluation is prepared by the qualified medical evaluator selected from a three-member panel, the employee shall be entitled to the same reports at employer expense as an employee who has been represented from the time the dispute arose.

(d) Subject to Section 4906, if an employer files an application for adjudication and the employee is unrepresented at the time the application is filed, the employer shall be liable for any attorney's fees incurred by the employee in connection with the application for

adjudication if the employee does not obtain a rebuttal report.

SEC. 3. Section 4453 of the Labor Code is amended to read:

4453. (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:

(1) Not less than one hundred twenty-six dollars ($126) nor more than two hundred ninety-four dollars ($294), for injuries occurring on and after January 1, 1983.

(2) Not less than one hundred sixty-eight dollars ($168) nor more than three hundred thirty-six dollars ($336), for injuries occurring on and after January 1, 1984.

(3) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and, for temporary disability, not less than the lessor of one hundred forty-seven dollars ($147) or, if his or her average weekly earnings are between ninety-nine dollars ($99) and one hundred thirteen dollars ($113), 1.5 times the employee's average weekly earnings, nor more than three hundred ninety-nine dollars ($399) for injuries occurring on and after January 1, 1990.

(4) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and not less than 1.5 times the employee's average weekly earnings from all employers if his or her average weekly earnings are less than one hundred eighty-nine dollars ($189) for temporary disability, nor more than five hundred four dollars ($504), for injuries occurring on and after January 1, 1991.

(b) In computing average annual earnings for purposes of permanent partial disability indemnity, except as provided in Section 4659, the average weekly earnings shall be taken at:

(1) Not less than seventy-five dollars ($75) nor more than one hundred ninety-five dollars ($195), for injuries occurring on and after January 1, 1983.

(2) Not less than one hundred five dollars ($105) nor more than two hundred ten dollars ($210), for injuries occurring on and after January 1, 1984.

(3) When the final adjusted permanent disability rating of the injured employee is 25 percent or greater, not less than one hundred five dollars ($105), nor more than two hundred twenty-two dollars ($222), for injuries occurring on and after January 1, 1991.

(c) Between the limits specified in subdivisions (a) and (c), the average weekly earnings, except as provided in Sections 4456 to 4459, shall be arrived at as follows:

(1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.

(2) Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week; but the earnings from employments other than the employment in which the injury occurred shall not

be taken at a higher rate than the hourly rate paid at the time of the injury.

(3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments.

(d) Every computation made pursuant to this section beginning January 1, 1990, shall be made only with reference to temporary disability or the permanent disability resulting from an original injury sustained after January 1, 1990. However, all rights existing under this section on January 1, 1990, shall be continued in force. Except as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

SEC. 4. Section 4658 of the Labor Code is amended to read:

4658. (a) For injuries occurring prior to January 1, 1992, if the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	3
10–19.75	4
20–29.75	5
30–49.75	6
50–69.75	7
70–99.75	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent

disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1— Percentage of permanent disability incurred:	Column 2— Cumulative number of benefit weeks:
5	15.00
10	30.25
15	50.25
20	70.50
25	95.50
30	120.75
35	150.75
40	180.75
45	210.75
50	241.00
55	276.00
60	311.00
65	346.00
70	381.25
75	421.25
80	461.25
85	501.25
90	541.25
95	581.25
100	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(b) This subdivision shall apply to injuries occurring on and after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1) However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1 - Range of percentage of permanent disability incurred:	Column 2
Under 10	3.0
10-19.75	4.0
20-24.75	5.0
25-29.75	6.0
30-49.75	7.0
50-69.75	8.0
70-99.75	9.0

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

SEC. 5 Section 5703.5 of the Labor Code is amended to read:

5703.5. (a) The appeals board, at any time after an application is filed and prior to the expiration of its jurisdiction may, upon the agreement of a party to pay the cost, direct an unrepresented employee to be examined by a qualified medical evaluator selected by the appeals board, or a physician agreed upon by the parties to report, within the scope of the qualified medical evaluator's or the physician's professional training, upon any clinical question, other than those issues specified in Sections 4061 and 4062, then at issue before the appeals board.

(b) The administrative director or his or her designees, upon the submission of a matter to an information and assistance officer, may, upon the agreement of a party to pay the cost, and with the consent of the injured employee and his or her representative, if any, direct the injured employee to be examined by a qualified medical evaluator selected by the medical director, a physician agreed upon by the parties to report, within the scope of the qualified medical evaluator's or the physician's professional training, upon any clinical question, other than those issues specified in Sections 4061 and 4062, then pertinent to the investigation of the information and assistance officer.

SEC. 6. Unless otherwise specified, Assembly Bill 276 of the 1989–90 Regular Session shall apply only to injuries occurring on or after January 1, 1990.

SEC. 7. (a) It is the intent of the Legislature to reduce the backlog in workers' compensation courts, to provide workers with increased information services from the Department of Industrial

Relations, to provide staff for the Industrial Medical Council, as established by Section 139 of the Labor Code, and to increase the resources to audit employer and insurer benefit payments to injured workers.

(b) The Director of Industrial Relations shall establish the following new positions:

(1) For staffing of the workers' compensation courts:

(A) Twelve workers' compensation judges.

(B) Twelve hearing reporters.

(C) Twelve senior typists, legal.

(D) Twelve office assistants (II).

(2) Nine workers' compensation consultants for the information and assistance function.

(3) Forty auditors.

(4) For staffing of the Industrial Medical Council:

(A) One executive director.

(B) Three medical directors.

(C) Two attorneys.

(D) Seven workers' compensation consultants.

(E) Fifteen office assistants (II).

(c) The department shall request nine additional auditor positions to be funded in the Budget Act of 1990.

(d) The sum of two million five hundred thousand dollars ($2,500,000) is hereby appropriated from the General Fund to the Department of Industrial Relations as a loan for the purposes of this section. The department shall reimburse the amount of the appropriation, plus interest at the same rate of interest as that earned by moneys in the Pooled Money Investment Account during the term of the loan from assessments levied upon employers pursuant to Section 62.5 of the Labor Code.

CHAPTER 894

An act to amend Section 1141.11 of the Code of Civil Procedure, relating to judicial arbitration.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 1141.11 of the Code of Civil Procedure is amended to read:

1141.11. (a) In each superior court with 10 or more judges, all at-issue civil actions pending on or filed after the operative date of this chapter shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand

dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with less than 10 judges, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(c) In each municipal court district, the municipal court district may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter in such judicial district, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. The provisions of this section shall not apply to any action maintained pursuant to Section 1781 of the Civil Code or Section 116.2 or 1161 of this code.

(d) In each municipal court district which has adopted judicial arbitration pursuant to subdivision (c), all civil actions pending on or after July 1, 1990, which involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court, subject to disqualification for cause as specified in Sections 170.1 and 170.6.

The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

For the purposes of this subdivision, the term "single defendant" means (1) an individual defendant, whether a person or an entity, (2) two or more persons covered by the same insurance policy applicable to the motor vehicle collision, or (3) two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision. The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

(e) The provisions of this chapter shall not apply to those actions filed in a superior or municipal court which has been selected pursuant to Section 1823.1 and is participating in a pilot project pursuant to Title 1 (commencing with Section 1823) of Part 3.5; provided, however, that any superior or municipal court may provide by local rule that the provisions of this chapter shall apply to actions pending on or filed after July 1, 1979. Any action filed in

such court after the conclusion of the pilot project shall be subject to the provisions of this chapter.

(f) No local rule of a superior court providing for judicial arbitration may dispense with the conference required pursuant to Section 1141.16.

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 the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 895

An act to amend Sections 70047, 73348, 73349, 73350, 73351, 73354, 73356, 73358, 73364, 73365, and 73366 of, to add Section 73353.2 to, to repeal and add Section 73353 to, and to repeal Sections 73341.5, 73351.5, 73353.5, 73354.5, and 73357 of, the Government Code, relating to courts.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 70047 of the Government Code is amended to read:

70047. (a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan as established by joint action and approval of the board of supervisors and a majority of the judges of the court with one-year increments as provided in Section 73348 The step of entry shall be step one. However, the judges of the court may appoint any such reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has such experience and qualifications to entitle that individual to such higher initial step, but in no case may the initial salary be above the third step of the salary range. Official reporters shall advance to the next higher step on the salary plan annually, upon affirmative approval of the appointing authority. The compensation of each official reporter pro tempore shall be at a rate which is the equivalent of the daily wage of the first step in the salary range for full-time official reporters in Contra Costa County for each day such reporter is on duty under order of the court.

(b) During the hours which the court is open for the transaction of the judicial business, the regular official reporter shall perform the duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as that judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. Such adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, legal services clerk, intermediate stenographer clerk, and clerk (experienced level), and shall be effective on the same date.

(d) In addition to any fee otherwise required, in civil trials that last longer than one judicial day, a fee equal to the per diem rate for official reporters pro tempore shall be charged per day of service to the parties, on a pro rata basis, for the services of an official reporter for the second and each succeeding day a reporter is required.

(e) In addition to any fee otherwise required, in civil cases in which the court orders a daily transcript necessitating the services of two phonographic reporters, the party requesting the daily transcript shall pay a fee equal to the per diem rate for official reporters pro tempore for each day of service rendered by the second reporter, for the first and each successive day of trial.

(f) All parties shall deposit their pro rata share of such fees with the clerk at the beginning of the second and each succeeding day's court session

(g) The fees shall be taxed as costs in favor of any party paying the same and to whom costs are awarded by the judgment of the court. Such fee is not subject to Section 6103.

SEC. 1.5 Section 73341.5 of the Government Code is repealed.

SEC. 2. Section 73348 of the Government Code is amended to read:

73348. (a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan with one-year increments as follows:

Step 1. Thirty-seven thousand six hundred ninety-two dollars ($37,692).

Step 2. Thirty-nine thousand five hundred seventy-six dollars ($39,576).

Step 3. Forty-one thousand five hundred forty-four dollars ($41,544).

Step 4. Forty-three thousand six hundred thirty-two dollars ($43,632).

The step of entry to the above schedule shall be Step 1. However, the judges of the court may appoint a court reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has the experience and qualifications to entitle that individual to the higher initial step,

and if the higher initial salary has the approval of the presiding judge of the court and the board of supervisors, but in no case may the initial salary be above the third step of the salary range. Except as provided below, official reporters shall advance to the next higher step on the salary plan annually. The compensation of each official reporter pro tempore shall be at a rate which is the equivalent of the daily wage of the first step in the salary range for full-time official reporters in Contra Costa County for each day the reporter actually is on duty under order of the court which per diem rate shall apply when an official reporter is appointed pursuant to Section 869 of the Penal Code by a justice court judge acting as a magistrate.

Irrespective of the step of the salary range to which initially appointed, an official court reporter shall be eligible for advancement to the next higher step in the salary range after six months service, and thereafter shall advance on the salary range based on annual reviews.

(b) During the hours which the court is open for the transaction of the judicial business, the regular official reporter shall perform the duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as the judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. The adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, legal services clerk and clerk (experienced level). Any such reporter salary adjustment shall be effective on the same day as the effective date of the board's action as to all of the aforesaid county classifications, but for official reporters of each municipal court district shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made. The compensation of each official reporter pro tempore shall remain at the rate specified in subdivision (a) for the days he or she actually is on duty until changed by the board of supervisors at the same time and on the same basis as regular official reporters.

SEC. 3. Section 73349 of the Government Code is amended to read:

73349. Except as otherwise provided in this article, all paid employments of any municipal court now established or which may subsequently be established in Contra Costa County shall be under the merit system established in the county. The merit board of the county shall exercise the same jurisdiction over municipal court employments as it exercises over other county employments in the same manner as they apply to other merit system employments in the Contra Costa County service.

In the event that one or more eligibles are not certified to a vacancy within six months of the date the position became vacant,

or of the date of receipt of an examination request, whichever is later, the appointing authority may fill the vacancy by appointing any candidate who meets the minimum qualifications for the class as set forth in the class specification. The appointee shall thereby obtain merit system status as described above.

SEC. 4. Section 73350 of the Government Code is amended to read:

73350. Except as otherwise provided in this article, all employments of any municipal court now established or which may be established in Contra Costa County shall be compensated and receive other benefits in accordance with the provisions of the salary ordinance of the county governing other county employments. Any subsequent change in benefits provided by the salary ordinance to employees of the county shall apply equally to employees of the municipal courts and shall have the same effective date. These benefits may also be retroactively applied. References hereafter to range allocation and salary steps apply to the basic salary schedule set forth in Section 73352

Within-range step increases shall be granted only upon the affirmative recommendation of the appointing authority

Overtime payments must bear the same approval as within-range step increases.

Clerk-administrators who are retitled district court managers shall receive all management benefits allocated to the former class, including car allowance.

SEC. 4.5. Section 73351 of the Government Code is amended to read:

73351. There are the following classes of positions into which each of the positions of the municipal courts shall be assigned as prescribed in the section pertaining to each court:

(a) Deputy clerk beginning level, which shall include all municipal court employments assigned routine clerical tasks under continuous immediate supervision.

(b) Deputy clerk-data entry operator I, which shall include all municipal court employments at the entry level assigned to operate data entry devices for the purpose of entering and verifying a wide variety of data from coded or uncoded source documents.

(c) Deputy clerk-experienced level, which shall include all municipal court employments assigned clerical tasks requiring exercise of discretion as to methods and priorities and for which supervision is available on a periodic basis only.

(d) Deputy clerk-data entry operator II, which shall include all municipal court employments at the experienced working level assigned to operate data entry devices for the purpose of entering and verifying a wide variety of data from coded or uncoded source documents.

(e) Deputy clerk-senior level, which shall include all municipal court employments assigned complex clerical work involving responsibility for the establishment, maintenance, calendaring,

issuance of process and updating of case records using manual and automated systems.

(f) Deputy clerk-specialist level, which shall include all municipal court employments assigned clerical duties of a complex administrative nature, requiring exercise of initiative and discretion in work organization, methods, and priorities and which may include lead direction of a work section.

(g) Deputy clerk-courtroom clerk, which shall include all municipal court employments assigned clerical duties involving responsibility for keeping the minutes of court proceedings and the processing and maintenance of a variety of documents and records.

(h) Deputy clerk-division supervisor, which shall include all municipal court employments assigned responsibility for planning, organizing and directing the clerical activities of a division or branch office in a municipal court including the supervision of clerical staff.

(i) Court operations coordinator, which shall include assisting in supervision and direction of court affairs, filling in for courtroom clerks and other employees during absences, and being responsible for court operations in the absence of the district court manager. Chief deputy clerks holding such position on January 1, 1988, shall be retitled court operations coordinator-A.

(j) District court manager, which shall include any municipal court position charged with the overall responsibility for managing and supervising court clerical operations including courtroom duties. Clerk-administrators holding such position on January 1, 1989, shall be retitled district court manager A or B (Schedule A in a court with five to seven judges, inclusive; Schedule B in a court with two to four judges, inclusive). Whenever a single district court manager A position vacates, the salary shall be downgraded to that currently paid to district court manager B. Whenever a district court manager B position vacates, the salary shall be downgraded to that currently paid to district court manager C (in a court with two to four judges, inclusive).

(k) Court commissioner, which shall include all municipal court employments who exercise the same powers and duties of judges of the court with respect to traffic and small claims matters.

(*l*) Executive secretary, which shall be assigned to serve as the confidential secretary to the county municipal court administrator.

(m) Deputy clerk-senior data entry operator, which shall include all municipal court employments assigned to complex data entry activities of a varied nature. Positions of this class may assign and review the work of several deputy clerks-data entry operator I or II.

(n) County municipal court administrator, which shall be responsible for the overall administration of all municipal court judicial districts in the county.

(o) Assistant county municipal court administrator, which shall be responsible for assisting in the overall administration of all municipal court judicial districts in the county and may act for the county municipal court administrator in his or her absence.

(p) Municipal court systems manager, which shall be responsible for managing the development, implementation and enhancement of court systems.

(q) Municipal court fiscal officer, which shall be responsible for planning, reviewing and coordinating fiscal and accounting activities of the county's municipal courts.

(r) Municipal court training officer, which shall be responsible for planning, reviewing, and coordinating training and educational activities of the county's municipal courts, and related work as required.

(s) Municipal court management analyst, which shall be responsible under general direction for planning, developing, and implementing projects and assignments for the county's municipal courts, and related work as required.

The board of supervisors may create a new class or classes by specifying the number of positions for each new class and the compensation therefor, provided that the new class or classes shall be effective only until January 1 of the second year following the calendar year in which the classes are created

SEC. 5. Section 73351.5 of the Government Code is repealed.

SEC. 6. Section 73353 of the Government Code is repealed.

SEC. 7. Section 73353 is added to the Government Code, to read:

73353. Classes of positions provided in Section 73351 are allocated to the salary schedule as follows:

Class Title	Salary Schedule	Pay Level
Deputy clerk-beginning level	C5-1035	1279-1555
Deputy clerk-experienced level	C5-1180	1478-1797
Deputy clerk-senior level	XB-1347	1663-2123
Deputy clerk-specialist level	XB-1419	1788-2282
Deputy clerk-DEO I	C5-1133	1411-1715
Deputy clerk-DEO II	C5-1230	1554-1889
Deputy clerk-senior DEO	C5-1303	1672-2032
Deputy clerk-courtroom clerk	C5-1583	2212-2688
Deputy clerk-division supervisor	C5-1615	2284-2776
Court operations coordinator-B	C5-1787	2712-3296
Court operations coordinator-A	C5-1884	2988-3632
District court manager-A	C5-2214	4156-5051
District court manager-B	C5-2104	3723-4525
District court manager-C	C5-1933	3138-3814
Executive secretary	C1-1591	2710 F
Municipal court training officer	C5-1805	2761-3356
Municipal court management analyst	C5-1805	2761-3356
Municipal court systems manager	C5-1853	2897-3521
Municipal court fiscal officer	C5-1892	3012-3661
Assistant county municipal court administrator	C5-2104	3723-4525
County municipal court administrator	C1-2375	5933 F

SEC. 7.5. Section 73353.2 is added to the Government Code, to read:

73353.2. (a) The appointing authority for the position of division supervisor may, based upon an evaluation of work performance, award up to two 2½ percent steps (total of 5 percent maximum) salary advancement for outstanding performance by the employee.

(b) The appointing authority for the positions of county municipal court administrator and assistant county municipal court administrator may, based upon an evaluation of work performance, award up to two 2½ percent additional steps (total of 5 percent maximum) for outstanding performance by the employee.

SEC. 8. Section 73353.5 of the Government Code is repealed.

SEC. 8.5. Section 73354 of the Government Code is amended to read:

73354. Certain classifications in the municipal courts are deemed to be equivalent in job and salary level to certain classifications in the service of Contra Costa County and whenever the salary of a classification in the service of Contra Costa County is adjusted by the board of supervisors, the salary of the comparable classification in the municipal courts shall be adjusted a commensurate number of levels on the salary schedule. The adjustment shall be effective on the same day as the effective date of the action by the board of supervisors as it applies to the county classifications, but the adjustment shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made.

(a) The individual court class and equivalent county class or relationship are as follows:

Court Class	Equivalent County Class
Deputy clerk-beginning	Clerk-beginning
Deputy clerk-experienced	Clerk-experienced
Deputy clerk-senior	Clerk-senior
Deputy clerk-specialist	Clerk-specialist
Deputy clerk-DEO I	Data entry operator I
Deputy clerk-DEO II	Data entry operator II
Deputy clerk-senior DEO	7.5% above data entry operator II
Municipal court reporter	Superior court reporter
Deputy clerk-courtroom clerk	17.8% above clerk-specialist

(b) The municipal court classes listed below are designated management classes and are deemed equivalent in job and salary level to management classes in the service of Contra Costa County. Whenever the board of supervisors adjusts county management classes salary, municipal court management classes shall be adjusted a commensurate number of levels on the salary schedule. In no event shall the salary of deputy clerk-division supervisors be less than 26 salary levels above the salary of deputy clerk-courtroom clerk nor shall the salary adjustments allocated to the following positions

(excluding deputy clerk-division supervisor) be less than the percentage of adjustment allocated to deputy clerk-division supervisor:

Management Positions:
Deputy clerk-division supervisor
Court operations coordinator B or A
District court manager-A
District court manager-B
District court manager-C
Executive secretary
Municipal court training officer
Municipal court management analyst
Municipal court systems manager
Municipal court fiscal officer
Assistant county municipal court administrator
County municipal court administrator

(c) For commissioners appointed prior to July 1, 1985, the class of court commissioner shall be allocated to a five-step salary schedule, in five percent incremental steps with the fifth step equivalent to 85 percent of the salary of a superior court judge in the County of Contra Costa. For commissioners appointed on and subsequent to July 1, 1985, the class of court commissioner shall be allocated to a three-step salary schedule, in 5 percent incremental steps with the third step equivalent to 85 percent of the salary of a municipal court judge in the County of Contra Costa. Upon appointment, a new court commissioner shall be allocated to the first step of the schedule, except that an appointee with exceptionally high qualifications and experience may be appointed at a higher step with the board of supervisors' approval

SEC. 9. Section 73354.5 of the Government Code is repealed.

SEC. 10. Section 73356 of the Government Code is amended to read:

73356. Certain classifications in the municipal courts are excluded from the merit system.

(a) A majority of the municipal court judges in Contra Costa County shall appoint the county municipal court administrator, whose position shall be exempt from the merit system. The county municipal court administrator shall serve at the pleasure of the judges, and may be removed by a majority of the municipal court judges at their discretion.

(b) Appointment to the classification of court commissioner shall be made in accordance with Section 73362.

(c) The county municipal court administrator shall appoint the assistant county municipal court administrator who shall be exempt from the merit system and who shall serve at the discretion of the county municipal court administrator.

SEC. 11. Section 73357 of the Government Code is repealed.

SEC. 11.5. Section 73358 of the Government Code is amended to read:

73358. The total number of positions authorized for operation of municipal courts in Contra Costa County is as follows:

Class Title	Number of Positions
Deputy clerk-(deep class), including beginning, experienced, senior, and specialist levels	230
Deputy clerk-DEO I or II	24
Deputy clerk-senior DEO	4
Deputy clerk-courtroom clerk	16
Deputy clerk-division supervisor	15
Court operations coordinator B or A	4
District court manager-A	1
District court manager-B	2
District court manager-C	1
Executive secretary	1
Municipal court training officer	1
Municipal court management analyst	1
Municipal court systems manager	1
Municipal court fiscal officer	1
Assistant county municipal court administrator	1
County municipal court administrator	1

SEC 12. Section 73364 of the Government Code is amended to read:

73364. Approval of the board of supervisors shall be obtained prior to filling any position in Section 73358 or 73362 which has never been filled.

SEC 13. Section 73365 of the Government Code is amended to read:

73365. If an increase in the business of the court or any other emergency requires a greater number of employees for the prompt and faithful discharge of the business of the court than the number expressly provided by law or requires the performance of duties of positions in the lowest salary bracket where all such positions have been filled, with the approval of the presiding judge in a two-judge district, and the majority of the judges in a three-or-more-judge district, and in all cases with the approval of the board of supervisors, the county municipal court administrator may appoint as many additional deputies as are needed. The additional deputies shall be appointed at the entrance level classification and shall be selected in the same manner as those for whom express provision is made, and they shall receive compensation on the basis of the hourly equivalent to the base rate of pay as provided in the salary schedule in the same amount as the lowest salary bracket provided for such class of employee. Employees may continue in those positions not longer than 90 days after the adjournment of the next regular session of the

Legislature.

SEC. 14. Section 73366 of the Government Code is amended to read:

73366. Except as provided in this article, all persons serving as permanent employees of the municipal courts shall be assigned to the positions authorized in this article in accordance with the duties and responsibilities of their position classifications. The assignments shall be made by the appointing authority in accordance with the rules under the merit system.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 896

An act to amend Section 436.28 of, and to add Section 436.86 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 436.28 of the Health and Safety Code is amended to read:

436.28. (a) The office's authorization to insure health facility construction, improvement, and expansion loans under this chapter shall be limited to a total of not more than two billion dollars ($2,000,000,000).

(b) Notwithstanding the limitation in subdivision (a), the office may exceed the specific dollar limitation in any instance of refinancing a preexisting office-guaranteed loan, if the refinancing results in savings to the health facility and increases the probability that a loan can be repaid.

SEC. 2. Section 436.86 is added to the Health and Safety Code, to read:

436.86. (a) If a borrower is unable to comply with subdivision (j) of Section 436.8 due to selective provider contracting under the Medi-Cal program, and the office has determined the borrower has negotiated in good faith but was not awarded a contract, the borrower may be eligible for insurance under this chapter as provided in subdivision (b).

(b) The office may determine that a noncontracting borrower

shall be considered as meeting the requirements of subdivision (j) of Section 436.8 if the borrower otherwise provides a community service in accordance with regulations adopted by the office. The regulations shall describe alternative methods of meeting the obligation, which may include, but not be limited to, providing free care, charity care, trauma care, community education, or primary care outreach and care to the elderly, in amounts greater than the community average. The regulations shall include a requirement that a general acute care hospital, which is not a small and rural hospital as defined in Section 442.2, shall have, and continue to maintain, a 24-hour basic emergency medical service with a physician on duty, if it provided this service on January 1, 1990. The office shall have the authority to waive this requirement upon a determination by the director that this requirement would create a hardship for the hospital, be inconsistent with regionalization of emergency medical services, or not be in the best interest of the population served by the hospital.

CHAPTER 897

An act to add Section 26805 to the Government Code, to add Sections 24801 and 24802 to the Health and Safety Code, to amend Sections 11, 17, 37, 118, 182, 281, 470, 532, 653f, 859b, 1050, 1203.046, 1203.065, 1203.2a, 1463.5, 1463.22, 1601, and 3420 of, to amend and renumber Sections 19a, 19c, 19d, 19e, and 653*l* of, to add Sections 19.4, 189.5, 329, 501, and 4000.5 to, and to repeal Sections 19b, 177, 269, 638, 638a, 1047, 1103, 1103a, 1104, 1105, 1106, 1107, 1109, 1110, 1131, and 1135 of, the Penal Code, and to amend Sections 4514, 5328.4, and 6500 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 26805 is added to the Government Code, to read:

26805. The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

SEC. 2. Section 24801 is added to the Health and Safety Code, to read:

24801. No person shall operate or maintain any X-ray fluoroscope, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet. This section shall not apply to any licensed physician, surgeon,

podiatrist, chiropractor, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of those persons. Any person violating this section shall be guilty of a misdemeanor.

SEC. 3. Section 24802 is added to the Health and Safety Code, to read:

24802. It shall be unlawful for any person to implant foreign materials within the scalp of any other person for the purpose of preventing or alleviating baldness. "Foreign materials" shall include, but shall not be limited to, synthetic fibers and strands of human hair from another person. A violation of this section shall be a misdemeanor.

This section shall not be applicable to procedures for the transplantation of a person's own hair or to procedures for the fixation of hairpieces, toupees, or wigs.

SEC. 4. Section 11 of the Penal Code is amended to read:

11. This code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor, except as provided in Section 19.2 of this code, any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

SEC. 5. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison.

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Youth Authority for a crime punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, the offense shall, upon the discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor, or;

(2) The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

SEC. 6. Section 19a of the Penal Code is amended and renumbered to read:

19.2. In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.

SEC. 7. Section 19b of the Penal Code is repealed.

SEC. 8. Section 19c of the Penal Code is amended and renumbered to read:

19.6. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.

SEC. 9. Section 19d of the Penal Code is amended and renumbered to read:

19.7. Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to, powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof.

SEC. 10. Section 19e of the Penal Code is amended and renumbered to read:

19.8. The following offenses are subject to the provisions of subdivision (d) of Section 17: Sections 330, 415, 555, and 853.7, of this code; subdivision (m) of Section 602 of this code; subdivision (b) of Section 25658 and Sections 25661 and 25662 of the Business and Professions Code; Sections 27150.1, 40508, and 42005 of the Vehicle Code, Section 14601.1 of the Vehicle Code based upon failure to appear, and any other offense which the Legislature makes subject to the provisions of subdivision (d) of Section 17. Except where a lesser maximum fine is expressly provided for violation of any of those sections, any violation which is an infraction is punishable by a fine not exceeding two hundred fifty dollars ($250).

Except for Section 14601.1 of the Vehicle Code based upon failure to appear, a conviction for any offense made an infraction under subdivision (d) of Section 17 shall not be grounds for the suspension, revocation, or denial of any license, or for the revocation of probation or parole of the person convicted.

SEC. 11. Section 19.4 is added to the Penal Code, to read:

19.4. When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

SEC. 12. Section 37 of the Penal Code is amended to read:

37. (a) Treason against this state consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the state. The punishment of treason shall be death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and 190.4.

(b) Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor, except as provided in Sections 190.3 and 190.4, can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

SEC. 13. Section 118 of the Penal Code is amended to read:

118. (a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law of the State of California be administered, willfully and contrary to such oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which such testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

SEC. 14. Section 177 of the Penal Code is repealed.

SEC. 15. Section 182 of the Penal Code is amended to read:

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform such promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment in the state prison for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of the that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or both.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in the county jail for not more than one year, or in the state prison, or by a fine not exceeding ten thousand dollars ($10,000) or both.

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect such conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 16. Section 189.5 is added to the Penal Code, to read:

189.5. (a) Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon the defendant, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

(b) Nothing in this section shall apply to or affect any proceeding under Section 190.3 or 190.4.

SEC 17. Section 269 of the Penal Code is repealed.

SEC 18. Section 281 of the Penal Code is amended to read:

281. (a) Every person having a husband or wife living, who marries any other person, except in the cases specified in Section 282, is guilty of bigamy.

(b) Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the marriages may be proved by evidence which is admissible to prove a marriage in other cases; and when the second marriage took place out of this state, proof of that fact, accompanied with proof of cohabitation thereafter in this state, is sufficient to sustain the charge.

SEC. 19. Section 329 is added to the Penal Code, to read:

329. Upon a trial for the violation of any of the provisions of this chapter, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

SEC. 20. Section 470 of the Penal Code is amended to read:

470. (a) Every person who, with intent to defraud, signs the name of another person, or a fictitious person, knowing that he or she has no authority so to do, to, or falsely makes, alters, forges, or counterfeits, any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for

money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or any assignment of any bond, writing obligatory, promissory note, or other contract for money or other property; or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(b) Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any forged bill or note, it is not necessary to prove the incorporation of the bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that the bill or note is forged or counterfeited.

SEC. 21. Section 501 is added to the Penal Code, to read:

501. Upon a trial for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained, if the offender be proved to have embezzled or stolen any money, bank notes, certificates of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank notes, certificates of stock, or valuable security, is not proved; and upon a trial for embezzlement, if the offender is proved to have embezzled any piece of coin or other money, any bank note, certificate of stock, or

valuable security, although the piece of coin or other money, or bank note, certificate of stock, or valuable security, may have been delivered to him or her in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

SEC. 22. Section 532 of the Penal Code is amended to read:

532. (a) Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, or who causes or procures others to report falsely of his or her wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets possession of money or property, or obtains the labor or service of another, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.

(b) Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any labor, money, or property, whether real or personal, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof is in writing, subscribed by or in the handwriting of the defendant, or unless the pretense is proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. This section does not apply to a prosecution for falsely representing or personating another, and, in that assumed character, marrying, or receiving any money or property.

SEC. 23. Section 638 of the Penal Code is repealed.

SEC. 24. Section 638a of the Penal Code is repealed.

SEC. 25. Section 653f of the Penal Code is amended to read:

653f. (a) Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial, proceeding, or inquiry authorized by law, is punishable by imprisonment in the county jail not more than one year or in the state prison, or by fine of not more than ten thousand dollars ($10,000), or the amount which could have been assessed for commission of the offense itself, whichever is greater, or by both such fine and imprisonment.

(b) Every person who, with the intent that the crime be committed, solicits another to commit or join in the commission of murder is punishable by imprisonment in the state prison for three, six, or nine years.

(c) Every person who, with the intent that the crime be committed, solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence, or any violation of Section 264.1, 288, or 289, is punishable by imprisonment in a state prison for two, three or four years.

(d) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in the county jail for a period not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, then the person convicted of the subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

This subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 26. Section 653*l* of the Penal Code is amended and renumbered to read:

653j. (a) Every person 18 years of age or older who, in any voluntary manner, solicits, induces, encourages, or intimidates any minor with the intent that the minor shall commit a felony in violation of paragraph (1) of subdivision (c) of Section 136.1 or Section 187, 211, 245, 246, 451, 459, or 520 of the Penal Code, or Section 10851 of the Vehicle Code, shall be punished by imprisonment in the state prison for a period of three, five, or seven years. If the minor is 16 years of age or older at the time of the offense, this section shall only apply when the adult is at least five years older than the minor at the time the offense is committed.

(b) In no case shall the court impose a sentence pursuant to subdivision (a) which exceeds the maximum penalty prescribed for the felony offense for which the minor was solicited, induced, encouraged, or intimidated to commit.

(c) Whenever a sentence is imposed under subdivision (a), the court shall consider the severity of the underlying crime as one of the circumstances in aggravation.

SEC. 26.5. Section 859b of the Penal Code is amended to read:

859b. At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with Section 859a, the magistrate, immediately upon the appearance of counsel, or if none appears, after waiting a reasonable time therefor as provided in Section 859, shall set a time for the examination of the case and

shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense.

Both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found as provided for in Section 1050, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later.

Whenever the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment or plea and the defendant has remained in custody for 10 or more court days solely on that complaint, unless either of the following occur:

(a) The defendant personally waives his or her right to preliminary examination within the 10 court days.

(b) The prosecution establishes good cause for a continuance beyond the 10-court-day period.

For purposes of this subdivision, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or in Section 11165.6 has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. Any continuance under this paragraph shall be limited to a maximum of three additional court days.

If the preliminary examination is set or continued beyond the 10-court-day period, the defendant shall be released pursuant to Section 1318 unless:

(1) The defendant requests the setting of continuance of the preliminary examination beyond the 10-court-day period.

(2) The defendant is charged with a capital offense in a cause where the proof is evident and the presumption great.

(3) A witness necessary for the preliminary examination is unavailable due to the actions of the defendant

(4) The illness of counsel.

(5) The unexpected engagement of counsel in a jury trial.

(6) Unforeseen conflicts of interest which require appointment of new counsel.

The magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment or plea, unless the defendant personally waives his or her right to a preliminary examination within the 60 days.

SEC. 27. Section 1047 of the Penal Code is repealed.

SEC. 27.5 Section 1050 of the Penal Code is amended to read:

1050 (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and

heard and determined at the earliest possible time. To this end the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary; and (2), within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify people's witnesses and the defense attorney shall notify defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court. The superior and municipal courts of a county may adopt rules, which shall be consistent, regarding the method of giving the notice or waiver of service required by this subdivision, where a continuance is sought because of a conflict between scheduled appearances in the courts of that county.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the

facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

For purposes of this section, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6 has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chairman of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

SEC. 28. Section 1103 of the Penal Code is repealed.
SEC. 29. Section 1103a of the Penal Code is repealed.
SEC. 30. Section 1104 of the Penal Code is repealed.
SEC. 31. Section 1105 of the Penal Code is repealed.
SEC. 32. Section 1106 of the Penal Code is repealed.
SEC. 33. Section 1107 of the Penal Code is repealed.
SEC. 34. Section 1109 of the Penal Code is repealed.
SEC. 35. Section 1110 of the Penal Code is repealed.
SEC. 36. Section 1131 of the Penal Code is repealed.
SEC. 37. Section 1135 of the Penal Code is repealed.

SEC. 37.5. Section 1203.046 of the Penal Code is amended to read:

1203.046. (a) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of violating Section 653j by using, soliciting, inducing, encouraging, or intimidating a minor to commit a felony in violation of that section.

(b) When probation is granted pursuant to subdivision (a), the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 38. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of violating subdivision (2) of Section 261, or Section 264.1, or Section 266h, or Section 266i, or Section 266j, or subdivision (a) of Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or subdivision (c) of Section 311.4.

(b) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a violation of Section 220 for assault with intent to commit any of the following: rape, sodomy, oral copulation, any violation of Section 264.1, any violation of subdivision (b) of Section 288, or any violation of Section 289.

When probation is granted, 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.

(c) This section 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. 39. Section 1203.2a of the Penal Code is amended to read:

1203.2a. If any defendant who has been released on probation is committed to a prison in this state or another state for another offense, the court which released him or her on probation shall have jurisdiction to impose sentence, if no sentence has previously been imposed for the offense for which he or she was granted probation,

in the absence of the defendant, on the request of the defendant made through his or her counsel, or by himself or herself in writing, if such writing is signed in the presence of the warden or superintendent of the prison in which he or she is confined or the duly authorized representative of the warden or superintendent, and such warden or superintendent or his or her representative attests both that the defendant has made and signed such request and that he or she states that he or she wishes the court to impose sentence in the case in which he or she was released on probation, in his or her absence and without him or her being represented by counsel.

The probation officer may, upon learning of such defendant's imprisonment, and must within 30 days after being notified in writing by the defendant or his or her counsel, or the warden or superintendent or duly authorized representative of the prison in which the defendant is confined, report such commitment to the court which released him or her on probation.

Upon being informed by the probation officer of the defendant's confinement, or upon receipt from the warden, superintendent, or duly authorized representative of any prison in this state or another state of a certificate showing that the defendant is confined in prison, the court shall issue its commitment if sentence has previously been imposed. If sentence has not been previously imposed and if the defendant has requested the court through counsel or in writing in the manner herein provided to impose sentence in the case in which he or she was released on probation in his or her absence and without the presence of counsel to represent him or her, the court shall impose sentence and issue its commitment, or shall make other final order terminating its jurisdiction over the defendant in the case in which the order of probation was made. If the case is one in which sentence has previously been imposed, the court shall be deprived of jurisdiction over defendant if it does not issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 60 days after being notified of the confinement. If the case is one in which sentence has not previously been imposed, the court is deprived of jurisdiction over defendant if it does not impose sentence and issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 30 days after defendant has, in the manner prescribed by this section, requested imposition of sentence.

Upon imposition of sentence hereunder the commitment shall be dated as of the date upon which probation was granted. If the defendant is then in a state prison for an offense committed subsequent to the one upon which he or she has been on probation, the term of imprisonment of such defendant under a commitment issued hereunder shall commence upon the date upon which defendant was delivered to prison under commitment for his or her subsequent offense. Any terms ordered to be served consecutively shall be served as otherwise provided by law.

In the event the probation officer fails to report such commitment to the court or the court fails to impose sentence as herein provided, the court shall be deprived thereafter of all jurisdiction it may have retained in the granting of probation in said case.

SEC. 40. Section 1463.5 of the Penal Code is amended to read:

1463.5. The distribution of funds required pursuant to Section 1463, and the distribution of assessments imposed and collected under Section 1464 and Section 42006 of the Vehicle Code, may be determined and made upon the basis of probability sampling. The sampling shall be procedural in nature and shall not substantively modify the distributions required pursuant to Sections 1463 and 1464 and Section 42006 of the Vehicle Code. The procedure for the sampling shall be prescribed by the county auditor and the procedure and its implementation shall be approved by the board of supervisors and a majority of the cities within a county. The reasonableness of the distribution shall be verified during the audit performed pursuant to Section 71383 of the Government Code.

SEC. 41. Section 1463.22 of the Penal Code is amended to read:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) for each alleged violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and justice courts incurred in administering Sections 16028, 16030, and 16031 of the Vehicle Code. The amount required to be deposited in a special account pursuant to this subdivision shall be deposited regardless of whether the charge is dismissed pursuant to subdivision (e) of Section 16028 of the Vehicle Code or otherwise. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars ($3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department's costs in administering those sections of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the

General Fund.

SEC. 42. Section 1601 of the Penal Code is amended to read:

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

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

SEC. 43. Section 3420 of the Penal Code is amended to read:

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

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

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

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

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

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

(i) Murder.

(ii) Mayhem.

(iii) Aggravated mayhem.

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

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

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

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

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

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

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

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

SEC. 44. Section 4000.5 is added to the Penal Code, to read:

4000.5. Notwithstanding any other provision of law, the sheriff of any county may transfer prisoners committed to any jail of the county to any industrial road camp maintained by the county.

SEC. 45. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of intake, assessment, and services or appropriate

referrals, or in the course of conservatorship proceedings. The consent of the person with a developmental disability, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional employed by a facility to a professional not employed by the facility who does not have the medical responsibility for the care of a person with a developmental disability.

(b) When the person with a developmental disability, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the person, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person.

(c) To the extent necessary for a claim, or for a claim to be made on behalf of a person with a developmental disability for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. Such rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"_____
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or such person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions

of the Welfare and Institutions Code.

"

Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by such committee.

(i) If the person with a developmental disability who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person is unable to sign such release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the person, may release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional to reveal information which has been given to him or her in confidence by a family member of the person.

(k) Upon written agreement by a person with a developmental disability previously confined in or otherwise treated by a facility, the professional in charge of the facility or his or her designee may release any information, except information which has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that such information is relevant to the evaluation. Such agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state hospital for the developmentally disabled the State Department of Developmental Services, the physician in charge of the patient, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the state hospital resident, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident which is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) of, and Chapter 3 (commencing with Section 1500) of, Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the

person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of such board and the records are relevant to such violation. Such information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the physician in charge of the person with a developmental disability, or the professional in charge of the facility or his or her designee, when he or she has probable cause to believe that a person with a developmental disability while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To the agency established in this state to fulfill the requirements and assurances of Section 142 of the federal Developmental Disabilities Act of 1984 for a system to protect and advocate the rights of persons with developmental disabilities, as defined in Section 102(5) of the federal act. The agency shall have access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities when both of the following conditions apply:

(1) The agency has received a complaint from, or on behalf of, the person and the person consents to the disclosure to the extent of his or her capabilities.

(2) The person does not have a parent, guardian, or conservator, or the state or the designee of the state is the person's guardian or conservator.

SEC. 46. Section 5328.4 of the Welfare and Institutions Code is amended to read:

5328.4. The physician in charge of the patient, or the professional

person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in Section 12020 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

SEC. 47. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of subdivision (2) or (3) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is

made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event such subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

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

SEC. 48. Any section of any act enacted by the Legislature during the 1989 calendar year, which takes effect on or before January 1, 1990, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

CHAPTER 898

An act to amend Sections 436.4, 443.22, and 15071 of, to add Sections 15047.5, 15049.5, and 15057 to, and to add Article 9 (commencing with Section 436.490) to Chapter 4 of Part 1 of Division 1 of, the Health and Safety Code, relating to health facilities, and making an appropriation therefor.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. This act shall be known, and may be cited as, the Hospital Cost Containment Act of 1989.

SEC. 2. Section 436.4 of the Health and Safety Code is amended to read:

436.4. The office shall implement the loan insurance program for the construction, improvement, and expansion of public and nonprofit corporation health facilities so that, in conjunction with all other existing facilities, the necessary physical facilities for furnishing adequate health facility services will be available to all the people of the state.

The office shall make an inventory of all existing health facilities and shall survey the need for construction, improvement, and

expansion of public and nonprofit corporation health facilities and, on the basis of that inventory and survey, shall develop a state plan.

The health facility construction loan insurance program shall provide for health facility distribution throughout the state in a manner that will make all types of health facility services reasonably accessible to all persons in the state according to the state plan.

In performing its duties under this section, the office may utilize the state plan developed pursuant to Section 439.3.

SEC. 3. Article 9 (commencing with Section 436.490) is added to Chapter 4 of Part 1 of Division 1 of the Health and Safety Code, to read:

Article 9. Rural Hospital Grant Program

436.490 It is the intent of the Legislature in enacting this article to assist rural hospitals which play a vital role in the health delivery system. The Legislature recognizes the difficulties rural hospitals encounter meeting urban hospital standards while serving a small, rural, or tourist patient base. However, it is not the intent of the Legislature to provide assistance to facilities that can only survive with continuous subsidies. Rather, it is the intent of the Legislature, through this program, to encourage the development and transition to an alternative rural hospital model, and to provide essential access to services not available at the alternative rural hospital level.

436.491. In each even-numbered year, the office shall contract for an actuarial study to determine the reserve sufficiency of funds in the Health Facility Construction Loan Insurance Fund. The study shall examine the portfolio of existing insured loans and shall estimate the amount of reserve funds that the office should reasonably have available to be able to respond adequately to potential foreseeable risks, including extraordinary administrative expenses and actual defaults. Actuarial study contracts shall be exempt from the provisions of Section 10373 of the Public Contract Code and shall be considered sole-source contracts.

436.492. (a) In each odd-numbered year when the reserve balance in the fund is projected to be in excess of that actuarially needed, the office may, subject to authority in the Budget Act, grant excess reserve funds to rural hospitals.

(b) Whenever the office administers the grant program, it shall do so by a competitive process where potential grantees have sufficient time to apply. Priority for funds shall be given to alternative rural hospitals and rural hospitals that are sole community providers. Priority shall also be given to applicants that are otherwise financially viable, but request one-time financial assistance for equipment expenditures or other capital outlays. The maximum amount of any grant for a single project in any one grant year shall be two hundred fifty thousand dollars ($250,000).

(c) For the purposes of this article, "rural hospital" shall have the same meaning as contained in subdivision (a) of Section 1188.855.

SEC. 4. Section 443.22 of the Health and Safety Code is amended to read:

443.22. On and after January 1, 1986, any reference in this code to the Advisory Health Council shall be deemed a reference to the California Health Policy and Data Advisory Commission.

SEC. 5. Section 15047.5 is added to the Health and Safety Code, to read:

15047.5. The director shall request the Department of Finance or the Auditor General to perform an audit of the uses of fees collected pursuant to Section 15046. This audit shall include, but not be limited to, an accounting of staff resources allocated to hospital plan reviews by the statewide office and by the office of the State Architect in the Department of General Services since these reviews are funded by fees collected pursuant to Section 15046. If the Department of Finance and the Auditor General indicate that other audit responsibilities will prohibit them from performing and completing the audit within six months of being initially requested to do so, then the office may contract with an independent organization to perform the audit.

SEC. 6. Section 15049.5 is added to the Health and Safety Code, to read:

15049.5. Any permit or authorization issued or provided pursuant to this chapter shall be subject to Chapter 3 (commencing with Section 15374) of Part 6.7 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 15057 is added to the Health and Safety Code, to read:

15057. The director, the State Architect, and the State Fire Marshal shall establish explicit procedures to coordinate responsibilities of their respective agencies in addressing the mandates of this chapter. The purpose of these procedures shall be to establish a more timely plan review process and to eliminate any unnecessary delays in that process. The statewide office shall serve as the lead agency and the director, with the advice of the office of the State Architect and the State Fire Marshal, shall submit a report to the Legislature no later than July 1, 1990, outlining problems and constraints in implementing this section, if any. Further, the director from time to time shall meet with the Director of Health Services, or his or her designee, to ensure that there are no postreview conflicts with licensing and certification in the implementation of projects which have been approved by the statewide office.

SEC. 8. Section 15071 of the Health and Safety Code is amended to read:

15071. New construction of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 shall conform to the provisions of the latest edition of Title 24 of the California Code of Regulations. The statewide office, with the advice of the Building Safety Board, shall adopt and administer regulations for the independent review of these structures.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these buildings. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of the State Architect and the State Fire Marshal.

The statewide office shall, by July 1, 1991, set forth and implement criteria to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

SEC. 8.5. Section 15071 of the Health and Safety Code is amended to read:

15071. Construction or alterations of buildings specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026 shall conform to the provisions of the latest edition of Title 24 of the California Code of Regulations. The statewide office shall independently review and inspect these structures. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city, county, or city and county.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a

hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these buildings. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of the State Architect and the State Fire Marshal.

The statewide office shall, by July 1, 1991, set forth and implement criteria to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026, which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

SEC. 9. Section 8.5 of this bill incorporates amendments to Section 15071 of the Health and Safety Code proposed by both this bill and AB 2347. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 15071 of the Health and Safety Code, and (3) this bill is enacted after AB 2347, in which case Section 8 of this bill shall not become operative.

CHAPTER 899

An act to amend Sections 7073, 7073.5, and 7082 of the Government Code, relating to enterprise zones, and making an appropriation therefor.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 7073 of the Government Code is amended to read:

7073. (a) The governing body of a city or county may, either by ordinance or resolution, propose an eligible area plus one commercial or industrial area or both within its respective jurisdiction as the geographic area for an enterprise zone. A county may propose an area within the unincorporated area as the geographic area for an enterprise zone, but shall not propose an area within an incorporated area. This proposed geographic area shall be based upon findings by the governing body that the area is a depressed area and that the designation as an enterprise zone is necessary in order to assist in attracting private sector investment in the area. The city or county shall establish definitive boundaries for the area to be included in the application for designation and, if designated by the department, the designation shall be binding for a period of 15 years.

(b) Following the application for designation of an enterprise zone by a city or county, the governing body shall apply to the department for designation. The department shall adopt regulations and guidelines concerning the necessary contents of each application for designation.

(c) Any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application. A maximum of 20 applications may be chosen each year to complete a final application.

(d) (1) From the applications received, the department may designate by December 1991, not more than 25 enterprise zones within the state, one of which may be designated an airport enterprise zone and not more than three of which may be designated high technology enterprise zones.

(2) In the case of any existing zone or any new zone designated on or after the effective date of the act adding this paragraph, a city or county may propose that the enterprise zone within the incorporated area be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone. The department may approve that expansion based upon the criterion specified in subdivision (e).

(e) In designating enterprise zones, the department shall select

from the applications submitted those proposed enterprise zones which, based on those applications, meet, to the extent possible, the following criterion:

Those proposed enterprise zones which, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed

For purposes of this paragraph, regulatory incentives include, but are not limited to, all of the following: the suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls; the elimination or reduction of fees for applications, permits, and local government services; and the establishment of a streamlined permit process.

Tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

Program and other incentives may include, but are not limited to, all of the following: the provision or expansion of infrastructure; the targeting of federal block grant moneys, including small cities, education, and health and welfare block grants; the targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration; the targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Partnership Training Act of 1982; the targeting of federal or state transportation grant moneys; and the targeting of federal or state low-income housing and rental assistance moneys.

In the process of designating new zones, the department shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(f) In evaluating applications for designation, the department shall ensure that applications are not disqualified solely because of technical deficiencies and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(g) For purposes of this section, "high technology enterprise zone" means an enterprise zone which is intended to attract private sector investment in high technology industries and is proposed to be located in an area which would permit the association of those industries with an urban university or college.

(h) The applications and selection criteria for designation adopted pursuant to Section 7076 prior to the effective date of the act adding this subdivision shall apply to this section, as amended by the act adding this subdivision.

(i) Section 7076 shall not apply to the extent it conflicts with the provisions of the act adding this subdivision.

(j) For purposes of this section, "airport enterprise zone" means

an enterprise zone intended to attract private sector investment in aviation-dependent industries, commercial aviation, and other commercial and industrial activity and which includes a rural airport located within unincorporated territory.

SEC. 2. Section 7073.5 of the Government Code is amended to read:

7073.5. (a) An enterprise zone shall consist of both one eligible area plus one commercial or industrial area or both.

(b) An eligible area is a geographic area which, based upon the determination of the department, fulfills at least one of the following:

(1) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(2) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(3) The city or county has submitted material to the department for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(4) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

SEC. 3. 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) The area 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.

The area may have, but is not required to have, a history of gang-related activity whether or not crimes of violence have been committed.

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 have, but is not required to have, a history of gang-related activity, whether or not crimes of violence have been committed.

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. 4. The sum of one hundred forty-nine thousand dollars ($149,000) is hereby appropriated from the General Fund to the Department of Commerce to fund one and one-half personnel years to support three positions for six months each, the addition of which is required to administer the Enterprise Zone Act (Ch. 12.8 (commencing with Sec. 7070), Div. 7, Title 1, Gov. C.), as amended by this act.

SEC. 5. This act shall become operative only if Senate Bill 19 of the 1989–90 Regular Session is chaptered.

CHAPTER 900

An act to amend Sections 68074 and 68075 of, and to add Sections 68074.1 and 68075.1 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 68074 of the Education Code is amended to read:

68074. Except as otherwise provided in Section 68074.1, a student who is a natural or adopted child stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

If that member of the armed forces of the United States, whose dependent natural or adopted child, stepchild, or spouse is in attendance at an institution, (1) is thereafter transferred on military orders to a place outside this state where the member continues to serve in the armed forces of the United States or (2) is thereafter retired as an active member of the armed forces of the United States, the student dependent shall not lose his or her resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 2. Section 68074.1 is added to the Education Code, to read:

68074.1. Notwithstanding Section 68074, a student who is a natural or adopted child, stepchild, or spouse who is a dependent of a member of the armed forces of the United States stationed in this state on active duty shall be entitled to resident classification at a campus of the California State University.

SEC. 3. Section 68075 of the Education Code is amended to read:

68075. Except as otherwise provided in Section 68075.1, a student

who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 4. Section 68075.1 is added to the Education Code, to read:

68075.1. Notwithstanding Section 68075, a student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification at a campus of the California State University.

CHAPTER 901

An act to add Sections 1127a, 1191.25, and 4001.1 to the Penal Code, relating to crimes.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 1127a is added to the Penal Code, to read:

1127a. (a) As used in this section, an "in-custody informant" means a person, other than a codefendant, percipient witness, accomplice, or coconspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institution.

(b) In any criminal trial or proceeding in which an in-custody informant testifies as a witness, upon the request of a party, the court shall instruct the jury as follows:

"The testimony of an in-custody informant should be viewed with caution and close scrutiny. In evaluating such testimony, you should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits from the party calling that witness. This does not mean that you may arbitrarily disregard such testimony, but you should give it the weight to which you find it to be entitled in the light of all the evidence in the case."

(c) When the prosecution calls an in-custody informant as a witness in any criminal trial, contemporaneous with the calling of that witness, the prosecution shall file with the court a written statement setting out any and all consideration promised to, or received by, the in-custody informant.

The statement filed with the court shall not expand or limit the defendant's right to discover information that is otherwise provided by law. The statement shall be provided to the defendant or the

defendant's attorney prior to trial and the information contained in the statement shall be subject to rules of evidence.

(d) For purposes of subdivision (c), "consideration" means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, benefit, immunity, financial assistance, reward, or amelioration of current or future conditions of incarceration in return for, or in connection with, the informant's testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness.

SEC. 2. Section 1191.25 is added to the Penal Code, to read:

1191.25. The prosecution shall make a good faith attempt to notify any victim of a crime which was committed by, or is alleged to have been committed by, an in-custody informant, as defined in subdivision (a) of Section 1127a, within a reasonable time before the in-custody informant is called to testify. The notice shall include information concerning the prosecution's intention to offer the in-custody informant a modification or reduction in sentence or dismissal of the case or early parole in exchange for the in-custody informant's testimony in another case. The notification or attempt to notify the victim shall be made prior to the commencement of the trial in which the in-custody informant is to testify where the intention to call him or her is known at that time, but in no case shall the notice be made later than the time the in-custody informant is called to the stand.

Nothing contained in this section is intended to affect the right of the people and the defendant to an expeditious disposition of a criminal proceeding, as provided in Section 1050. The victim of any case alleged to have been committed by the in-custody informant may exercise his or her right to appear at the sentencing of the in-custody informant pursuant to Section 1191.1, but the victim shall not have a right to intervene in the trial in which the in-custody informant is called to testify.

SEC. 3. Section 4001.1 is added to the Penal Code, to read:

4001.1. (a) No law enforcement or correctional official shall give, offer, or promise to give any monetary payment in excess of fifty dollars ($50) in return for an in-custody informant's testimony in any criminal proceeding. Nothing contained herein shall prohibit payments incidental to the informant's testimony such as expenses incurred for witness or immediate family relocation, lodging, housing, meals, phone calls, travel, or witness fees authorized by law, provided those payments are supported by appropriate documentation demonstrating that the money was used for the purposes for which it was given.

(b) No law enforcement agency and no in-custody informant acting as an agent for the agency, may take some action, beyond merely listening to statements of a defendant, that is deliberately designed to elicit incriminating remarks.

(c) As used in this section, an "in-custody informant" means a person described in subdivision (a) of Section 1127a.

SEC. 4. It is the intent of the Legislature that subdivision (b) of Section 4001.1 of the Penal Code is a restatement of existing case law and where the language in that subdivision conflicts with the language of that case law, the decisions of Kuhlmann v. Wilson, 91 L. Ed. 2d 364, and United States v. Henry, 65 L. Ed. 2d 115, and other United States Supreme Court decisions which have been decided at the time this act is enacted shall be controlling.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 902

An act to amend Sections 113, 25606, 25628, 25810, and 25816 of, and to add Sections 25812.8 and 25816.2 to, the Health and Safety Code, relating to health.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 113 of the Health and Safety Code is amended to read:

113. (a) The fees or charges for the issuance or renewal of any permit, license, or registration pursuant to Sections 403, 436.53, 527, 1017, 1616, 1676, 1677, 2202, 2805, 4083, 11887, 23013, 25628, 25694, 25696, 25697, 25812.8, 25816, 25817, 26506.2, 26593.2, 26593.4, 26688, 27010, 27011, 28126, 28410, 28411, and 28702 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list pursuant to subdivision (d) of Section 1017 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 until January 1, 1992.

SEC. 2. Section 25606 of the Health and Safety Code is amended to read:

25606. The department shall maintain surveillance over the storage, packaging, transporting, and loading of radioactive material within this state regardless of the material's ultimate destination. In carrying out its duties under this section, the department may enter into an agreement with the Division of Occupational Safety and Health and other state and local agencies to conduct any appropriate inspection and enforcement activities. Any agreement with state and local agencies shall not duplicate work to be done pursuant to agreement with the Division of Occupational Safety and Health, nor shall work done by the Division of Occupational Safety and Health duplicate work agreed to be done by other state and local agencies. Licensees of the Nuclear Regulatory Commission and the facilities of the Department of Energy and the Department of Defense are exempt from this section.

SEC. 3. Section 25628 of the Health and Safety Code is amended to read:

25628 (a) The department shall provide by regulation a schedule of fees which shall be paid by persons applying to establish their competence to perform nuclear medicine technology. The revenue derived from the fees shall be sufficient to cover all costs incurred in the administration of this chapter.

(b) The fees paid by applicants shall be adjusted annually, pursuant to Section 113, and the adjusted fee amounts shall be rounded off to the nearest whole dollar.

SEC. 4. Section 25810 of the Health and Safety Code is amended to read:

25810. The department is designated as the agency responsible for the issuance of licenses. In carrying out its duties under this section, the department may enter into an agreement with the Division of Occupational Safety and Health and other state and local agencies to conduct technical evaluations of license applications prior to issuance of licenses. The agreements shall also include provisions for conducting inspections in accordance with Section 25820.

SEC. 5. Section 25812.8 is added to the Health and Safety Code, to read:

25812.8. In addition to the fees authorized to be levied pursuant to Section 25816, the department may, by regulation, set fees to be paid for the disposal in the state of low-level radioactive waste, set in an amount sufficient to pay the costs of the regulatory activities

specified in paragraphs (2) and (3) of subdivision (E) of Article 4 of the Southwestern Low-Level Radioactive Waste Disposal Compact, as specified in Section 25878.

SEC. 6. Section 25816 of the Health and Safety Code is amended to read:

25816. (a) The department shall provide by regulation a schedule of the fees which shall be paid by the following persons:

(1) Persons possessing radioactive materials under licenses issued by the department or under other state or federal licenses for the use of these radioactive materials, when these persons use these radioactive materials in the state in accordance with the regulations adopted pursuant to subdivision (d) of Section 25815.

(2) Persons generally licensed for the use of devices and equipment utilizing radioactive materials which are designed and manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, if the devices are manufactured pursuant to a specific license authorizing distribution to general licensees.

(b) The revenues derived from the fees shall be used, together with other funds made available therefor, for the purpose of the issuance of licenses or the inspection and regulation of the licensees.

(c) The department may 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 establish and adjust fees for radioactive materials licenses in an amount to produce estimated revenues equal to at least 95 percent of the department's costs in carrying out these licensing requirements, if the new fees were to remain in effect throughout the fiscal year for which the fee is established or adjusted.

(d) A local agency participating in a negotiated agreement pursuant to Section 25810 shall be fully reimbursed for direct and indirect costs based upon activities governed by Section 25816.1. With respect to these agreements, any salaries, benefits, and other indirect costs shall not exceed comparable costs of the department.

(e) The fees for licenses for radioactive materials and of devices and equipment utilizing those materials shall be adjusted annually pursuant to Section 113.

SEC. 7. Section 25816.2 is added to the Health and Safety Code, to read:

25816.2. In addition to the annual adjustment of the fees authorized by this chapter pursuant to Section 113, on or before January 1, 1991, the director may adopt 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, to establish and adjust these fees, and for purposes of that chapter, including Section 11349.6 of the Government Code, an 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.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 903

An act to amend Section 23800 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 23800 of the Business and Professions Code is amended to read:

23800. Upon request of the licensee or applicant for a license the department may place reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in the following situations.

(a) If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions.

(b) Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings. In the case of a suspension, the conditions may be in lieu of or in addition to the suspension.

(c) Where the department issues an order suspending or revoking only a portion of the privileges to be exercised under the license.

CHAPTER 904

An act to amend the heading of Part 5 (commencing with Section 8401) of Division 4 of, to amend Sections 8401, 8402, 8405, 8406, 8407, 8451, 8454, 8457, 8461, 8463, 8465, 8551, 8552, 8553, 8554, 8555, 8556, 8557, 8563, 8564, 8601, 8602, 8603, 8604, 8605, 8651, 8702, 8703, 8704, 8705, 8707, 8751, and 8756 of, and to add Part 5.5 (commencing with Section 8760) to Division 4 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989]

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

SECTION 1. The heading of Part 5 (commencing with Section 8401) of Division 4 of the Food and Agricultural Code is amended to read:

PART 5. CITRUS PEST DISTRICT CONTROL LAW

SEC. 2. Section 8401 of the Food and Agricultural Code is amended to read:

8401. This part shall be known as the Citrus Pest District Control Law

SEC. 3. Section 8402 of the Food and Agricultural Code is amended to read:

8402. It is the purpose of this part to make available a procedure for the organization, operation, government, and dissolution of districts for the more effective control and eradication of citrus pests, whichever products the district is established to protect.

SEC. 4. Section 8405 of the Food and Agricultural Code is amended to read:

8405. "Citrus acreage" means any parcel, tract, or lot of land with 25 or more citrus trees of any age growing on it, except a parcel, tract, or lot which is used as a nursery.

SEC. 5. Section 8406 of the Food and Agricultural Code is amended to read:

8406. "Citrus pest" includes any infectious, transmissible, or contagious disease, any form of animal life, or any form of vegetable life infesting citrus trees or citrus fruits.

SEC. 6. Section 8407 of the Food and Agricultural Code is amended to read:

8407. "District" means a citrus pest control district organized pursuant to this part.

SEC. 7. Section 8451 of the Food and Agricultural Code is amended to read:

8451. Proceedings for the formation of a district within any county shall be commenced by a petition which is signed by the

owners of not less than 51 percent by area of the land in the proposed district within the county devoted exclusively to the growing of citrus fruits. The petition shall be addressed to, and filed with, the board of supervisors of the county.

SEC. 8. Section 8454 of the Food and Agricultural Code is amended to read:

8454. (a) The petition shall state the name of the proposed district and shall set forth its boundaries or describe the lands to be included in it.

(b) It is a sufficient designation of the boundaries of a proposed district to recite that all the citrus acreage in the county is to be included in the district, or that all the citrus acreage in a designated area within the county is to be included in the district.

(c) If either designation is used, the outside boundary of the area so designated is the boundary of the district and the district shall include all area within the outside boundary, if the district is formed pursuant to this part.

SEC. 9. Section 8457 of the Food and Agricultural Code is amended to read:

8457. The notice of hearing shall do all of the following:

(a) State the name of the district and that it is being formed for the eradication and control of citrus pests.

(b) State the petition is available for inspection at the office of the clerk of the board of supervisors.

(c) Designate the boundaries of the proposed district in substantially the same way that they are described in the petition.

(d) State the time and place for the hearing.

(e) State that at the hearing protests will be considered by the board of supervisors.

(f) State that requests in writing for the exclusion of lands, from, or the inclusion of lands in, the proposed district will be heard and considered by the board of supervisors.

SEC. 10 Section 8461 of the Food and Agricultural Code is amended to read.

8461. At the hearing, any owner of citrus acreage in the proposed district may present to the board of supervisors a request in writing for the exclusion of that land or any part of that land from, and any owner of citrus acreage outside the proposed district may present to the board of supervisors a request in writing for inclusion of the land in, the proposed district.

SEC. 11. Section 8463 of the Food and Agricultural Code is amended to read:

8463. (a) If the board of supervisors determines that the project is feasible and in the interest of the citrus growers of the county, the board of supervisors shall, by order entered in its minutes, declare the district duly organized under the name designated in the petition for the formation of the district.

(b) The order shall describe the territory included in the district and, if the board of supervisors does not exclude or include land

pursuant to Section 8465, it is a sufficient description of the territory to describe the boundaries in substantially the same way as they are described in the petition. A copy of the order duly certified by the clerk of the board of supervisors shall be filed for record in the office of the county recorder of the county in which the district is situated.

SEC. 12. Section 8465 of the Food and Agricultural Code is amended to read:

8465. (a) In determining the boundaries of the district, the board of supervisors shall exclude from the district any citrus acreage which it finds will not be benefited by the proposed project, and it may include in the district any lands which it finds will be benefited if it also finds it will be to the interest of the district to include these lands. The inclusion may be upon application of the owner or, without the owner's application, upon giving the owner notice of the proposed inclusion and an opportunity for a hearing on it.

(b) Notice of inclusion shall be mailed, postage prepaid, by the clerk of the board of supervisors, to the address of the owner of the land as shown by the last equalized county assessment roll, and to any person that has filed with the clerk that person's name and address and description of land in which he or she has either a legal or equitable interest. The notice shall describe the land proposed to be included, and shall state the time and place at which objections to the inclusion will be heard.

SEC. 13. Section 8551 of the Food and Agricultural Code is amended to read:

8551. The district shall have perpetual succession and may do all of the following:

(a) Sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction

(b) Adopt a seal and alter it at pleasure.

(c) Take by grant, purchase, gift, devise, lease, or otherwise, and hold, use and enjoy, and lease, or otherwise dispose of, real and personal property of every kind and description within or without the district necessary to the full and convenient exercise of its powers.

(d) Cause assessments to be levied, as provided in Chapter 5 (commencing with Section 8601) to pay any obligation of the district and to accomplish the purposes of the district in the manner provided in this part.

(e) Make contracts, and employ, except as otherwise provided in this part, all persons, firms, and corporations necessary to carry out the purposes and the powers of the district, and at any salary, wage, or other compensation as the board of directors shall determine

(f) Eradicate, remove, or prevent the spread of any and all citrus pests.

(g) Enter into or upon any land included within the boundaries of the district for the purpose of inspecting and treating the citrus trees and other host plants and fruit growing on them.

(h) Perform any and all acts either within or outside the district

necessary or proper to fully and completely carry out the purposes for which the district was organized.

SEC. 14. Section 8552 of the Food and Agricultural Code is amended to read:

8552. Every district formed pursuant to this part has all of the powers prescribed by Section 8551 and other sections of this part, including the power to eradicate, remove, or prevent the spread of each and every citrus pest, regardless of any language in the petition for formation for any district or in any of the proceedings leading to formation which might seem to limit the power of the district to the control or eradication of one or more citrus pests in particular.

SEC. 15. Section 8553 of the Food and Agricultural Code is amended to read:

8553. (a) A district may pay limited compensation to the owner of any citrus tree infected with citrus tristeza virus which is removed by the district or by the owner within 60 days after written notice of the infection to the owner by the district. The limited compensation shall not exceed the following payment schedule, with the age of the tree being conclusively established as of the time written notice of the infection is first given to the owner.

(b) The schedule of payments is as follows:

Age of trees	Maximum payment
1 year	$ 5.00 per tree
2 years	7.50 per tree
3 years	10.00 per tree
4 years	14.00 per tree
5 years	17.50 per tree
6 years	20.75 per tree
7 years or older	25.00 per tree

(c) For the purposes of this section, the holder of the record title of the real property on which the trees are located shall be considered to be the owner of the citrus trees to whom written notice of infection is given.

(d) The written notice referred to in subdivision (a) shall be a written or printed document labeled "Notice of Infection," addressed to the owner and informing the owner of the existence of the infected trees, their location, and that they should be removed forthwith.

(e) For the purposes of determining the age of infected citrus trees under this section, trees shall be considered one year old as of the January 1st succeeding the calendar year in which they are planted, and shall be deemed one year older on the January 1st of each succeeding year.

SEC. 16. Section 8554 of the Food and Agricultural Code is amended to read:

8554. In order to expedite the elimination of the source of citrus tristeza virus, if it appears to the board that the cost of testing,

indexing, or retesting trees to determine infection may exceed the cost of removal, plus the payment of limited compensation, a district may, with the consent of the owner, remove and pay limited compensation pursuant to Section 8553 for trees which have not been determined to be infected with citrus tristeza virus.

SEC. 17. Section 8555 of the Food and Agricultural Code is amended to read:

8555. Any payment made to the owner or owners of citrus trees removed pursuant to Section 8553 or 8554 shall in no event exceed the sum of three thousand dollars ($3,000) per geographical acre.

SEC. 18. Section 8556 of the Food and Agricultural Code is amended to read:

8556. The commissioner of the county in which the district is located shall, upon request of the board and without fee or charge, supervise and direct, in accordance with the best known and accepted methods as determined by the board, all activities undertaken by the district for the control or eradication of citrus pests.

SEC. 19. Section 8557 of the Food and Agricultural Code is amended to read:

8557. The board shall, immediately after its qualification, formulate an effective plan based on the best known and accepted methods for the control and eradication of the citrus pests within the district.

SEC. 20. Section 8563 of the Food and Agricultural Code is amended to read:

8563. The notice shall contain all of the following:

(a) A summary of the proposed budget and shall refer to the original on file with the board for further particulars.

(b) State that it is the intention to raise the amount of money required to meet the proposed budget by levying an assessment upon the assessed value of the citrus trees within the district in accordance with this part.

(c) A statement of the day, hour, and place, when and where any and all persons interested may appear and object to the adoption of the budget or to any item in it.

SEC. 21. Section 8564 of the Food and Agricultural Code is amended to read:

8564. At any time not later than the hour set for hearing objections to the proposed budget, any owner of citrus acreage in the district may make written protest against the budget or any item in it.

SEC. 22. Section 8601 of the Food and Agricultural Code is amended to read:

8601. (a) The county assessor, in making the annual assessment of property in each and every year after the organization of the district, shall assess any parcel of real property with 25 or more citrus trees on it and enter as a separate item, on the assessment roll for each such parcel of real propety included in the district, the value,

as improvements on the parcel, of all citrus trees which are growing on it.

(b) For the purpose of this part, the county assessor shall assess all citrus acreage at a uniform value per acre. The assessment shall be upon an acreage basis and the number of acres shall be determined conclusively, except as otherwise provided in this section, by the assessor counting the trees and dividing the total number by the number of trees per acre of average planting. The county assessor in counting the citrus trees shall not, however, count any more than 200 trees on any one acre of land, and for any citrus acreage which has from 70 to 100 trees per acre the number of acres to be determined by the county assessor shall be the actual acreage of the parcel.

(c) Upon completing the assessment roll of the county in each year, the assessor shall separately compute and certify, to the board of supervisors, the total assessed value, as shown by the assessment roll, of all the citrus trees in the district.

SEC. 23. Section 8602 of the Food and Agricultural Code is amended to read:

8602. Whenever acreage within the district is planted with citrus trees in such a fashion as to qualify as citrus acreage, the acreage is subject to assessment as provided in this part.

SEC 24 Section 8603 of the Food and Agricultural Code is amended to read:

8603. Whenever any citrus trees have been removed from any parcel of land included in the district, the owner of the parcel of land may file with the board an affidavit particularly describing the parcel of land, and setting forth the fact of the removal therefrom of the trees. Thereupon, the board shall cause an investigation of the parcel of land to be made and, if the board finds the allegations of the affidavit are true, the board shall immediately certify this fact to the county assessor and the amount of citrus acreage removed shall not be assessed on the next assessment roll.

SEC. 25. Section 8604 of the Food and Agricultural Code is amended to read:

8604. (a) The board shall, on or before the first Monday in July of each year, file with the board of supervisors the final budget which sets forth all estimated expenditures of the district for the fiscal year commencing on the first day of July. A copy of the budget shall also at the same time be filed with the auditor of the county.

(b) The board of supervisors shall annually, at the time of levying other county taxes, levy an assessment upon all the citrus trees planted or growing in the district, regardless of age, as assessed by the assessor pursuant to this part. The rate shall be such as will produce, after due allowance for delinquency, the amount determined as necessary to be raised on the secured roll. If a fraction of a cent occurs on a valuation of one hundred dollars ($100), it shall be taken as a full cent.

SEC. 26. Section 8605 of the Food and Agricultural Code is amended to read:

8605. The assessment authorized to be assessed and levied is hereby declared to be in the nature of a special assessment, and the Legislature hereby finds that the owners of all citrus trees will be benefited by the district to the same extent and in the same manner regardless of the age of the trees. The assessments authorized by this chapter to be assessed and levied on the trees shall be assessed and levied on all citrus trees regardless of their age.

SEC. 27. Section 8651 of the Food and Agricultural Code is amended to read:

8651. Lands devoted exclusively to the growing of citrus fruits within a tract of land outside the district but in the county wherein the district is located may be annexed to the district.

SEC. 28. Section 8702 of the Food and Agricultural Code is amended to read:

8702. Proceedings for consolidation may be initiated by the filing of a petition for consolidation with the board of each district to be consolidated. Each petition shall be signed by the owners of 51 percent by area of the citrus land in the district. Upon the filing of a petition, the board of directors shall adopt a resolution which recites the fact of receipt and the willingness of the district to consolidate, and shall then send copies of the petition and resolution to the board of directors of each of the other districts. The board shall send the original petition and a certified copy of the resolution to the board of supervisors of the county in which is located the largest area of citrus acreage of the proposed consolidated district, and a copy of the petition and resolution to the board of supervisors of each of the other counties in which is located any part of the proposed consolidated district.

SEC. 29. Section 8703 of the Food and Agricultural Code is amended to read.

8703. Upon presentation and filing of the petitions of two or more districts proposing consolidation, the board of supervisors of the county in which is located the largest area of citrus acreage of the proposed consolidated district shall fix a time and place for hearing the petitions. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district pursuant to Chapter 2 (commencing with Section 8451).

SEC. 30. Section 8704 of the Food and Agricultural Code is amended to read:

8704. If the board of supervisors determines that the consolidation is feasible and for the best interests of the citrus growers of the respective districts, it shall by resolution duly adopted declare the districts consolidated into one district, giving the consolidated district a name which name shall include the term "consolidated." Certified copies of the resolution shall be filed with the Secretary of State and, for record, with the county recorder of each county in which is located any part of the consolidated district. Upon the filing, the districts are consolidated into a single

consolidated district with all the rights, privileges, and powers of a district. The consolidated district shall succeed to all the funds and other property, and is subject to all the indebtedness, bonded and otherwise, of the districts consolidated. Each district which is included in the consolidated district shall continue in existence for the purpose of representation on the board of the consolidated district, and for the purpose of levying, assessing, and collecting assessments for district purposes. The board of the consolidated district is, however, the board of each district which is included in the consolidated district.

SEC. 31. Section 8705 of the Food and Agricultural Code is amended to read:

8705. Upon the adoption of a resolution consolidating two or more districts, the board of supervisors shall immediately appoint a board of directors of at least five members, including at least one member from each of the districts which are included in the consolidated district. If any of the districts which are included in the consolidated district includes more than 15,000 acres of citrus acreage, the board of directors shall be increased to a number equal to the number of districts which are included in the consolidated district, plus one additional director for each 10,000 acres, or major fraction of 10,000 acres, in any one district which is included in the consolidated district.

SEC. 32. Section 8707 of the Food and Agricultural Code is amended to read:

8707. Any district which has been included in a consolidated district may withdraw from the consolidated district and be reconstituted as a separate district by filing with the board of directors of the consolidated district a petition for withdrawal which is signed by the owners of not less than 51 percent by area of citrus land in the district. The board of directors of the consolidated district shall send the original petition to the board of supervisors of the county in which the withdrawing district is located, and a copy of the petition to the board of supervisors of each of the other counties in which is located any part of the consolidated district. Upon receipt of a petition for withdrawal, the board of supervisors of the county in which the withdrawing district is located shall fix a time and place for hearing the petition. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district under Chapter 2 (commencing with Section 8451). Upon withdrawal of a district, all moneys collected from the district for the use of the consolidated district, and all property purchased with these moneys, shall remain the property of the consolidated district. All moneys collected from a district after it withdraws from a consolidated district shall be held for the use of the district.

SEC. 33. Section 8751 of the Food and Agricultural Code is amended to read:

8751. Upon the filing of a petition with the board of supervisors,

signed by the owners of not less than 60 percent by area of the citrus acreage in the district, requesting the dissolution of the district, the board of supervisors shall set a time and place for hearing on the petition, which shall not be less than 20 days, nor more than 40 days, after the filing of the petition.

SEC. 34. Section 8756 of the Food and Agricultural Code is amended to read:

8756. If, at the hearing, a majority of the members of the board of supervisors find that the dissolution of the district will benefit the citrus industry of the county, it shall by resolution dissolve the district.

SEC. 35. Part 5.5 (commencing with Section 8760) is added to Division 4 of the Food and Agricultural Code, to read:

PART 5.5. STONE AND POME FRUIT PEST DISTRICT CONTROL LAW

CHAPTER 1 GENERAL PROVISIONS

8760. This part shall be known as the Stone and Pome Fruit Pest District Control Law

8761. All of Part 5 (commencing with Section 8401) applies to stone and pome fruit pest control districts and are hereby incorporated in this part as though set forth in full in this part unless a provision in this part expressly states that the provision is not applicable to this part.

8762. Any district formed during 1989 pursuant to Part 5 (commencing with Section 8401) to control and eradicate stone and pome fruit pests shall continue in existence without further proceedings and shall be subject to this part.

8763. Sections 8451, 8551, 8553, 8554, 8555, 8556, 8601, 8602, 8603, and 8604, and subdivision (b) of Section 8563 do not apply to this part.

8764. It is the purpose of this part to make available a procedure for the organization, operation, government, and dissolution of districts for the more effective control and eradication of stone and pome fruit pests, whichever products the district is established to protect.

8764.5. Proceedings for the formation of a district within any county shall be commenced by a petition which is signed by the owners of not less than 51 percent by area of the land in the proposed district, which may be composed of noncontiguous parcels within the county devoted exclusively to the growing of stone and pome fruit trees. The petition shall be addressed to, and filed with, the board of supervisors of the county.

8764.6. (a) In determining the boundaries of the district, the board of supervisors shall exclude from the district any stone and pome fruit acreage which it finds will not be benefited by the proposed project, and it may include in the district any noncontiguous lands which it finds will be benefited if it also finds it will be in the interest

of the district to include these lands. The inclusion may be upon application of the owner or, without the owner's application, upon giving the owner notice of the proposed inclusion and an opportunity for a hearing on it.

(b) Notice of inclusion shall be mailed, postage prepaid, by the clerk of the board of supervisors, to the address of the owner of the land as shown by the last equalized county assessment roll, and to any person that has filed with the clerk that person's name and address and description of land in which he or she has either a legal or equitable interest The notice shall describe the land proposed to be included, and shall state the time and place at which objections to the inclusion will be heard.

8765. "Stone and pome fruit acreage" means any parcel, tract, or lot of land with 10 or more stone or pome fruit trees of any age growing on it with a commercial value of at least two hundred fifty dollars ($250), except a parcel, tract, or lot which is used as a nursery.

8766. The district shall have perpetual succession and may do all of the following:

(a) Sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction. Section 820.9 of the Government Code applies to this subdivision.

(b) Adopt a seal and alter it at pleasure

(c) Take by grant, purchase, gift, devise, lease, or otherwise, and hold, use and enjoy, and lease, or otherwise dispose of, real and personal property of every kind and description within or without the district necessary to the full and convenient exercise of its powers

(d) Cause assessments to be levied, as provided in this chapter to pay any obligation of the district and to accomplish the purposes of the district in the manner provided in this part.

(e) Make contracts, and employ, except as otherwise provided in this part, all persons, firms, and corporations necessary to carry out the purposes and the powers of the district, and at any salary, wage, or other compensation as the board of directors shall determine.

(f) Eradicate, remove, or prevent the spread of any and all stone or pome fruit pests.

(g) Enter into or upon any land included within the boundaries of the district for the purpose of inspecting and treating the stone or pome fruit trees and other host plants and fruit growing on them.

(h) Perform any and all acts either within or outside the district necessary or proper to fully and completely carry out the purposes for which the district was organized

8767 In order to expedite the elimination of the source of the apple maggot, a district may, with the consent of the owner, remove trees which have not been determined to be infested with the apple maggot.

8768. The board in which the district is located shall, after consultation with the commissioner, supervise and direct, in accordance with the best known and accepted methods as

determined by the board, all activities undertaken by the district for the control or eradication of stone or pome fruit pests. The board may authorize the use of nonchemical alternatives.

8769. (a) The board, annually after the organization of the district, shall assess any assessors parcel of real property with 10 or more stone or pome fruit trees on it and enter as a separate item, on an annual assessment roll for each such assessor's parcel of real property included in the district, the number of all stone or pome fruit trees which are growing on it.

(b) For the purpose of this part, the board shall assess all stone or pome fruit acreage at a uniform value per tree. The assessment shall be upon a tree basis and the number of trees shall be determined conclusively by the board counting the trees on each assessors parcel. The board, in counting the stone or pome fruit trees, shall not, however, count any more than 100 trees on any one acre of land.

(c) Upon completing the tree count within the district each year, the board shall separately compute and certify, to the board of supervisors, the total number of all the stone or pome fruit trees in the district on each parcel.

8770. Whenever new acreage within the district is planted with stone or pome fruit trees in such a fashion as to qualify as stone or pome fruit acreage, the trees are subject to assessment as provided in this part.

8771. Whenever any stone or pome fruit trees have been removed from any parcel of land included in the district, the owner of the parcel of land may file with the board an affidavit particularly describing the parcel of land, and setting forth the fact of the removal of the trees. Upon receipt of the affidavit, the board shall cause an investigation of the parcel of land to be made and, if the board finds the statements in the affidavit are true, the board shall immediately verify this fact and the amount of stone or pome fruit trees removed shall not be assessed on the next assessment roll.

8772. (a) The board shall, on or before the first Monday in July of each year, file with the board of supervisors a list of assessor parcel numbers which sets forth all assessments of the district for the fiscal year commencing on the first day of July At the same time, a copy of the list shall also be filed with the auditor of the county.

(b) The board of supervisors shall annually, at the time of levying county taxes, levy a special assessment upon all the stone or pome fruit trees planted or growing in the district regardless of age, as submitted by the district pursuant to subdivision (a). The special assessment shall be added to the secured roll and collected by the county on behalf of the district in the same manner that the county collects county taxes.

CHAPTER 905

An act to amend Section 8215 of the Education Code, and to amend Section 2 of Chapter 462 of the Statutes of 1987, relating to child care.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 8215 of the Education Code is amended to read:

8215. (a) There is hereby established a five-year project known as the California Child Care Initiative Project. It is the intent of the Legislature to promote and foster the project in cooperation with private corporations and local governments. The objective of the project is to increase the availability of quality child care programs in the state.

(b) For purposes of this section, the California Child Care Initiative Project means a project to expand the role and functions of selected resource and referral agencies in activities including needs assessment, recruitment and screening of providers, technical assistance, and staff development and training, in order to aid communities in increasing their capability in the number of child care spaces available and the quality of child care services offered.

(c) The Superintendent of Public Instruction shall allocate all state funds appropriated for the California Child Care Initiative Project for the purpose of making grants to those child care resource and referral agencies that have been selected as pilot sites for the project.

(d) The project shall ensure that each dollar of state funds allocated pursuant to subdivision (c) is matched by two dollars ($2) from other sources, including private corporations, the federal government, or a local government.

(e) The grants to the sites made available by the project shall be comprised of a combination of state funds and other funds pursuant to subdivision (d).

(f) The Superintendent of Public Instruction shall develop a data base for the project.

(g) The California Child Care Resource and Referral Network, in consultation with the Office of the Legislative Analyst and the State Department of Education, shall evaluate the California Child Care Initiative Project. The evaluation shall be submitted to the appropriate policy and fiscal committees of the Legislature on or before March 1, 1990.

The evaluation of the project shall address, but need not be limited to, the following:

(1) The characteristics of the project and its data base.

(2) The effectiveness of the project in attaining its legislative goals

and purposes.

(3) The appropriateness of the funding allocation mechanism.

(4) The appropriateness of amounts spent to administer the project.

(5) The extent to which the services provided by the project are duplicative of other state or local services.

(6) The extent to which there is a need to expand the project on a statewide basis.

(h) This section shall become inoperative on June 30, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 2 of Chapter 462 of the Statutes of 1987 is amended to read:

Sec. 2. It is the intent of the Legislature that the California Child Care Initiative Project established by this act shall be funded through the annual Budget Act for the 1990–91, 1991–92, 1992–93, 1993–94, and 1994–95 fiscal years.

CHAPTER 906

An act to amend Sections 25202.5, 25220, 25221, 25222.1, 25229, 25230, 25231, 25233, 25234, 25235, 25240, and 25355.5 of, and to add Section 25117.13 to, the Health and Safety Code, and to amend Sections 402.1 and 402.3 of the Revenue and Taxation Code, relating to hazardous waste.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 25117.13 is added to the Health and Safety Code, to read:

25117.13. "Land use restriction" means any limitation regarding the uses of property which may be provided by, but is not limited to, a written instrument which imposes an easement, covenant, restriction, or servitude, or a combination thereof, as appropriate, upon the present and future uses of all, or part of, the land, pursuant to Section 25202.5, 25222.1, 25230, or 25355.5.

SEC. 2. Section 25202.5 of the Health and Safety Code is amended to read:

25202.5. (a) With respect to any hazardous waste facility permitted pursuant to Section 25200 or granted interim status pursuant to Section 25200.5, the department may do either of the following:

(1) Enter into an agreement with the owner of the hazardous waste facility that requires the execution and recording of a written

instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(2) Impose a requirement upon the owner of the hazardous waste facility, by permit modification, permit condition, or otherwise, that requires the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(b) The easement, covenant, restriction, or servitude imposed pursuant to subdivision (a) shall be no more restrictive than needed, as determined by the department, to protect the present or future public health and safety and shall not place any restriction on any land that limits the use, modification, or expansion of an existing industrial or manufacturing facility or complex. The instrument shall be executed by all of the owners of the land and by the director, shall particularly describe the real property affected by the instrument, and shall be recorded by the owner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution. The easement, covenant, restriction, or servitude shall state that the land described in the instrument has been, or will be, the site of a hazardous waste facility or is adjacent to the site of such a facility, and may impose those use restrictions as the department deems necessary to protect the present or future public health. The restrictions may include restrictions upon activities on, over, or under the land, including, but not limited to, a prohibition against building, filling, grading, excavating, or mining without the written permission of the director.

A certified copy of the recorded easement, covenant, restriction, or servitude shall be sent to the department upon recordation. Notwithstanding any other provision of law, except as provided in Section 25202.6, an easement, covenant, restriction, or servitude executed pursuant to this section and recorded so as to provide constructive notice shall run with the land from the date of recordation and shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. The easement, covenant, restriction, or servitude shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(c) Except as provided in subdivisions (d) and (e), any land on which is located a hazardous waste disposal facility permitted

pursuant to this chapter shall be surrounded by a minimum buffer zone of 2,000 feet between the facility and the outer boundary of the buffer zone. The department may impose an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the buffer zone pursuant to subdivision (a). If the department determines that a buffer zone of more than 2,000 feet is necessary to protect the present and future public health and safety, the department may increase the buffer zone by restricting the disposal of hazardous waste at that facility to land surrounded by a larger buffer zone.

(d) Subdivision (c) does not apply to any hazardous waste property, as defined in paragraph (1) of subdivision (a) of Section 25117.3, which was actually and lawfully used for the disposal of hazardous waste on August 6, 1980.

(e) If the owner of a hazardous waste disposal facility proves to the satisfaction of the department that a buffer zone of less than 2,000 feet is sufficient to protect the present and future public health and safety, the department may allow the disposal of hazardous waste onto land surrounded by a buffer zone of less than 2,000 feet.

SEC. 3. Section 25220 of the Health and Safety Code is amended to read:

25220. (a) For purposes of this article, unless the context clearly requires a different meaning:

(1) "Determination" means a decision by the department as to whether land should be designated as hazardous waste property or border zone property and which is reached after an analysis and an evaluation of the information obtained by the department.

(2) "Designation" means imposition of the requirements specified in Section 25230 after a determination, a public hearing, and a decision by the director has occurred pursuant to Section 25229.

(b) Whenever there is reasonable cause for the department to believe that any land may be a hazardous waste property or border zone property, the department may, by certified mail, request any person who owns, leases, or occupies the land, or any other person who has information relating to the land, to provide any or all of the following information:

(1) A description of the present use of the land.

(2) The types and volumes of hazardous waste or extremely hazardous waste contained therein or thereon.

(3) The date or dates the hazardous waste or extremely hazardous waste was deposited into or onto the land.

(4) A map or maps of the property which they own and which contains or overlies hazardous waste or extremely hazardous waste, drawn to a scale of not more than 200 feet to the inch, which shows the area or areas where the hazardous waste or extremely hazardous waste is contained or was deposited. The provision of a map pursuant to this subdivision shall not be required if the respondent to the request asserts in writing that the respondent has no knowledge or

insufficient knowledge of the existence or location of the wastes to comply with this subdivision.

(5) Any other information which relates to the disposal of hazardous waste on or within 2,000 feet of the property or the potential for the migration of those wastes.

(c) Any person who is requested to provide information pursuant to subdivision (b) shall submit the information to the department within 90 calendar days of receipt of the request.

(d) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed pursuant to Section 25202.5, 25222.1, 25230, or 25355.5 within the jurisdiction of the local agency. Upon receiving this notification, the planning and building department shall do both of the following:

(1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.

(2) Require that any person requesting a land use which differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25233 or 25234.

(e) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (d). For purposes of this subdivision, "property owner" does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

SEC. 4. Section 25221 of the Health and Safety Code is amended to read:

25221. (a) Any person as owner, lessor, or lessee who (1) knows, or has probable cause to believe, that a significant disposal of hazardous waste has occurred on, under, or into the land which he or she owns or leases or that the land is within 2,000 feet of a significant disposal of hazardous waste, and (2) intends to construct or allow the construction on that land of a building or structure to be used for a purpose which is described in subdivision (b) of Section 25232 within one year, shall apply to the department prior to construction for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

The addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property which do not change the use of the property or increase the population density does not constitute the construction of a building or structure for purposes of this subdivision.

(b) Any person who, as owner, lessor, or lessee, knows or has probable cause to believe that land which he or she owns or leases is a hazardous waste property or a border zone property, may apply

to the department for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

(c) If a city or county knows or has probable cause to believe that any land within its jurisdiction is a hazardous waste property or a border zone property, the city or county may apply to the department for a determination as to whether that land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

(d) Subdivisions (a), (b), and (c) do not apply to any land on which a determination has previously been made pursuant to Section 25222.1 or 25229, unless either of the following has occurred since that determination:

(1) A significant new disposal of hazardous waste has occurred on, under, or into the land.

(2) Significant new information about past disposal of hazardous waste on, or within 2,000 feet of, the land becomes known to the owner, lessor, or lessee of the land or to the city or county.

SEC. 5. Section 25222.1 of the Health and Safety Code is amended to read:

25222.1. (a) Notwithstanding Sections 25222, 25229, 25232, and 25233, any person may enter into an agreement with the department regarding that person's property, or a portion thereof, which provides for restricting specified uses of the property, as determined by all parties to the agreement. Except as otherwise provided in this article, the agreement is irrevocable and shall be recorded by the owner, pursuant to paragraph (1) of subdivision (a) of Section 25230, as a hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, upon the present and future uses of the land. That person shall bear all costs incurred in determining the specific land use restrictions for that person's property, or a portion thereof pursuant to this subdivision.

(b) By entering into this agreement with respect to a portion of a property, the department is not precluded from taking action to designate the remainder of the property as hazardous waste or border zone property.

SEC. 6. Section 25229 of the Health and Safety Code is amended to read:

25229. (a) If, after the hearing, the director makes the decision that the subject land should not be designated a hazardous waste property or border zone property, the director shall issue that decision in writing and serve it in the manner provided in subdivision (c).

(b) If, after the hearing, the director makes the decision, upon a preponderance of the evidence, including any evidence developed at any time prior to the hearing, that the land should be designated a hazardous waste property or a border zone property, the director shall issue that decision in writing, which shall identify the subject land, or portion thereof, by street address, assessor's parcel number,

or legal description and the name of the owner of record, contain findings of fact based upon the issues presented, including the reasons for this designation, the substances on, under, or in the land, and the significant existing or potential hazards to present or future public health and safety, and order every owner of the designated land to take all of the following actions:

(1) Execute before a notary a written instrument which imposes an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, upon the present and future uses of the land pursuant to Section 25230. The written instrument shall also include a copy of the director's decision.

(2) Return the executed instrument to the director within 30 days after the decision is delivered or mailed. Within 10 days after receiving the instrument, the director shall execute the written instrument and return the instrument to the owner.

(3) Record the written instrument pursuant to Section 25230 within 10 days after receiving the written instrument executed by the director, as specified in paragraph (2).

(4) Return the recorded written instrument to the director within 10 days after the owner records the instrument, as specified in paragraph (3).

(c) Copies of the determination shall be delivered or sent by certified mail to the owner of the property, the legislative body of the city or county in whose jurisdiction the land is located, and any other persons who were served pursuant to Section 25222 or who were permitted to intervene in the proceeding pursuant to Section 25226.

(d) Failure or refusal to comply with any order issued pursuant to this section shall be treated in the manner provided by Section 11525 of the Government Code.

SEC. 7. Section 25230 of the Health and Safety Code is amended to read.

25230. (a) Upon a decision that the subject land shall be designated as hazardous waste property or border zone property pursuant to Section 25229, the director shall notify the owner of the property and the legislative body of the city or county in whose jurisdiction the land is located and any other persons who were permitted to intervene in the proceeding, and shall issue orders to every owner of the land requiring all of the following:

(1) The notarized execution and recordation of a written instrument which imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of all or part of the land which has been designated a hazardous waste property or a border zone property as provided by Section 25232, and which provides that removal of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be in accordance with Section 25234. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be executed by all the owners of the land and by the director, shall particularly describe the real property

affected by the instrument, and, if applicable, the location of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the real property. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be recorded with the recorder of the county in which the land is located within 10 days after the instrument, as executed by the director, is received by the owner and shall be indexed by the county recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall state that the land described in the instrument is subject to a hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section shall run with the land from the date of recordation and shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs, successors, and assignees, unless it is removed pursuant to Section 25234. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(2) The execution and delivery of a written instrument to accompany all purchase, lease, or rental agreements relating to the land which has been designated a hazardous waste property or a border zone property. The instrument shall be prepared by the owner or lessor of the land and shall contain the following statement:

"The land described herein contains hazardous waste or is within 2,000 feet of land that contains hazardous waste. This condition renders the land and the owner, lessee, or other possessor of the land subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

(b) In any case where the department has made reasonable efforts to obtain execution of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, and the owner or owners have failed or refused to execute it, the department may apply to the court for an order imposing the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate. The issued order shall be recorded in the same manner as an executed instrument, as specified in paragraph (1) of subdivision (a).

(c) Any hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section shall be exclusively for the purpose of protecting the public health and safety and shall convey no interest in real or other property to the state Notwithstanding any other provision of law, any easement, covenant, restriction, or servitude, or

any combination thereof, as appropriate, held by the department shall not be sold or otherwise transferred to another person.

SEC. 8. Section 25231 of the Health and Safety Code is amended to read:

25231. A decision of the director made pursuant to Section 25229 shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 9. Section 25233 of the Health and Safety Code is amended to read:

25233. (a) Any aggrieved person may apply to the department for a written variance from a land use restriction, including the requirements set forth in subdivision (a) or (b) of Section 25232. Any application shall contain sufficient evidence for the department to issue a notice for a hearing. The notice shall contain both of the following:

(1) A statement of all of the following that apply:

(A) Land use restrictions have been imposed on the land.

(B) A hearing is pending on the land.

(C) The land has been designated a hazardous waste property or border zone property.

(2) A statement of who is applying for a variance, the proposed variance, and a statement of the reasons in support of the granting of a variance.

(b) The procedures for the conducting of the hearing specified in subdivision (a) are those set forth in this article. No person shall make a subsequent application pursuant to this section within 18 months of a final decision on an application by the department. A person applying for a variance pursuant to this section shall pay the department for all costs incurred by the department relating to the application

(c) The applicant shall have the burden of proving at the hearing that the variance will not cause or allow any of the following effects associated with hazardous waste or extremely hazardous waste:

(1) The creation or increase of significant present or future hazards to public health.

(2) Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.

(3) Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public.

(d) If, upon the preponderance of the testimony taken, the director is of the opinion that the variance should be granted, the director shall issue and cause to be served his or her decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other persons who were permitted to intervene in the proceedings. The findings of fact shall include the exact nature of the proposed variance and the reasons in support of the granting of the variance.

(e) If the director is of the opinion that the variance should not

be granted, the director shall issue and cause to be served his or her findings of fact in support of the denial on the parties mentioned in subdivision (c).

(f) The department shall record within 10 days any final decision made by the director pursuant to this section as provided in Section 25235.

(g) A decision of the director made after a hearing held pursuant to this section shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

SEC. 10. Section 25234 of the Health and Safety Code is amended to read:

25234. (a) Any aggrieved person may apply to the department to remove a land use restriction, including a designation that the land is a hazardous waste property or a border zone property on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. No person shall make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department pursuant to this section shall pay the department all costs incurred by the department relating to the application. Any application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste which caused the land to be restricted or designated has since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste which caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) Any aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25235.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, including the designation of a hazardous waste property or a border zone property, the easement, covenant, restriction, or servitude imposed on the land created by Section 25222.1, 25230, or 25355.5 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and which shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude, and in the grantor index in the name of the department.

SEC. 11. Section 25235 of the Health and Safety Code is amended to read:

25235. The department shall record within 10 days any final written instrument made pursuant to Section 25222.1 or 25230 with the county recorder of the county in which the property is located. Any recordation made pursuant to this article or Section 25202.5 or 25355.5 shall include the street address, assessor's parcel number, or legal description of each parcel affected and the name of the owner thereof, and the recordation shall be recorded by the recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department.

SEC. 12. Section 25240 of the Health and Safety Code is amended to read.

25240. An assessor shall consider any restrictive easement, covenant, restriction, or servitude adopted pursuant to Section 25202.5, 25222.1, or 25355.5 or any easement, covenant, restriction, or servitude imposed pursuant to Section 25230 as an enforceable easement, covenant, restriction, or servitude subject to Section 402.1 of the Revenue and Taxation Code and shall appropriately reassess any land, the use of which has been so restricted, at the lien date following the adoption or imposition of the easement, covenant, restriction, or servitude.

SEC. 13. 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.

Any enforceable agreement entered into pursuant to this section may provide for the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of the site. The instrument shall provide that the easement, covenant, restriction, or servitude, or combination thereof, as appropriate, is subject to the variance or removal procedures specified in Sections 25233 and 25234. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs, successors, and assignees, and is enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(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. 14. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Section 422.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance

with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section 25240 of the Health and Safety Code.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is unrebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable land which are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) "Comparable lands" are lands which are similar to the land being valued in respect to legally permissible uses and physical attributes

(2) "Representative sales information" is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of such land. It is also hereby declared that the further purpose and intent of the Legislature in

enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land which legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. Nothing in this statute shall be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

SEC. 15. Section 402.3 of the Revenue and Taxation Code is amended to read:

402.3. An assessor shall consider any restrictive covenant, easement, restriction, or servitude adopted pursuant to Section 25202.5, 25222.1, or 25355.5 of the Health and Safety Code or any restriction, easement, covenant, or servitude imposed pursuant to Section 25230 of the Health and Safety Code as an enforceable restriction, easement, covenant, or servitude subject to Section 402.1 and shall appropriately reassess any land, the use of which has been so restricted, at the lien date following the adoption or imposition of the covenant, easement, servitude, or restriction.

SEC 16. The amendments made to Sections 25202.5 and 25355.5 of the Health and Safety Code by Sections 2 and 9, respectively, of this act do not constitute a change in, but are declaratory of, the existing law.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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 certain of the programs or levels or service mandated by this act.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 907

An act to amend Sections 21089, 21092, 21104, and 21153 of, and to add Sections 21091, 21092.2, and 21092.3 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 21089 of the Public Resources Code is amended to read:

21089. A lead agency may charge and collect a reasonable fee from any person proposing a project subject to this division in order to recover the estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project and for procedures necessary to comply with this division on the project. Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this division under Section 21167 are not recoverable under this section.

SEC. 2. Section 21091 is added to the Public Resources Code, to read:

21091. (a) The public review period for a draft environmental impact report shall not be less than 30 days. When the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days.

(b) The public review period for a negative declaration shall not be less than 21 days. When the negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days.

(c) When a draft environmental impact report or a negative declaration is submitted to the State Clearinghouse for review, the public review period established by the lead agency shall be at least as long as the period of review by the State Clearinghouse. The lead agency shall consider any comments on a draft environmental impact report or proposed negative declaration, which are received by the State Clearinghouse within the public comment period established by this section.

(d) (1) Criteria for shorter review periods by the State Clearinghouse for documents which must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 21 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the

Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

SEC. 3. Section 21092 of the Public Resources Code, as amended by Chapter 141 of the Statutes of 1989, is amended to read:

21092 (a) Any public agency which is preparing an environmental impact report or a negative declaration shall provide public notice of that fact within a reasonable period of time prior to final adoption by the public agency of the environmental impact report or negative declaration. The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, and the address where copies of the draft environmental impact report or negative declaration are available for review. This section shall not be construed in any manner which results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section The notice required by this section shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(1) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of notice by the public agency on- and off-site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(b) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (c), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in paragraphs (1), (2), and (3) of subdivision (a). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel

or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of the effective date of Assembly Bill 58 of the 1989–90 Regular Session in compliance with this section as it existed prior to that effective date.

(c) The notice requirements of subdivision (b) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(d) The notice requirements specified in subdivision (a) or (b) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 4. Section 21092.2 is added to the Public Resources Code, to read·

21092.2. The notices required pursuant to Sections 21080.4, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, which is reasonably related to the costs of providing this service. This section shall not be construed in any manner which results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

SEC. 5. Section 21092.3 is added to the Public Resources Code, to read:

21092.3. The notices required pursuant to Sections 21080.4 and 21092 shall be posted in the office of the county clerk of the county

or counties in which the project will be located and shall remain posted for a period of 30 days.

SEC. 6. Section 21104 of the Public Resources Code is amended to read:

21104. (a) Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency, any public agency which has jurisdiction by law with respect to the project, and any city or county which borders on a city or county within which the project is located, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the state lead agency shall, upon the request of the applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The state lead agency may consult with persons identified by the applicant which the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made a written request to be consulted on the project. A request by the applicant for early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project

(b) The state lead agency shall consult with, and obtain comments from, the State Air Resources Board in preparing an environmental impact report on a highway or freeway project, as to the air pollution impact of the potential vehicular use of the highway or freeway.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

SEC. 7. Section 21153 of the Public Resources Code is amended to read:

21153. Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, any public agency which has jurisdiction by law with respect to the project, and any city or county which borders on a city or county within which the project is located, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the applicant which the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the applicant for

early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project. The local lead agency may charge and collect from the applicant a fee not to exceed the actual costs of the consultations.

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 908

An act to amend Sections 66799.22 and 66799.40 of the Government Code, and to add Sections 41341 and 41360 to the Public Resources Code relating to hazardous waste

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 66799.22 of the Government Code is amended to read:

66799.22. The board may do all of the following:

(a) Enter into loan guarantee agreements with owners or operators of solid waste landfills operating solid waste disposal facilities on or after January 1, 1988, pursuant to a solid waste facilities permit issued pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3.

(b) Enter into contracts which the board determines to be necessary to carry out its powers and duties pursuant to this chapter.

(c) Provide grants, pursuant to Section 66799.40, to cities, counties, or local agencies with responsibility for waste management for local programs to help prevent the disposal of hazardous wastes at solid waste disposal sites, including, but not limited to, programs to manage household hazardous waste These grants shall not exceed, in any one fiscal year, more than 20 percent of the total revenues deposited, or anticipated to be deposited, in the account during the same fiscal year.

(d) Fix reasonable fees and charges for loan guarantees and

revise, from time-to-time, these fees and charges.

SEC. 2. Section 66799.40 of the Government Code is amended to read:

66799.40. The board may make grants of funds in the account to a city, county, or local agency with responsibility for waste management for any of the following purposes related to the safe operation, closure, and maintenance of solid waste landfills operating on or after January 1, 1988:

(a) Support for establishing collection systems to ensure that hazardous waste, including, but not limited to, household hazardous waste, is not improperly disposed of in a solid waste landfill.

(b) Payment of the local costs of waste control and enforcement programs that help prevent the disposal of hazardous wastes in solid waste landfills.

(c) If a city, county, or local agency with responsibility for waste management has already funded the type of program described in subdivision (a) or (b) locally, the board shall award a minimum grant of funds from the account to reimburse that city, county, or local agency for the actual cost of the local program in that fiscal year or 20 percent of the fees generated or anticipated to be generated in the city, county, or local agency into the account during the same fiscal year, whichever is less. This subdivision does not limit the authority of the board to award grants of funds from the account in excess of, or in addition to, the minimum grant amounts set forth in this subdivision, in accordance with the grant criteria established pursuant to Section 66799.23.

SEC. 3. Section 41341 is added to the Public Resources Code, to read:

41341. The board may do all of the following:

(a) Enter into loan guarantee agreements with owners or operators of solid waste landfills operating solid waste disposal facilities on or after January 1, 1988, pursuant to a solid waste facilities permit issued pursuant to Article 1 (commencing with Section 40900) of Chapter 8.

(b) Enter into contracts which the board determines to be necessary to carry out its powers and duties pursuant to this chapter.

(c) Provide grants, pursuant to Section 41360 to cities, counties, or local agencies with responsibility for waste management, for local programs to help prevent the disposal of hazardous wastes at solid waste disposal sites, including, but not limited to, programs to manage household hazardous waste. These grants shall not exceed in any one fiscal year, more than 20 percent of the total revenues deposited, or anticipated to be deposited, in the account during the same fiscal year.

(d) Fix reasonable fees and charges for loan guarantees and revise, from time to time, these fees and charges.

SEC. 4. Section 41360 is added to the Public Resources Code, to read:

41360. The board may make grants of funds in the account to a

city, county, or local agency with responsibility for waste management, for any of the following purposes related to the safe operation, closure, and maintenance of solid waste landfills operating on or after January 1, 1988:

(a) Support for establishing collection systems to ensure that hazardous waste, including, but not limited to, household hazardous waste, is not improperly disposed of in a solid waste landfill.

(b) Payment of the local costs of waste control and enforcement programs that help prevent the disposal of hazardous wastes in solid waste landfills.

(c) If a city, county, or local agency with responsibility for waste management has already funded the type of program described in subdivision (a) or (b) locally, the board shall award a minimum grant of funds from the account to reimburse that city, county, or local agency for the actual cost of the local program in that fiscal year or 20 percent of the fees generated or anticipated to be generated in the city, county, or local agency into the account during the same fiscal year, whichever is less. This subdivision does not limit the authority of the board to award grants of funds from the account in excess of, or in addition to, the minimum grant amounts set forth in this subdivision, in accordance with the grant criteria established pursuant to Section 41342.

SEC. 5. Sections 3 and 4 of this act shall become operative only if AB 939 is enacted and becomes operative January 1, 1990, in which case Sections 1 and 2 of this act shall not become operative.

CHAPTER 909

An act to add Sections 13188.1, 13188.2, and 13188.3 to, and to repeal Sections 13159.6 and 13199.5 of, the Health and Safety Code, relating to the State Fire Marshal.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 13159.6 of the Health and Safety Code is repealed.

SEC. 2. Section 13188.1 is added to the Health and Safety Code, to read:

13188.1. The State Fire Marshal may, upon a preliminary finding of a violation of the provisions of this part, suspend any license or certificate of registration for a period not exceeding 30 days pending investigation of any violation of the provisions of this part.

SEC. 3. Section 13188.2 is added to the Health and Safety Code, to read:

13188.2. Any applicant who has been denied a license or

certificate of registration or who has had a license or certificate of registration suspended, shall be entitled to a hearing in accordance with the provisions of this part.

SEC. 4. Section 13188.3 is added to the Health and Safety Code, to read:

13188.3. Except where otherwise provided in this part, all hearings under this part 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.

SEC. 5. Section 13199.5 of the Health and Safety Code is repealed.

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

CHAPTER 910

An act to amend Section 15 of, and to add Sections 26.2, 26.3, and 26.4 to, the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), relating to the Castaic Lake Water Agency.

[Approved by Governor September 25, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 15 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 15. The agency may acquire water and water rights, including, but not limited to, water from the State of California under the State Water Resources Development System, and provide, sell, and deliver that water at wholesale only, for municipal, industrial, domestic, and other purposes, through a transmission system to be acquired or constructed by the agency. To carry out these purposes, the agency shall have the following powers:

(a) To have perpetual succession

(b) To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To take by grant, purchase, gift, devise, or lease, hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the agency.

(e) To acquire, or contract to acquire, waterworks or a waterworks system, water rights, waters, lands, and rights and privileges and to construct, complete, extend, add to, repair, maintain, improve, and operate waterworks or a waterworks system, conduits, pipelines, reservoirs, works, machinery, and other property or facilities useful or necessary to import, store, treat, reclaim, conserve, convey, or supply water for the benefit and use of residents and owners of property within the agency, and otherwise for authorized agency purposes.

(f) To lease of and from any person, firm, public or private corporation, or public agency, with the privilege of purchasing or otherwise, all or any part of water storage, transportation or distribution facilities, existing waterworks or a waterworks system, and to carry on and conduct waterworks or a waterworks system; also to sell for use within the area of the agency at wholesale only water of the agency to cities, to other public corporations and public agencies, and to water corporations as defined in the Public Utilities Code, and to any mutual water companies engaged in distributing water to its members for use, without any preference, and the agency may, whenever the board finds that there is a surplus of water above that which may be required by those consumers within the agency, sell or otherwise dispose of that surplus water to any persons, firms, public or private corporations, public agencies, or other consumers.

(g) To exercise the right of eminent domain to take any property necessary or desirable for any facility reasonably required for the importation and transmission of water in the area of the agency. The agency in exercising that power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location. No action in eminent domain to acquire property outside the boundaries of the agency shall be commenced unless the board of supervisors of each affected county has consented to the acquisition by resolution.

(h) To issue bonds, borrow money, and incur indebtedness as authorized by law or in this act provided; also to refund (by the issuance of the same obligations following the same procedure) or retire any indebtedness or lien that may exist against the agency or property thereof.

(i) To issue negotiable promissory notes bearing interest at a rate not exceeding the maximum rate per annum authorized by Section 27; provided, however, that the notes shall be general obligations of the agency payable from revenues and taxes in the same manner as bonds of the agency; and provided further that the maturity shall not be later than five years from the date thereof and that the total

aggregate amount of the notes outstanding at any one time may be at least equal to seventy-five thousand dollars ($75,000) but shall not otherwise exceed the lesser of either one million dollars ($1,000,000) or 2 percent of the assessed valuation of the taxable property in the agency, or, if that assessed valuation is not obtainable, 2 percent of the county auditor's estimate of the assessed valuation of the taxable property in the agency evidenced by his or her certificate.

(j) To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the agency, including its formation expenses and any warrants issued therefor.

(k) To restrict the use of agency water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of agency water or the use of agency water during those periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the agency; to prohibit the use of agency water during those periods for specified uses which the agency may from time to time find to be nonessential.

(*l*) To prescribe and define by ordinance, the restrictions, prohibitions, and exclusions referred to in subdivision (k). Every ordinance relating to the matters referred to in this subdivision shall be in full force and effect forthwith upon adoption, but shall be published once in full within 10 days after adoption in a newspaper of general circulation published in the agency or, if no such newspaper is published in the agency, in a newspaper of general circulation distributed in the agency.

(m) To make contracts, to employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(n) To provide by ordinance of its board of directors for the pensioning of employees and the creation of a special fund for the purpose of paying those pensions, and the accumulation of contributions to the fund from the revenues of the agency, the wages of employees, voluntary contributions, gifts, donations, or any source of revenue not inconsistent with the general powers of the board, and to contract with any insurance corporation or any other insurance carrier for the maintenance of a service covering the pension of the employees, and to provide in the ordinance for the terms and conditions under which the pensions shall be awarded, and for the time and extent of service of employees before the pensions shall be available to them.

(o) To join with one or more public agencies, private corporations, or other persons for the purpose of carrying out any of the powers of the agency, and for that purpose to contract with such other public agencies or private corporations or persons for the purpose of financing those acquisitions, constructions, and operations. The contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of the acquisitions and operations, and the division and apportionment of the benefits, the services and products therefrom,

and may provide for any agency to effect the acquisitions and to carry on the operations, and shall provide in the powers and methods of procedure for the agency the method by which the agency may contract. The contracts with other public agencies or private corporations or persons may contain such other and further covenants and agreements as may be necessary or convenient to accomplish the purposes thereof. Particularly, but not exclusively, the agency may contract with the State of California for delivery of water under the State Water Resources Development System. The term "public agency," as used in this subdivision, shall be deemed to mean and include the United States of America or any department or agency thereof, the State of California or any department or agency thereof, a county, city, public corporation, the Metropolitan Water District of Southern California, or other public district of this state. The term "private corporation," as used in this subdivision, shall be deemed to mean and include any private corporation organized under the laws of the United States of America or of this or any other state thereof. Contracts mentioned herein include those made with the United States, under the Federal Reclamation Act of June 17, 1902, and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation Any such contract with the United States of America or any department or agency thereof, or with any private corporation organized under the laws of the United States of America, by which the agency, or an improvement district thereof, incurs an indebtedness or liability exceeding in any year the income and revenue for that year, shall not be executed without the assent of two-thirds of the qualified electors of the agency, or an improvement district thereof, voting at a special election to be held for that purpose, the election to be called and held, so far as practicable, in the same manner as bond elections for the agency. The exact form of the contract need not be available at the time of the special election, but the (1) purpose of the contract; (2) maximum amount of the indebtedness created thereby; (3) maximum term of repayment, and (4) maximum interest rate on the indebtedness shall be known and included in the proposition or measure submitted to the qualified electors of the agency, or an improvement district thereof, at the special election.

(p) To issue bonds under Section 28 for the purpose of providing money required to be paid by this agency to the State of California or any agency thereof under any contract which shall be made with it, or as all or part of the terms and conditions under which the corporate area of the agency may be annexed to and become a part of any metropolitan water district organized under the Metropolitan Water District Act. The amount of the bonds may include expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(q) To disseminate information concerning the rights, properties, and activities of the agency.

(r) To construct, operate, and maintain works to develop hydroelectric energy, for use by the agency in the operation of its works or as a means of assisting in financing the construction, operation, and maintenance of its projects for the control, conservation, diversion, and transmission of water and to enter into contracts for the sale of the energy for a term not to exceed 100 years. The energy may be marketed only at wholesale to any public agency or private entity, or both, or the federal or state government.

(s) To contract, in connection with the construction and operation of the works of the agency, for the sale of the right to use falling water for electric energy purposes with any public agency or private entity engaged in the retail distribution of electric energy, for a term not to exceed 100 years.

(t) To develop, treat, distribute, and reclaim water, and to store and recover water from groundwater basins located outside the boundaries of the agency and, in exercising that power, to make and enter into contracts allowing that storage and recovery.

SEC. 2. Section 26.2 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 26.2. The agency may prescribe, by rules and regulations adopted by resolution or ordinance, that, when any facility capacity fees adopted pursuant to Section 26.1 and Sections 29.1 to 29.5, inclusive, become due and are unpaid under and in accordance with the rules and regulations concerning those fees, the fees may be secured and collected in accordance with the procedures specified in Sections 26.3 and 26.4. The security and collection procedures set forth pursuant to Sections 26.3 and 26.4 shall only be operative with respect to facility capacity fees first becoming delinquent on or after January 1, 1990.

SEC. 3. Section 26.3 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 26.3. The amount of any delinquent and unpaid facility capacity fees shall be collected with the annual taxes next levied upon the property which is subject to a proposed changed use which resulted in the imposition of a facility capacity fee, and that amount constitutes a lien on that property as of the same time, and in the same manner, as the tax lien securing annual property taxes. However, if, during the year preceding the date on which the first installment of real property taxes which evidence the charges appears on the roll, any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereto, the lien which would otherwise be imposed by this section shall not be added to and become part of the annual assessment, nor shall it attach to the real property. Any county in which the agency is located shall deduct from the facility capacity fees collected by it an amount sufficient to compensate the county

for costs incurred in collecting the delinquent and unpaid facility capacity fees. The amount of that compensation shall be fixed by agreement between the board of supervisors of the county and the board of directors of the agency.

SEC. 4. Section 26.4 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 26.4. If delinquent and unpaid facility capacity fees are determined to exist by the agency, the amount of those fees may, in the discretion of the agency, be secured at any time by filing for record in the office of the county recorder of the county in which the real property is located, a certificate specifying the amount of those fees and the name and address of the person liable therefor.

From the time of recordation of the certificate, the amount required to be paid, together with interest and penalties, constitutes a lien upon all real property in the county owned by the person or later acquired before the lien expires. The lien shall have the force, priority, and effect of a judgment lien and shall continue for 10 years from the date of the filing of the certificate unless sooner released or otherwise discharged. The lien may, within 10 years from the filing of the certificate, or within 10 years from the date of the last extension of the lien in the manner provided in this section, be extended by filing for record a new certificate in the office of the county recorder of any county. From the time of that filing, the lien shall be extended with respect to the real property in that county for 10 additional years unless sooner released or otherwise discharged.

SEC. 5. Section 26.5 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read·

26.5. If the real property or any portion thereof is within the boundaries of the agency and subject to the final map, a notice shall be placed on the final map specifically referencing the fact that the real property is subject to facility capacity fees, as described in Section 26.1.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act akes effect pursuant to the California Constitution.

CHAPTER 911

An act to add Section 1569.67 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 25, 1989 Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 1569.67 is added to the Health and Safety Code, to read:

1569.67. (a) The department shall develop a written notice for the purpose of informing any individual who requests information regarding admission to a residential care facility for the elderly that the department's licensing analysts' inspection reports on all residential care facilities for the elderly are on file and are available for public review in the department's community care licensing district office nearest to each residential care facility for the elderly.

(b) The department shall adopt regulations requiring that each residential care facility provide this notice, as well as the address of the nearest departmental community care licensing district office, to any individual who requests information regarding admission to a residential care facility for the elderly and to any resident of the facility.

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

CHAPTER 912

An act to add Section 214.14 to the Revenue and Taxation Code, relating to property taxation

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. The Legislature finds and declares:

(a) It is the public policy of this state to encourage the operation

of museums for public and charitable purposes, and for the cultural and educational benefits museums provide.

(b) It has consistently been the intent of the Legislature, and so interpreted by the courts, that property owned and operated for charitable purposes of a museum by a tax exempt organization qualifies for the welfare exemption under Section 214 of the Revenue and Taxation Code.

(c) It has never been the intent of the Legislature to disqualify from the welfare exemption those properties used for activities or facilities reasonably necessary and incidental to the charitable purposes of museums, including restaurants, cafes, bars, or other food service facilities, and bookstore/giftshops selling primarily educational materials, for the convenience of museum visitors and staff.

(d) Rising costs of administration and operation, dwindling federal and state funding, and declining tax incentives for private donations have made it extremely difficult for museums to secure adequate funding.

(e) It is essential to maintain and enhance the three main funding avenues currently available to museums: tax exemptions, private contributions, and earned income.

(f) To require museums to pay property taxes, in whole or in part, on the basis of traditional activities incidental to or reasonably necessary for the advancement of museum purposes, would seriously hamper the ability of museums to function effectively and would cause them to divert funds that otherwise would be available to provide greater cultural, historical, and educational benefits to the entire state.

(g) The provisions of this act serve the public purpose of encouraging museum operations and thereby advance cultural and educational progress in furtherance of declared state policy.

SEC. 2. Section 214.14 is added to the Revenue and Taxation Code, to read:

214.14. Property used exclusively for charitable purposes of museums and owned and operated by a religious, hospital, scientific, or charitable fund, foundation, or corporation which meets all the requirements of subdivision (a) of Section 214 shall be deemed to be within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution and Section 214. For purposes of this section:

(a) Property used exclusively for the charitable purposes of museums shall include property used for activities and facilities related to the primary charitable purposes of museums and reasonably necessary and incidental to those purposes.

(b) Property used exclusively for charitable purposes of museums shall not be required to be indispensable to the primary charitable purposes of museums.

(c) Property used excusively for charitable purposes of museums shall not include property used for activities and facilities not related

to the primary charitable purposes of museums and not reasonable necessary or incidental to those purposes.

SEC. 3. The addition of this section made at the 1989–90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, existing law.

SEC. 4. Nothing in this act shall be construed as an admission on the part of the State Board of Equalization or an expression of opinion by the Legislature that the interpretations or applications of the welfare exemption by the board for prior years were in any way incorrect or invalid.

CHAPTER 913

An act to amend Section 36 of the Code of Civil Procedure, to amend Sections 206, 300, 307.5, 309, 353, 358.1, 361.3, 361.5, 364, 366, 366.21, 366.22, 366.23, 366.25, 366.26, 366.3, and 16503 of the Welfare and Institutions Code, and to amend Section 52 of Chapter 1485 of the Statutes of 1987, relating to actions and proceedings.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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 this 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.

(g) Upon the granting of a motion for preference pursuant to subdivision (b), a party in an action based upon a health provider's alleged professional negligence, as defined in Section 364, shall receive a trial date not sooner than six months and not later than nine months from the date that the motion is granted.

SEC. 2. Section 206 of the Welfare and Institutions Code is amended to read:

206. Persons taken into custody and persons alleged to be within the description of Section 300, or persons adjudged to be such and made dependent children of the court pursuant to this chapter solely upon that ground, shall be provided by the board of supervisors with separate facilities segregated from persons either alleged or adjudged to come within the description of Section 601 or 602 except as provided in Section 16514. Separate segregated facilities may be provided in the juvenile hall or elsewhere.

The facilities required by this section shall, with regard to minors alleged or adjudged to come within Section 300, be nonsecure.

For the purposes of this section, the term "secure facility" means a facility which is designed and operated so as to insure that all entrances to, and exits from, the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraints in order to control behavior of its residents. The term "nonsecure facility" means a facility that is not characterized by the use of physically restricting construction, hardware, and procedures and which provides its residents access to the surrounding community with minimal supervision. A facility shall not be deemed secure due solely to any of the following conditions: (1) the existence within the facility of a small room for the protection of individual residents from themselves or others; (2) the adoption of regulations establishing reasonable hours for residents to come and go from the facility based upon a sensible and fair balance between allowing residents free access to the community and providing the staff with sufficient authority to maintain order, limit unreasonable actions by residents, and to ensure that minors placed

in their care do not come and go at all hours of the day and night or absent themselves at will for days at a time; and (3) staff control over ingress and egress no greater than that exercised by a prudent parent. The State Department of Social Services may adopt regulations governing the use of small rooms pursuant to this section.

No minor described in this section may be held in temporary custody in any building that contains a jail or lockup for the confinement of adults, unless, while in the building, the minor is under continuous supervision and is not permitted to come into or remain in contact with adults in custody in the building. In addition, no minor who is alleged to be within the description of Section 300 may be held in temporary custody in a building that contains a jail or lockup for the confinement of adults, unless the minor is under the direct and continuous supervision of a peace officer or other child protective agency worker, as specified in Section 11165.9 of the Penal Code, until temporary custody and detention of the minor is assumed pursuant to Section 309. However, if a child protective agency worker is not available to supervise the minor as certified by the law enforcement agency which has custody of the minor, a trained volunteer may be directed to supervise the minor. The volunteer shall be trained and function under the auspices of the agency which utilizes the volunteer. The minor may not remain under the supervision of the volunteer for more than three hours. A county which elects to utilize trained volunteers for the temporary supervision of minors shall adopt guidelines for the training of the volunteers which guidelines shall be approved by the State Department of Social Services. Each county which elects to utilize trained volunteers for the temporary supervision of minors shall report annually to the department on the number of volunteers utilized, the number of minors under their supervision, and the circumstances under which volunteers were utilized.

No record of the detention of such a person shall be made or kept by any law enforcement agency or the Department of Justice as a record of arrest.

SEC. 3. Section 300 of the Welfare and Institutions Code, as added by Section 4 of Chapter 1485 of the Statutes of 1987, is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious

physical harm" does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jursidiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a

member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.

(g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being

physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the child.

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. 4. Section 300 of the Welfare and Institutions Code, as added by Section 4.5 of Chapter 1485 of the Statutes of 1987, is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the

failure of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a minor comes within the jursidiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment or nontreatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, or withdrawal, untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person

was physically abusing the minor. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.

(g) The minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into

family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section, "guardian" means the legal guardian of the child.

SEC. 5. Section 307.5 of the Welfare and Institutions Code is amended to read:

307.5 Notwithstanding the provisions of Section 307, an officer who takes a minor suspected of being a person described in Section 300 into temporary custody pursuant to subdivision (a) of Section 305 may, in a case where he or she deems that it is in the best interest of the minor and the public, take the minor to a community service program for abused or neglected children. Organizations or programs receiving referrals pursuant to this section shall have a contract or an agreement with the county to provide shelter care or counseling. Employees of a program receiving referrals pursuant to this section are "child care custodians" for the purpose of the requirements of Section 11165.7 of the Penal Code. The receiving organization shall take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken.

SEC. 6. Section 309 of the Welfare and Institutions Code is amended to read:

309. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding the minor's being taken into custody and attempt to maintain the minor with the minor's family through the provision of services. The probation officer shall immediately release the minor to the custody of the minor's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The minor has no parent, guardian, or responsible relative; or the minor's parent, guardian, or responsible relative is not willing to provide care for the minor.

(2) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(4) The minor has left a placement in which he or she was placed by the juvenile court.

(b) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this chapter while the minor is at the office of the physician or surgeon or the medical facility.

(c) If the minor is not released to his or her parent or guardian, the minor shall be deemed detained for purposes of this chapter.

SEC. 7. Section 353 of the Welfare and Institutions Code is amended to read:

353. At the beginning of the hearing on a petition filed pursuant to Article 8 (commencing with Section 325) of this chapter, the judge or clerk shall first read the petition to those present. Upon request of any parent, guardian, or adult relative, counsel for the minor, or the minor, if he or she is present, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences. The judge shall ascertain whether the parent, guardian, or adult relative and, when required by Section 317, the minor have been informed of their right to be represented by counsel, and if not, the judge shall advise those persons, if present, of the right to have counsel present and where applicable, of the right to appointed counsel. If such a person is unable to afford counsel and desires to be represented by counsel, the court shall appoint counsel in accordance with Section 317. The court shall continue the hearing for not to exceed seven days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself or herself with the case, or to determine whether the parent or guardian or adult relative is unable to afford counsel at his or her own expense, and shall continue the hearing as necessary to provide reasonable opportunity for the minor and the parent or guardian or adult relative to prepare for the hearing.

SEC. 8. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a probation officer or child advocate appointed by the court, required to be received in evidence pursuant to Section 358 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or probation officer has considered child protective services, as defined in Chapter 5

(commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the minor will be served by granting reasonable visitation rights with the minor to his or her grandparents, in order to maintain and strengthen the minor's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

SEC. 9. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether such a placement is appropriate, the probation officer and court shall consider the ability of the relative to provide a secure and stable environment for the child. Factors to be considered in that assessment include, but are not limited to, the good moral character of the relative; the ability of the relative to exercise proper and effective care and control of the child; the ability of the relative to provide a home and the necessities of life for the child; which relative is most likely to protect the child from his or her parents; which relative is most likely to facilitate visitation with the child's other relatives and to facilitate reunification efforts with the parents; and the best interests of the child. In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a probation officer's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, the probation officer and the court, in determining which relative should receive preferential consideration, shall consider the best interests of the child, and which of the relatives is most likely to protect the child from his or her parents, to facilitate visitation with the child's other relatives, and to facilitate reunification efforts with the parents. Consideration shall also be given to attempting to place siblings and stepsiblings in the same home if such a placement is found to be in their best interests.

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle,

or sibling.

SEC. 10. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of the provision of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parents is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in such a search.

(2) That the parent is suffering from a mental disability that is described in Section 232 of the Civil Code and that renders him or her incapable of utilizing those services.

(3) That the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or parents, guardian, or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse. However, this section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(4) That the parent of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing.

The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), or (5), inclusive, of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and postively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Services may include, but shall not be limited to, all of the following:

(1) Maintaining contact between parent and child through collect phone calls.

(2) Transportation services, where appropriate.

(3) Visitation services, where appropriate.

(4) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(f) If a court, pursuant to paragraph (2), (3), (4), or (5) of subdivision (b), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

SEC. 11. Section 364 of the Welfare and Institutions Code is amended to read:

364. (a) Every hearing in which an order is made placing a minor under the supervision of the juvenile court pursuant to Section 300 and in which the minor is not removed from the physical custody of his or her parent or guardian shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing. The continued hearing shall be placed on the appearance calendar. The court shall advise all persons present of the date of the future hearings, of their rights to be present, and to be

represented by counsel.

(b) At least 10 calendar days prior to the hearing, the probation officer shall file a supplemental report with the court describing the services offered to the family and the progress made by the family in eliminating the conditions or factors requiring court supervision. The probation officer shall also make a recommendation regarding the necessity of continued supervision. A copy of this report shall be furnished to all parties at least 10 calendar days prior to the hearing.

(c) After hearing any evidence presented by the probation officer, the parent, the guardian, or the minor, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the probation department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that such conditions are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.

(d) If the court retains jurisdiction it shall continue the matter to a specified date, not more than six months from the time of the hearing, at which point the court shall again follow the procedure specified in subdivision (c).

(e) In any case in which the court has ordered that a parent or guardian shall retain physical custody of a minor subject to supervision by a probation officer, and the probation officer subsequently receives a report of acts or circumstances which indicate that there is reasonable cause to believe that the minor is a person described in subdivision (a), (d), or (e) of Section 300, the probation officer shall commence proceedings under this chapter. If, as a result of the proceedings required, the court finds that the minor is a person described in subdivision (a), (d), or (e) of Section 300, the court shall remove the minor from the care, custody, and control of the minor's parent or guardian and shall commit the minor to the care, custody, and control of the probation officer pursuant to Section 361.

SEC. 12. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.25 or 366.26 is completed. The court shall determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and shall project a likely date by which the child may be returned to the home or placed for

adoption or legal guardianship.

(b) Subsequent to the hearing periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

SEC. 13. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parents to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship,

the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to any such hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider any such report and recommendation prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.5, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services. If the child is not returned to his or her parent or parents, the court shall determine whether reasonable

services have been provided or offered to the parent or parents which were designed to aid the parent or parents overcome the problems which led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated or continued.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk or detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or parents which were designed to aid the parent or parents to overcome the problems which led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or parents. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not adoptable and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26.

(h) In any case in which the court orders that a hearing pursuant

to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

SEC. 14. Section 366.22 of the Welfare and Institutions Code is amended to read·

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing the detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.6 and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he

or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing and the court determines that reasonable services have been offered or provided to the parent or guardian, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not adoptable and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

SEC. 15. Section 366.23 of the Welfare and Institutions Code is amended to read:

366.23. (a) Whenever a juvenile court schedules a hearing pursuant to Section 366.26 regarding a minor, it shall direct that the fathers, presumed and alleged, and mother of the minor, the minor,

if 10 years of age or older, and any counsel of record, shall be notified of the time and place of the proceedings and advised that they may appear. The notice shall also advise them of the right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. In all cases where a parent has relinquished his or her child for the purpose of adoption, no notice need be given to that parent. Service of the notice shall be completed at least 45 days before the date of the hearing, except in those cases where notice by publication is ordered in which case the service of the notice shall be completed at least 30 days before the date of the hearing. If the petitioner is recommending termination of parental rights, all persons entitled to receive notice shall also be notified by first-class mail of the recommendation at least 15 days before the scheduled hearing.

(b) Notice to the parent of the hearing may be given in any of the following manners:

(1) Personal service to the parent named in the notice.

(2) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(3) If the place of residence is outside the state, service may be made in the manner prescribed in paragraph (1) or (2), or by certified mail, return receipt requested.

(4) If the recommendation of the petitioner is limited to legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

(5) If the father or mother of the minor or any person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in paragraph (1), (2), (3), or (4) or if his or her place of residence is not known, the probation officer shall file an affidavit with the court at least 75 days before the date of the hearing, stating the name of the father or mother or alleged father or mother and his or her place of residence, if known, setting forth the efforts that have been made to locate and serve the parent.

(A) If the court determines that there has been due diligence in attempting to locate and serve the parent, and the petitioner limits the recommendation to legal guardianship or long-term foster care, the court shall order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear. In any case where the residence of the parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), (3), or (4).

(B) If the court determines that there has been due diligence in attempting to locate and serve the parent and the petitioner does not limit the recommendation to legal guardianship or long-term foster

care, the court shall order that service to the parent be by certified mail, return receipt requested, to the parent's counsel of record, if any. If the parent does not have counsel of record, the court shall order that the service be made by publication of a citation requiring the father or mother, or alleged father or mother, to appear at the time and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the father or mother. Publication shall be made once a week for four successive weeks. In case of service by certified mail on the counsel of record or publication where the residence of a parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in paragraph (1), (2), or (3). When service by certified mail on the counsel of record or publication is ordered, service of a copy of the notice in the manner provided for in paragraph (1), (2), or (3) is equivalent to service by certified mail on the counsel of record or publication. In any case where service by certified mail on the counsel of record or publication is ordered, the court shall also order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear.

If the identity of one or both of the parents or alleged parents of the minor is unknown or if the name of either or both of his or her parents or alleged parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or the mother, or both, of the minor, and to all persons claiming to be the father or mother of the minor naming and otherwise describing the minor.

(6) Notwithstanding paragraphs (1) to (5), inclusive, if the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26 regarding the minor, the court shall advise the parent of the time and place of the proceedings, their right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. The court shall order the parent to appear for the proceedings and then direct that the parent be noticed thereafter by first-class mail to the parent's usual place of residence or business only.

(7) Notwithstanding paragraphs (1) to (5), inclusive, whenever the whereabouts of a parent is not known at the time the court schedules a hearing pursuant to Section 366.26 regarding a minor, and the petitioner presents to the court an affidavit setting forth the name of the parent and the efforts that have been made to locate the parent, the court shall order that the notice for the parent be as set forth in subparagraph (A) or (B) of paragraph (5).

(c) Notice to the minor, if 10 years of age or older, and to any counsel of record, of the hearing shall be by first-class mail.

(d) Service is deemed complete at the time the notice is personally delivered to the party named in the notice, or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication, whichever occurs first.

SEC. 16. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25 (a) In order to provide stable, permanent homes for children, a court shall, if the minor cannot be returned home pursuant to subdivision (e) of Section 366.2, conduct a hearing to make a determination regarding the future status of the minor no later than 12 months after the original dispositional hearing in which the child was removed from the custody of his or her parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Section 319 or 16507.4 and periodically, but no less frequently than once each 18 months, thereafter during the continuation of foster care. The hearing may be combined with the six months' review as provided for in Section 366. In the case of a minor who comes within subdivision (b) of Section 361.5 and for whom the court has found that reunification services should not be provided, a hearing shall be held pursuant to Section 361.5.

(b) Notice of the proceeding to conduct the review shall be mailed by the probation officer to the same persons as in an original proceeding, to the minor's present custodian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) Except in cases where permanency planning is conducted pursuant to Section 361.5, the court shall first determine at the hearing whether the minor should be returned to his or her parent or guardian, pursuant to subdivision (e) of Section 366.2. If the minor is not returned to the custody of his or her parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months. If the court so determines it shall set another review hearing for not more than six months, which shall be a hearing pursuant to this section.

(d) If the court determines that the minor cannot be returned to the physical custody of his or her parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the following determinations and orders:

(1) If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of his or her parents or guardians pursuant to Section 232 of the Civil

Code unless the court finds that any of the following conditions exist:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(2) If the court finds that it is not likely that the minor can or will be adopted or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) applies, the court shall order the appropriate county department to initiate or facilitate the placement of the minor in a home environment that can be reasonably expected to be stable and permanent. This may be accomplished by initiating legal guardianship proceedings or long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is in a foster home and the foster parents, including relative caretakers, are willing and capable of providing a stable and permanent environment, the minor shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the foster parents. The court shall also make orders for visitation with the parents or guardians unless the court finds by a preponderance of evidence that the visitation would be detrimental to the physical or emotional well-being of the minor

(3) (A) If the court finds that it is not likely that the minor can or will be adopted, that there is no suitable adult available to become the legal guardian of the minor, and that there are no suitable foster parents except certified homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(B) The licensed foster family agency shall only use a suitable licensed or other family home which has been certified by the agency as meeting licensing standards. When the care, custody, and control has been transferred to a foster family agency, it shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for support of the minor shall not in and of itself create

liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(C) Subsequent reviews for these minors shall be conducted every six months by the court. The licensed foster family agency shall be required to submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

(e) The proceeding for the appointment of a guardian for a minor who is a dependent child of the juvenile court shall be in the juvenile court. The court shall receive into evidence a report and recommendation concerning the proposed guardianship. The report shall include, but not be limited to, a discussion of all of the following:

(1) A social history of the proposed guardian, including screening for criminal records and prior referrals for child abuse or neglect.

(2) A social history of the minor, including an assessment of any identified developmental, emotional, psychological, or educational needs, and the capability of the proposed guardian to meet those needs.

(3) The relationship of the minor to the proposed guardian, the duration and character of the relationship, the motivation for seeking guardianship rather than adoption, the proposed guardian's long-term commitment to provide a stable and permanent home for the minor, and a statement from the minor concerning the proposed guardianship.

(4) The plan, if any, for the natural parents for continued involvement with the minor.

(5) The proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship.

The report shall be read and considered by the court prior to ruling on the petition for guardianship, and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(f) Physical custody of a minor by his or her parents or guardians for insubstantial periods during the 12-month period prior to a permanency planning hearing shall not serve to interrupt the running of those periods.

(g) Notwithstanding any other provision of law, the application of any person who, as a foster parent, including relative caretakers, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the foster parent and removal from the foster parent would be

seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(h) Subsequent hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous hearing and is awaiting finalization of the adoption or (2) the child is the ward of a guardian.

(i) This section applies to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

(j) An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to Section 232 or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ.

SEC. 17. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Section 4600 of the Civil Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 224, 224m, and 7017 of the Civil Code specify the exclusive procedures, after January 1, 1990, for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the

following procedures:

(1) It shall terminate parental rights if it determines by clear and convincing evidence that it is likely that the minor will be adopted. The findings pursuant to subdivision (b) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, are a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed

medical, physical, or mental handicap, or the minor is the age of seven years or more.

(3) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(4) If the court finds that the child should not be placed for adoption that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read

and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be heard until the appellate rights of the natural parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 18. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 366.25 or 366.26, the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. The court may continue jurisdiction following the establishment of a legal guardianship, if continued jurisdiction is in the interests of the minor. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

(b) If the court has dismissed jurisdiction following the establishment of a legal guardianship and the legal guardianship is

subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing jurisdiction over the minor.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 366.25 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

(c) If the minor is in a placement other than a preadoptive home or the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency; the court shall conduct the review upon the request of the minor's parents or guardian or of the minor and shall conduct the review 18 months after the hearing held pursuant to Section 366.26 and every 18 months thereafter. The reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and the adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the minor, unless the parent or

parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

SEC. 19. Section 16503 of the Welfare and Institutions Code is amended to read:

16503. (a) Subsequent to completion of the hearing conducted pursuant to Section 366.25 or 366.26, the agency responsible for placement and care of a minor, as defined in subdivision (e) of Section 11400, shall ensure that a child in foster care shall receive administrative reviews periodically but no less frequently than once every six months. The administrative review shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and adequacy of services provided to the child.

(b) The term "administrative review" means a review open to the participation of the parents of a child in foster care conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to either the child or the parents who are the subject of the review.

(c) The department shall develop and implement regulations establishing processes, procedures and standards for the conduct of administrative reviews.

(d) The requirements of this section shall not be interpreted as requiring duplicate concurrent court and administrative reviews.

SEC. 20. Section 52 of Chapter 1485 of the Statutes of 1987 is amended to read:

Sec. 52. Section 4.5 of this act shall be operative January 1, 1992.

SEC. 21. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 914

An act to amend Section 8880.38 of the Government Code, relating to criminal history information.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 8880.38 of the Government Code is amended to read:

8880.38. Deputy Director for Security

One of the deputy directors shall be responsible for a security division to assure integrity, honesty, and fairness in the operation and administration of the California State Lottery, including, but not limited to, an examination of the qualifications and criminal history of all prospective and current employees, prospective and current Lottery Game Retailers, and prospective and current Lottery suppliers as defined in Section 8880.57. Fingerprints shall be obtained in this process and shall be furnished to the Department of Justice. The Department of Justice shall submit one set of the fingerprints to the Federal Bureau of Investigation as required, and shall retain the other set to obtain the California criminal history record that may be maintained.

The Deputy Director for Security shall be qualified by training and experience, including at least five years of law enforcement experience, and shall have knowledge and experience in computer security, to fulfill these responsibilities. The Deputy Director for Security shall confer with the Attorney General or his or her designee and the Controller or his or her designee as the Deputy Director for Security deems necessary and advisable to promote and ensure integrity, security, honesty, and fairness of the operation and administration of the Lottery. The Deputy Director for Security shall report any alleged violation of any law related to the operations of the California State Lottery to the appropriate law enforcement agency and the Attorney General for further investigation and action. The Deputy Director for Security and lottery security officers shall have access to criminal history information pursuant to Sections 11105 and 11105.01 of the Penal Code.

SEC. 2. The Legislature finds and declares that the provisions of Section 1 of this act further the purpose of the California State Lottery Act of 1984

CHAPTER 915

An act to amend Sections 4585, 4586, 4587, 4590, 4591, and 4604 of, the Public Resources Code, relating to forest practices.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 4585 of the Public Resources Code, as amended by Section 8 of Chapter 987 of the Statutes of 1987, is amended to read:

4585. (a) Within one month after completion of the work described in the timber harvesting plan, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization, has been completed.

(b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.

(c) 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. Section 4585 of the Public Resources Code, as added by Section 9 of Chapter 987 of the Statutes of 1987, is amended to read:

4585. Within one month after completion of the work described in the timber harvesting plan, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization has been completed.

This section shall become operative January 1, 1994.

SEC. 3. Section 4585 of the Public Resources Code, as amended by Section 8 of Chapter 987 of the Statutes of 1987, is amended to read:

4585. (a) Within one month after completion of the work described in the timber harvesting plan, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking,

site preparation, or maintenance of drainage facilities and soil stabilization, has been completed.

(b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.

(c) This section shall remain in effect only until January 1, 1991, or until the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and as of that date is repealed.

SEC. 4. Section 4585 is added to the Public Resources Code, to read:

4585. (a) Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization, has been completed.

(b) If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and shall remain operative 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. 5. Section 4585 of the Public Resources Code, as added by Section 9 of Chapter 987 of the Statutes of 1987, is amended to read:

4585. Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, excluding work for stocking, site preparation, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and landings after the plan period, a report shall be filed by the timber owner or the owner's agent with the department that all work, except stocking, site preparation, or maintenance of drainage facilities and soil stabilization has been completed.

This section shall become operative on January 1, 1994.

SEC. 6. Section 4586 of the Public Resources Code is amended to read:

4586. Within six months of the receipt of the work completion report specified in Section 4585, the director shall determine, by inspection, whether the work described in the report, excluding

stocking, has been properly completed in conformity with the rules and regulations of the board and standards of this chapter. If it has been so completed, the director shall issue a report of satisfactory completion of all items except stocking. If not, the director shall take such corrective action as he or she deems appropriate in accordance with Article 8 (commencing with Section 4601).

This section shall remain in effect only until January 1, 1994, and as of that date if repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1994, pursuant to Section 9611 of the Government Code, Section 4586 of this code, as amended by Section 265 of Chapter 676 of the Statutes of 1980, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 7. Section 4587 of the Public Resources Code, as amended by Section 3 of Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area identified in a report submitted pursuant to Section 4585, a report of stocking with respect to that area shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) 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. 8. Section 4587 of the Public Resources Code, as added by Section 4 of Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area covered by a timber harvesting plan, a report of stocking shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking

requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures which shall be designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall become operative on January 1, 1994.

SEC. 9. Section 4587 of the Public Resources Code, as amended by Section 3 of Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area identified in a report submitted pursuant to Section 4585, a report of stocking with respect to that area shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall remain in effect only until January 1, 1991, or until the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and as of that date is repealed.

SEC. 10. Section 4587 is added to the Public Resources Code, to read:

4587. (a) Within five years after completion of timber operations on an area identified in a report submitted pursuant to Section 4585 or nonindustrial timber harvest notice, a report of stocking with respect to that area shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry, pursuant to Senate Bill 1566, whichever date occurs first and shall remain operative 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. 11. Section 4587 of the Public Resources Code, as added by Section 4 of Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area covered by a timber harvesting plan or nonindustrial timber harvest notice, a report of stocking shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures which shall be designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other

applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall become operative on January 1, 1994.

SEC. 12. Section 4590 of the Public Resources Code is amended to read:

4590. (a) (1) A timber harvesting plan is effective for a period of not more than three years, unless extended pursuant to paragraph (2).

(2) A timber harvesting plan on which work has been commenced but not completed may be extended by amendment for a one-year period in order to complete the work, up to a maximum of two one-year extensions, if (1) good cause is shown and (2) all timber operations are in conformance with the plan, this chapter, and all applicable rules and regulations, upon the filing of the notice of extension as required by this paragraph. The extension shall apply to any area covered by the plan for which a report has not been submitted under Section 4585. The notice of extension shall be provided to the department not sooner than 30 days, but at least 10 days, prior to the expiration date of the plan. The notice shall include the circumstances which prevented a timely completion of the work under the plan and, consistent with Section 4583, an agreement to comply with this chapter and the rules and regulations of the board as they exist on the date the extension notice is filed

(b) Stocking work may continue for more than the effective period of the plan under subdivision (a), but shall be completed within five years after the conclusion of other work.

(c) 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. If that date is not deleted or extended, then, on and after January 1, 1994, pursuant to Section 9611 of the Government Code, Section 4590 of this code, as added by Section 4 of Chapter 880 of the Statutes of 1973, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 13. Section 4591 of the Public Resources Code is amended to read:

4591. Amendments to the original timber harvesting plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until the amendment has been filed with, and acted upon, by the department in accordance with Sections 4582.7 and 4583. An amendment may not extend the effective period of the plan, except as provided in Section 4590.

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. If that date is not deleted or extended, then, on and after January 1, 1994,

pursuant to Section 9611 of the Government Code, Section 4591 of this code, as amended by Section 95 of Chapter 1300 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 14. Section 4604 of the Public Resources Code is amended to read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan, or a longer period as may be mutually agreed upon by the department and the person submitting the plan, except that the inspection need not be made if the department determines that it would not add substantive information that is necessary to enforce this chapter. In any event, the department shall provide for inspections, as needed, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including, but not limited to, photographic equipment and temperature measurement devices, as determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

SEC. 15. Section 4604 of the Public Resources Code is amended to read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan, or a longer period as may be mutually agreed upon by the department and the

person submitting the plan, except that the inspection need not be made if the department determines that it would not add substantive information that is necessary to enforce this chapter. In any event, the department shall provide for inspections, as needed, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times as determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including. but not limited to, photographic equipment and temperature measurement devices, as determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision.

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

(c) This section shall remain in effect only until January 1, 1991, or until the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and as of that date is repealed.

SEC. 16. Section 4604 is added to Public Resources Code, to read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan or nonindustrial timber management plan, or a longer period as may be mutually agreed upon by the department and the person submitting the plan. The department shall provide for inspections, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times as determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including, but not limited to, photographic equipment and temperature measurement devices, as determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision.

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first.

SEC. 17. Sections 3, 4, and 5 of this bill incorporate amendments to Section 4585 of the Public Resources Code proposed by both this bill and SB 1566. These sections shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4585 of the Public Resources Code, and (3) this bill is enacted after SB 1566, in which case Sections 1 and 2 of this bill shall not become operative.

SEC. 18. Sections 9, 10, and 11 of this bill incorporate amendments to Section 4587 of the Public Resources Code proposed by both this bill and SB 1566. These sections shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4587 of the Public Resources Code, and (3) this bill is enacted after SB 1566, in which case Sections 7 and 8 of this bill shall not become operative.

SEC. 19. Sections 15 and 16 of this bill incorporate amendments to Section 4604 of the Public Resources Code proposed by both this bill and SB 1566. These sections shall become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4604 of the Public Resources Code, and (3) this bill is enacted after SB 1566, in which case Section 14 of this bill shall not become operative.

CHAPTER 916

An act to amend Section 39141.8 of, and to add Sections 1986 and 39324 to, the Education Code, relating to education.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 1986 is added to the Education Code, to read:

1986. (a) The Legislature hereby recognizes that community schools are a permissive educational program.

(b) If a county superintendent of schools elects to operate a community school pursuant to this chapter, he or she shall do one or more of the following:

(1) Utilize available school facilities that conform to the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(2) Apply for emergency portable classrooms pursuant to Chapter 25 (commencing with Section 17785) of Part 10.

(3) Enter into lease agreements provided that the facilities are limited to one of the following:

(A) Single story, wood-framed structure.

(B) Single story, light steel frame structure.

(C) A structure where a structural engineer has submitted a report that determines substantial structural hazards do not exist. The county board of education shall review the report prior to approval of the lease and may reject the report if there is any evidence of fraud regarding the facts in the report.

(c) Before entering into any lease pursuant to paragraph (3) of subdivision (b), the county superintendent of schools shall certify that all reasonable efforts have been made to locate community schools in facilities that conform to the structural safety standards listed in paragraph (1) of subdivision (b).

(d) On or before September 1, 1993, and every three years thereafter, each county superintendent of schools shall report to the State Allocation Board on the facilities utilized for the operation of community schools and efforts to place community school programs in facilities that conform with the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(e) This section shall become operative on July 1, 1990.

SEC. 2. Section 39141.8 of the Education Code is amended to

read:

39141.8. (a) Notwithstanding Section 39141.4, any high school pupil who attends a class or classes on a campus of the University of California or the California State University in order to receive specialized educational services and opportunities authorized by Chapter 6 (commencing with Section 58800) of Part 31 and any adult attending a special education program established pursuant to Part 30 (commencing with Section 56000), is considered a pupil of that campus for the purposes of Article 3 (commencing with Section 39140) of Chapter 2 of Part 23. Any building or structure or portion of building or structure that pupils occupy pursuant to this section shall not be considered "school buildings" within the meaning of Section 39141.

(b) The governing board of each school district, each county board of education, or each county superintendent of schools, as appropriate, shall notify, in writing, the parent or guardian of each high school pupil who attends a class or classes authorized by Chapter 6 (commencing with Section 58800) of Part 31 and each adult attending a special education program established pursuant to Part 30 (commencing with Section 56000), prior to the pupil's attendance at the class on a university campus that, although University of California and California State University buildings are required to conform to the rigorous standards of the Uniform Building Code (UBC), the buildings on the university campuses may not meet the requirements of Article 3 (commencing with Section 39140) of Chapter 2 of Part 23. This notice shall accompany, to the greatest extent possible, any existing notification to parents or guardians regarding specialized educational services and opportunities.

SEC. 3. Section 39324 is added to the Education Code, to read:

39324. The State Allocation Board shall consider community school pupils housed in leased facilities that do not conform to the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations as unhoused for the purposes of determining priority for the leasing of portable classrooms pursuant to Chapter 25 (commencing with Section 17785) of Part 10.

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

California Constitution.

CHAPTER 917

An act to amend Sections 8880.14, 8880.20, 8880.25, 8880.31, 8880.32, 8880.46, 8880.56, 8880.59, 8880.64. and 12419.5 of the Government Code, and to amend Section 1203.4 of the Penal Code, relating to the California State Lottery.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 8880.14 of the Government Code is amended to read:

8880.14. "Lottery Contractor"

"Lottery Contractor" means a person or organization with whom the Lottery has contracted for the purpose of providing goods and services required by the Lottery.

SEC. 2. Section 8880.20 of the Government Code is amended to read:

8880.20. Meetings

Meetings of the Commission shall be open and public in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3).

SEC. 3. Section 8880.25 of the Government Code is amended to read:

8880.25. Operation of the Lottery

The Lottery shall be initiated and operated so as to produce the maximum amount of net revenues to supplement the total amount of money allocated for public education in California.

SEC. 4. Section 8880.31 of the Government Code is amended to read:

8880.31. Sale Price of Tickets and Shares

The Commission shall promulgate rules and regulations specifying the retail sales price for each ticket or share for each Lottery Game, provided:

(a) Except as provided in subdivision (b), no ticket or share shall be sold for more or less than the retail sales price established by the Commission.

(b) The retail price of each ticket or share in any Lottery Game conducted by the Lottery shall be at least one dollar ($1), except to the extent of any discounts authorized by the Commission.

SEC. 5. Section 8880.32 of the Government Code is amended to read:

8880.32. Validation and Payment of Prizes

The Commission shall promulgate rules and regulations to establish a system of verifying the validity of prizes and to effect payment of the prizes, provided:

(a) For convenience of the public, Lottery Game Retailers may be authorized by the Commission to pay winners of up to six hundred dollars ($600) after performing validation procedures on their premises appropriate to the Lottery Game involved.

(b) No prize may be paid arising from tickets or shares that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the Lottery by applicable deadlines, lacking in captions that confirm and agree with the lottery play symbols required by the Lottery Game involved, purchased by a minor, or not in compliance with additional specific rules and regulations and confidential validation and security tests appropriate to the particular Lottery Game. The Lottery may pay a prize of less than one million dollars ($1,000,000) even though the actual winning ticket is not received by the Lottery if the Lottery validates the claim for the prize based upon substantial proof.

The Commission may require that any form relating to a claim for a prize shall be signed under penalty of perjury. Any such declaration shall meet the requirements of Section 2015.5 of the Code of Civil Procedure.

(c) No particular prize in any Lottery Game shall be paid more than once.

(d) The Commission may specify that winners of less than twenty-five dollars ($25) claim the prizes from either the same Lottery Game Retailer from whom it was purchased or from the Lottery itself.

(e) Players shall have the right to claim prize money for 180 days after the drawing or the end of the Lottery Game or play in which the prize was won. The Commission may define shorter time periods for eligibility for participation in, and entry into, drawings involving entries or finalists. If a valid claim is not made for a prize directly payable by the Lottery Commission or for any Lotto prize within the period applicable for that prize, the unclaimed prize money shall revert to the benefit of the public purpose described in this chapter.

(f) After the expiration of the claim period for prizes for each Lottery Game, the Commission shall make available a detailed tabulation of the total number of tickets or shares actually sold in a Lottery Game and the total number of prizes of each prize denomination that were actually claimed and paid directly by the Lottery Commission.

(g) The right of any person to a prize shall not be assignable, except that payment of any prize may be paid to the estate of a deceased prize winner or to a person designated pursuant to an appropriate judicial order. In the event that there is no probate, the prize shall be paid to the survivors of the claimant in the following order:

(1) The claimant's spouse.

(2) The claimant's children.
(3) The claimant's parents.
(4) The claimant's brothers and sisters.

Payment shall be to the members of the group entitled, who are living on the date of death of the claimant, share and share alike. No payment shall be made to persons in any group if at the date of death there are living persons in any group preceding it. The Director, the Commission, and the state shall be discharged of all further liability upon the payment of a prize pursuant to this subdivision.

(h) A ticket or share shall not be purchased by, and a prize shall not be paid to, a member of the Commission, any officer or employee of the Commission, any officer or employee of the office of the Controller who is designated in writing by the Controller as having possible access to confidential Lottery information, programs, or systems, or any spouse, child, brother, sister, or parent of that person who resides within the same household of the person. Any person who knowingly sells or purchases a ticket or share in violation of this section, or who knowingly claims or attempts to claim a prize with a ticket or share that was purchased or sold in violation of this section, is guilty of a misdemeanor.

(i) No prize shall be paid to any person under the age of 18 years. Any person who knowingly claims or attempts to claim a prize with a ticket or share purchased by a person under the age of 18 years is guilty of a misdemeanor.

SEC. 6. Section 8880.46 of the Government Code is amended to read:

8880.46. Independent Audit of Lottery Security

After the first nine months of sales to the public, the Commission shall engage an independent firm experienced in security procedures, including, but not limited to, computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Lottery. This study shall include, but not be limited to, personnel security, Lottery Game Retailer security, Lottery Contractors security, security of manufacturing operations of Lottery Contractors, security against ticket counterfeiting and alterations and other means of fraudently winning, security of drawings, computer security, data communications security, data base security, systems security, lottery premises and warehouse security, security in distribution, security involving validation and payment procedures, security involving unclaimed prizes, security aspects applicable to each particular Lottery Game, security against locating winners in Lottery Games having preprinted winners, and any other aspects of security applicable to the Lottery and its operations. The portion of the report containing the overall evaluation of the Lottery in terms of each aspect of security shall be presented to the Commission, the Governor, the Controller, the Treasurer, the Attorney General, and the Legislature. The portion of the report containing specific recommendations shall be exempt from public disclosure and shall

be presented only to the Commission, the Attorney General, the Controller and the Governor. Upon request, all materials and data used in the production of the report shall be made available to the Commission, the Attorney General, the Controller, and the Governor. Similar audits of security shall be conducted every two years after the completion of the first audit.

SEC. 7. Section 8880.56 of the Government Code is amended to read.

8880.56. Procurement

(a) Notwithstanding other provisions of law, the Director may purchase or lease such goods and services as are necessary for effectuating the purposes of this chapter. The Director may not contract with any private party for the operation and administration of the California State Lottery created by this chapter. However, this section does not preclude procurements which integrate functions such as game design, supply, advertising, and public relations. In all procurement decisions, the Commission and Director shall take into account the particularly sensitive nature of the California State Lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the Lottery and the objective of raising net revenues for the benefit of the public purpose described in this chapter.

(b) Notwithstanding any other provision of this chapter, the following shall apply to procurement for or by the Commission:

(1) To assure the fullest competition, the Commission shall adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than one hundred thousand dollars ($100,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The Director shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services.

(2) The provisions of Article 1 (commencing with Section 11250) of Chapter 3 of Part 1 of Division 3 apply to the Commission.

(3) The Commission is subject to the Small Business Procurement and Contract Act, as provided in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3.

(4) In advertising or awarding any contract for the procurement of goods and services exceeding five hundred thousand dollars ($500,000), the Commission and the Director shall require all bidders or contractors, or both, to include specific plans or arrangements to utilize subcontracts with socially and economically disadvantaged small business concerns. The subcontracting plans shall delineate the nature and extent of the services to be utilized, and those concerns or individuals identified for subcontracting if known.

It is the intention of the Legislature in enacting this section to

establish as an objective of the utmost importance the advancement of business opportunities for these small business concerns in the private business activities created by the California State Lottery. In that regard, the Commission and the Director shall have an affirmative duty to achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs.

By July 1, 1986, the Commission shall adopt proposal evaluation procedures, criteria, and contract terms which are consistent with the advancement of business opportunities for small business concerns in the private business activities created by the California State Lottery and which will achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs. The proposal evaluation procedures, criteria, and contract terms adopted shall be reported in writing to both houses of the Legislature on or before July 1, 1986.

For the purposes of this section, socially and economically disadvantaged persons include women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other natural persons found by the Commission to be disadvantaged.

The Commission shall report to the Legislature by July 1, 1987, and by each July 1 thereafter, on the level of participation of small businesses, socially and economically disadvantaged businesses, and California businesses in all contracts awarded by the Commission.

(5) The Commission shall prepare and submit to the Legislature by October 1 of each year a report detailing the Lottery's purchase of goods and services through the Department of General Services. The report shall also include a listing of contracts awarded for more than one hundred thousand dollars ($100,000), the name of the contractor, amount and term of the contract, and the basis upon which the contract was awarded.

The Lottery shall fully comply with the requirements of paragraphs (2) to (4), inclusive, except that any function or role which is otherwise the responsibility of the Department of Finance or the Department of General Services shall instead, for purposes of this subdivision, be the sole responsibility of the Lottery, which shall have the sole authority to perform that function or role.

SEC. 8. Section 8880.59 of the Government Code is amended to read:

8880.59. Performance Bond

Any Lottery Contractor may be required by the Lottery to post, with the Commission an acceptable performance bond, letter of credit, or other form of security or guarantee of performance, using

a surety acceptable to the Commission, in an amount sufficient to protect the Lottery in case of default by the contractor. The Commission may require any Lottery Game Retailer to provide a fidelity bond which shall be payable upon order of the Commission.

SEC. 9. Section 8880.64 of the Government Code is amended to read:

8880.64. Expenses

Expenses of the Lottery shall include all costs incurred in the operation and administration of the Lottery and all costs resulting from any contracts entered into for the purchase or lease of goods and services required by the Lottery, including but not limited to, the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, compensation paid to the Lottery Game Retailers, bonding for lottery game retailers, printing, distribution of tickets or shares, reimbursement of costs of services provided to the California State Lottery by other governmental entities, and for the costs for any other goods and services necessary for effectuating the purposes of this chapter. As a promotional expense, the Commission may supplement the prize pool of a game or games upon its determination that a supplement will benefit the public purpose of this chapter. No more than 16 percent of the total annual revenues accruing from the sale of all lottery tickets and shares from all Lottery Games shall be expended for the payment of the expenses of the Lottery.

SEC. 10. Section 12419.5 of the Government Code is amended to read:

12419.5. The Controller may, in his or her discretion, offset any amount due a state agency from a person or entity, against any amount owing that person or entity by any state agency. The Controller may deduct from the claim, and draw his or her warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the Controller, in his or her discretion, shall determine. If, in the discretion of the Controller, the person or entity refuses or neglects to file his or her claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of that person or entity . If approved by the Controller, the claim shall have the same force and effect as though filed by that person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing that person or entity after any offset as provided in this section.

For purposes of this section, an amount owing to a person or entity by any state agency shall include any tax refund.

This section shall not apply to payment of on-line game prizes of ninty-nine dollars ($99) or lower by California State Lottery Retailers pursuant to subdivision (a) of Section 8880.32.

SEC. 11. Section 1203.4 of the Penal Code is amended to read:

1203.4. (a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of 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 accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing; however, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor which is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict 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.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

SEC. 12. The Legislature finds and declares that this act furthers the purposes of the California State Lottery Act of 1984.

SEC 13 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 918

An act to amend Section 17755 of the Education Code, relating to schools.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 17755 of the Education Code is amended to read:

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.

(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.

CHAPTER 919

An act to amend Sections 1505, 11830.5, 11831.5, 11833, 11834, 11834.10, 11834.11, 11834.12, 11834.14, 11834.17, 11834.18, 11834.20, 11834.21, 11834.22, 11834.23, 11834.24, 11834.25, 11834.30, and 11834.35 of, and to add Sections 11830, 11831, and 11834.19 to, the Health and Safety Code, and to amend Section 6363.6 of the Revenue and Taxation Code, relating to drug and alcohol treatment facilities.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as

defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department.

(*l*) Any similar facility determined by the director.

SEC. 2. Section 11830 is added to the Health and Safety Code, to read:

11830. The department shall take the following goals and objectives into consideration in the implementation of this chapter:

(a) The significance of community-based programs to alcohol recovery shall not be diminished.

(b) Opportunities for low-income and special needs populations to receive alcohol or drug abuse recovery or treatment services shall be encouraged.

SEC. 3 Section 11830.5 of the Health and Safety Code is amended to read:

11830.5. The department, in consultation with the State Advisory Board, county alcohol and drug program administrators, and other interested organizations and individuals, shall develop program standards specific to each type of residential program, to be used during its certification process. These standards shall be advisory only and are excluded from the provisions of Section 11347.5 of the Government Code and other requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and Chapter 8 (commencing with Section 11835).

The program standards shall include, but not be limited to, both of the following:

(a) Recognition and characterization of different approaches and solutions to the alcohol and drug problems that the department determines have sufficient merit for a separate standard.

(b) Reference to the needs of youth, the elderly, women, pregnant women, mothers and their children, gay, disabled, and minority populations, with recognition of innovative solutions to the problems of those special populations.

The program standards shall serve as educational documents to inform the public of the current state-of-the-art in effective and cost-efficient alcohol and drug problem programming.

SEC. 4. Section 11831 is added to the Health and Safety Code, to read:

11831. To the maximum extent possible, a reasonable effort to refer a client to other programs, facilities, or services is encouraged for any program or facility which is unable to accept a client after initial assessment.

SEC 5. Section 11831 5 of the Health and Safety Code is amended to read:

11831.5. (a) Certification shall be granted by the department pursuant to this section to any alcoholism or drug abuse recovery or treatment program wishing to receive, and requesting, the certification regardless of the source of the program's funding.

(b) The purposes of certification under this section shall be all of the following:

(1) To identify programs which exceed minimal levels of service quality, are in substantial compliance with the department's standards, and merit the confidence of the public, third party payers, and county alcohol and drug programs.

(2) To encourage programs to meet their stated goals and objectives.

(3) To encourage programs to strive for increased quality of service through recognition by the state and by peer programs in the alcoholism and drug field.

(4) To assist programs to identify their needs for technical assistance, training, and program improvements.

(c) Certification may be granted under this section on the basis of evidence satisfactory to the department that the requesting alcoholism or drug abuse recovery or treatment program has an accreditation by a statewide or national alcohol or drug program accrediting body The accrediting body shall be one whose accreditation meets or exceeds the department's standards and which is recognized by the department.

(d) No fee shall be levied by the department for certification of nonprofit organizations or local governmental entities under this section.

(e) Certification, or the lack thereof, shall not convey any approval or disapproval by the department, but shall be for information purposes only.

(f) The standards developed pursuant to Section 11830 and the certification under this section shall satisfy the requirements of Section 1463.16 of the Penal Code.

(g) The department and the State Department of Social Services shall enter into an interagency agreement to establish a process by which the Department of Alcohol and Drug Programs can certify residential facilities or programs serving primarily adolescents as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, and providing alcoholism and drug recovery or treatment services

The departments shall report to the Legislature no later than January 1, 1991, on the certification process they have identified to be used by the department in certifying adolescent programs.

SEC. 6. Section 11833 of the Health and Safety Code is amended to read:

11833 The department shall have the sole authority in state government to determine the qualifications, including the appropriate skills, education, training, and experience of personnel working within alcoholism or drug abuse recovery and treatment

programs funded under this part.

SEC. 7. Section 11834 of the Health and Safety Code is amended to read:

11834. The department shall encourage the development of educational courses that provide core knowledge concerning alcohol and drug abuse problems and programs to personnel working within alcohol and drug abuse programs.

SEC. 8. Section 11834.10 of the Health and Safety Code is amended to read:

11834.10. The department has the sole authority in state government to license alcoholism or drug abuse recovery or treatment facilities serving adults.

SEC. 9. Section 11834.11 of the Health and Safety Code is amended to read:

11834.11. (a) As used in this chapter, alcoholism or drug abuse recovery or treatment facility means any facility, place, or building which provides 24-hour residential nonmedical services in a group setting to adults, which may include, but need not be limited to, mothers over 18 years of age and their children, and emancipated minors, which may include, but need not be limited to, mothers under 18 years of age and their children, who are recovering from alcohol, drug, or drug and alcohol misuse and are currently capable of meeting their life support needs independently, but who temporarily need guidance, counseling, or other alcohol or drug recovery services.

(b) "Emancipated minors" as used in this chapter means persons under 18 years of age who have acquired emancipation status through one or more of the following methods.

(1) Declaration of emancipation pursuant to Section 64 of the Civil Code.

(2) Marriage.

(3) Service in any of the armed forces of the United States.

SEC. 10. Section 11834.12 of the Health and Safety Code is amended to read·

11834.12. No person, firm, partnership, association, corporation, or local governmental entity shall operate, establish, manage, conduct, or maintain an alcoholism or drug abuse recovery or treatment facility in this state without obtaining a current valid license issued pursuant to this chapter.

SEC. 11 Section 11834.14 of the Health and Safety Code is amended to read:

11834.14. Licensure regulations under this chapter shall be consistent with the intent of subdivision (c) of Section 11760.3, and with the goal of protecting the public while promoting the public welfare. Criteria for licensure shall be limited to all of the following:

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

(b) Submission by the applicant of a clearance relative to fire safety from the State Fire Marshal

(c) Demonstration by the applicant that it possesses adequate administrative, fiscal, and operational capability to achieve its stated goals and objectives.

(d) Inspection by the department, or by any departmental agent who has no financial interests, as defined in Section 87103 of the Government Code, in any alcoholism or drug abuse recovery facility, to determine that the applicant's facility is clean, safe, healthful, and free of alcohol or illicit drug use.

SEC. 12. Section 11834.17 of the Health and Safety Code is amended to read:

11834 17. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulations relating to the subject of fire and life safety in alcoholism and drug abuse recovery facilities which is more restrictive than those standards adopted by the State Fire Marshal.

SEC. 13. Section 11834.18 of the Health and Safety Code is amended to read:

11834.18. (a) Nothing in this chapter shall authorize the imposition of rent regulations or controls for licensed alcoholism or drug abuse recovery or treatment facilities.

(b) Licensed alcoholism and drug abuse recovery or treatment facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity.

SEC. 14. Section 11834.19 is added to the Health and Safety Code, to read:

11834.19. The department shall license alcoholism or drug abuse recovery or treatment facilities, as defined in Section 11834.11.

SEC. 15. Section 11834.20 of the Health and Safety Code is amended to read:

11834.20. The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need.

The provisions of this article apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity.

For the purposes of this article, "six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

SEC. 16. Section 11834.21 of the Health and Safety Code is amended to read:

11834.21. Any person licensed under this chapter who operates or proposes to operate an alcoholism or drug abuse recovery or treatment facility, the department or other public agency authorized to license such a facility, or any public or private agency which uses or may use the services of the facility to place its clients, may invoke the provisions of this article.

This section shall not be construed to prohibit any interested party

from bringing suit to invoke the provisions of this article.

SEC. 17. Section 11834.22 of the Health and Safety Code is amended to read:

11834.22. An alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 11834.23, local bond assessments, and other fees, charges, and assessments to which other single-family dwellings are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons.

SEC. 18. Section 11834 23 of the Health and Safety Code is amended to read:

11834.23. Whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences.

This section shall not be construed to forbid the application to an alcoholism or drug abuse recovery or treatment 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. However, the ordinance shall not distinguish alcoholism or drug abuse recovery or treatment facilities which serve six or fewer persons from other single-family dwellings or distinguish residents of alcoholism or drug abuse recovery or treatment facilities from persons who reside in other single-family

dwellings.

No conditional use permit, zoning variance, or other zoning clearance shall be required of an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons that is not required of a single-family residence in the same zone.

Use of a single-family dwelling for purposes of an alcoholism or drug abuse recovery facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent those sections are applicable to alcoholism or drug abuse recovery or treatment facilities serving six or fewer residents.

SEC. 19. Section 11834.24 of the Health and Safety Code is amended to read:

11834.24. No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to an alcoholism or drug abuse recovery or treatment facility because of a failure to comply with local ordinances from which the facility is exempt under Section 11834.23, if the applicant otherwise qualifies for a fire clearance, license, permit, or similar authorization.

SEC. 20. Section 11834.25 of the Health and Safety Code is amended to read:

11834.25. For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, an alcoholism or drug abuse recovery or treatment facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

SEC. 21. Section 11834.30 of the Health and Safety Code is amended to read:

11834.30. (a) The director may bring an action to enjoin the violation of Section 11834.12 in the superior court in and for the county in which the violation occurred. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the 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 11834.12, the court shall, if it finds the allegations to be true, issue its order enjoining the alcoholism or drug abuse recovery or treatment facility from continuance of the violation

SEC. 22. Section 11834.35 of the Health and Safety Code is amended to read:

11834.35. (a) The director may suspend or revoke any license issued under the provisions of 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:

(1) Violation by the licensee of any provision of this chapter or regulations adopted pursuant to this chapter.

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

(3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions set forth in paragraph (1) or (2).

(4) Conduct in the operation of an alcoholism or drug abuse recovery or treatment facility which is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California.

(5) Misrepresentation of any material fact in obtaining the alcoholism or drug abuse recovery or treatment facility license.

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

SEC. 23. Section 6363.6 of the Revenue and Taxation Code is amended to read:

6363.6. There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use or other consumption in this state of, meals and food products for human consumption furnished or served to and consumed by residents or patients of:

(a) A health facility as defined in Section 1250 of the Health and Safety Code, which holds the license required pursuant to Section 1253, or is exempt from the license requirement pursuant to subdivision (a) of Section 1270, or is operated by the United States.

(b) A community care facility as defined in Section 1502 of the Health and Safety Code, which holds the license required by Section 1508, or is a residential facility selected by a licensee pursuant to Section 1506 and exclusively used for the reception and care of persons placed by such licensee, or is exempt from the license requirement pursuant to subdivision (f) of Section 1505, or is

operated by the United States.

(c) Any house or institution supplying board and room for a flat monthly rate and serving as a principal residence exclusively for persons 62 years of age or older.

(d) An alcoholism recovery facility, as defined in Section 11834.11 of the Health and Safety Code, which holds the license required by Section 11834.12 of the Health and Safety Code. This subdivision shall apply to meals served by the facility on or after January 1, 1985.

(e) A drug abuse recovery or treatment facility, as defined in Section 11834.11 of the Health and Safety Code, which holds the license required by Section 11834.12 of the Health and Safety Code.

SEC. 24. The State Department of Alcohol and Drug Programs shall adopt regulations no later than October 1, 1991, to implement Sections 2 to 22, inclusive, of this act.

CHAPTER 920

An act to amend Sections 1603.3, 1603.4, and 1632 of, to add Chapter 4.1 (commencing with Section 1640) to Division 2 of, and to repeal and add Section 195 of, the Health and Safety Code, relating to infectious diseases.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. Section 195 of the Health and Safety Code is repealed.

SEC. 2. Section 195 is added to the Health and Safety Code, to read:

195. The Legislature hereby finds and declares that the State Department of Health Services, working with the California AIDS Leadership Committee, has developed a draft state AIDS plan for comprehensive, coordinated government action against AIDS and HIV infection. It is the intention of the Legislature to implement those recommendations pertaining to infectious-disease screening of blood and other body parts and fluids, and to notifying donors of the results of those screening tests.

SEC. 3. Section 1603.3 of the Health and Safety Code is amended to read:

1603.3. (a) Prior to a donation of blood or blood components each donor shall be notified in writing of, and shall have signed a written statement confirming the notification of, all of the following:

(1) That the blood or blood components shall be tested for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome.

(2) That donors found to have serologic evidence of the antibodies

shall be placed on a confidential statewide Blood Donor Deferral Register without a listing of the reason for being included on the register.

(3) That the donor shall be notified of the test results in accordance with the requirements described in subdivision (c).

(4) That the donor blood or blood component which is found to have the antibodies shall not be used for transfusion.

(5) That blood or blood components shall not be donated for transfusion purposes by a person if the person has reason to believe that he or she has been exposed to acquired immune deficiency syndrome.

(6) That the donor is required to complete a health screening questionnaire to assist in the determination as to whether he or she has been exposed to acquired immune deficiency syndrome.

(b) A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors. The means of self-deferral may include, but are not limited to, a form with checkoff boxes specifying that the blood donated is for research or test purposes only and a telephone callback system for donors to use in order to inform the blood bank that blood donated should not be used for transfusion. The blood bank or plasma center shall inform the donor, in a manner that is understandable to the donor, that the self-deferral process is available and should be used if the donor has reason to believe that he or she is infected with the human immunodeficiency virus. The blood bank or plasma center shall also inform the donor that it is a felony pursuant to Section 1621.5 to donate blood if the donor knows that he or she has a diagnosis of AIDS or knows that he or she has tested reactive to the etiologic agent of AIDS or to antibodies to that agent.

(c) Blood or blood products from any donor initially found to have serologic evidence of antibodies to the probable causative agent of AIDS shall be retested for confirmation. Only if a further test confirms the conclusion of the earlier test shall the donor be notified of a reactive result by the blood bank or plasma center.

The state department shall develop permissive guidelines for blood banks and plasma centers on the method or methods to be used to notify a donor of a test result. Each blood bank or plasma center shall, upon positive confirmation using the best available and reasonable techniques, provide the information to the state department for inclusion in the Donor Deferral Register. Blood banks and plasma centers shall provide the information on donations testing reactive for the antibodies to the probable causative agent of AIDS and carrier donors of viral hepatitis to the department on a single list in the same manner without specification of the reason the donor appears on the list.

(d) The Blood Donor Deferral Register, as described in subdivision (e) of Section 1603.1, shall include names of individuals who are deferred from blood donations without identifying the reasons for deferral.

(e) Each blood bank or plasma center operating in California shall prominently display at each of its collection sites a notice which provides the addresses and phone numbers of sites, within the proximate area of the blood bank or plasma center, where tests provided pursuant to Article 8 (commencing with Section 1630) may be administered without charge.

(f) The state department may promulgate any additional regulations it deems necessary to enhance the safety of donated blood and plasma. The state department may also promulgate regulations it deems necessary to safeguard the consistency and accuracy of HIV test results by requiring any confirmatory testing the state department deems appropriate for the particular types of HIV tests that have yielded "reactive," "positive," "indeterminate," or other similarly labeled results.

(g) Notwithstanding any other provision of law, no civil liability or criminal sanction shall be imposed for disclosure of test results to a public health officer when the disclosure is necessary to locate and notify a blood donor of a reactive result if reasonable efforts by the blood bank or plasma center to locate the donor have failed. Upon completion of the public health officer's efforts to locate and notify a blood donor of a reactive result, all records obtained from the blood bank pursuant to this subdivision, or maintained pursuant to this subdivision, including, but not limited to, any individual identifying information or test results, shall be expunged by the public health officer.

SEC 4. Section 1603.4 of the Health and Safety Code is amended to read:

1603 4 (a) Notwithstanding Chapter 1.11 (commencing with Section 199.20) of Part 1 of Division 1, as added by Assembly Bill 403 of the 1985–86 Regular Session, or any other provision of law, no public entity or any private blood bank or plasma center shall be liable for an inadvertent, accidental, or otherwise unintentional disclosure of the results of an HIV test or information in the Donor Referral Register.

As used in this section, "public entity" includes, but is not limited to, any publicly owned or operated blood bank or plasma center and the state department.

(b) Neither the state department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, shall be held liable for any damage resulting from the notification of test results, as set forth in paragraph (3) of subdivision (a) of, or in subdivision (c) of, Section 1603.3.

SEC. 5. Section 1632 of the Health and Safety Code is amended to read:

1632. (a) Each county, designated by the director, shall make the test available within its jurisdiction without charge, in an accessible manner and the tests shall be made available by the county on a confidential basis through use of a coded system with no linking of individual identity with the test request or results. The number

and location of sites in each county designated by the director shall be approved by the director. The test shall be made available by the county either directly or by contract with a physician and surgeon or with any clinic or health facility licensed by the state department. Neither the county nor anyone else administering the test described in this article, shall ask for the name, social security number, or any other information which could reveal the identity of the individual who takes the test. Each alternative test site shall make available confidential information and referral services, within the funds available, to individuals who seek testing. A county may subcontract with individuals or entities to provide information and referral services.

All alternative test sites shall provide a referral list of physicians and surgeons or clinics knowledgeable about AIDS, to all persons who have any known risk factor for AIDS, especially those who have a reactive antibody test, for further information and explanation of the test results and for medical evaluation.

At a minimum, individuals seeking testing shall be informed about the validity and accuracy of the antibody test before the test is performed. All testing site personnel shall be required to attest to having provided the above information. Furthermore, all individuals who are tested at the sites established by this article shall be given the results of this test in person. All sites providing antibody testing pursuant to this article shall have a protocol for referral for 24-hour inpatient and mental health services. All individuals awaiting test results and all persons to whom results are reported shall be informed of available crisis services and shall be directly referred, if necessary.

Each county, designated by the director, shall be required to submit a plan to the state department within 45 days after the effective date of this section which details where testing and pretest and posttest information and referral will be provided and the qualifications of the staff who will be performing the services required by this article. The state department shall make training available, especially to smaller counties.

(b) The state department shall establish a reimbursement process for counties within 30 days after the effective date of this section for the following services:

(1) Informing test applicants on the test's reliability and validity.

(2) Administration of tests, analysis of test samples, and costs associated with the laboratory work required by this antibody test.

(3) Short-term information and referral sessions, of no more than one visit per person tested for the purpose of transmitting the person's test results and, as requested, for referral to available followup services.

The state department shall establish the amounts to be reimbursed for each of these services, but the amounts shall be established at a level to ensure that the purposes of this article are carried out Reimbursements shall be made for each service provided.

(c) The state department may replace the test for the antibody to the probable causative agent for AIDS with another type of HIV test, as the state department deems appropriate.

(d) The director may grant a waiver to a county from the requirements of this article if the county petitions the director for the waiver and the director determines that the waiver is consistent with the purposes of this article.

(e) A participating county or the state department may accept grants, donations, and in-kind services for purposes of carrying out this article.

SEC. 6. Chapter 4.1 (commencing with Section 1640) is added to Division 2 of the Health and Safety Code, to read.

CHAPTER 4.1. DONATIONS OF ORGANS, TISSUES, OR BODY FLUIDS

1640. (a) The State Department of Health Services shall adopt regulations requiring the screening for infectious diseases of all donors of organs, tissues, or body fluids intended for introduction into the body of another person by means of transplantation, therapeutic insemination, ingestion, or other means or procedure. This screening shall include, but not be limited to, testing for the presence of HIV.

(b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1601) of Chapter 4.

SEC. 7 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 921

An act to amend Section 8102 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 8102 of the Welfare and Institutions Code is amended to read:

8102. (a) Whenever a person who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon

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

(b) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated.

Where the person is released without judicial commitment, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.

Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm.

(c) Upon the release of a person without judicial commitment as described in subdivision (b), the confiscating law enforcement agency shall have 15 days, unless good cause is shown, to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue

(d) The law enforcement agency shall inform the person that he or she has 15 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For the

purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

(e) If the person responds and requests a hearing, the court clerk shall set a hearing, no sooner than 30 days but not later than 60 days from receipt of the request The court clerk shall notify the person and the district attorney of the date, time, and place of the hearing.

(f) If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default.

(g) If the law enforcement agency does not initiate proceedings within the 15-day period, it shall make the weapon available for return

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act affirms for the state that which has been declared existing law or regulation by action of the courts and because counties will receive funding under the Brown-Presley Trial Court Funding Act in lieu of such reimbursement.

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

It is essential that a constitutionally sound mechanism authorizing a procedure for the confiscation of firearms or other deadly weapons in the hands of persons taken into custody for evaluation of their mental condition, always be available to law enforcement agencies.

The case of Bryte v. City of La Mesa (207 Cal App. 3d 687; modified 208 Cal. App. 3d 544b; petition for review denied on May 18, 1989 - Supreme Court No. S009261) has cast doubt upon the validity of the current statutory authority regarding confiscation of these weapons. This doubt and the great danger which would result if law enforcement agencies are left with no statutory authority to confiscate these weapons, make it necessary that this bill take effect immediately.

CHAPTER 922

An act to add Sections 14035.1 and 14035.4 to the Government Code, and to amend Section 160006 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 14035.1 is added to the Government Code, to read:

14035.1. Commuter rail service shall be provided to the communities between San Jose and Gilroy if the conditions specified in subdivision (a) of Section 14035.4 are completed. Upon the completion of those conditions, the powers and duties of the Department of Transportation with respect to the San Francisco Peninsula commuter rail service shall apply to the San Jose-Gilroy segment.

SEC. 2. Section 14035.4 is added to the Government Code, to read:

14035.4. (a) Commuter rail service between San Jose and Gilroy pursuant to Section 14035.1 or pursuant to Section 160006 of the Public Utilities Code may be provided only upon completion of all the following conditions:

(1) Adoption of a resolution by the governing board of the Santa Clara County Transit District agreeing to pay all of the capital outlay cost for providing the extended service and to reimburse the operating entity for all operating deficits incurred in operating the San Jose-Gilroy segment during the first two years of operation.

(2) Adoption of a resolution by one or more local agencies agreeing to reimburse the operating entity for all operating deficits resulting from operating the service between San Jose and Gilroy after the first two years of operation.

(3) Completion by the Santa Clara County Transit District of a feasibility study for the extended service.

(4) Completion and approval of all environmental impact report documents required for the extended service.

(b) With respect to the extended service between San Jose and Gilroy:

(1) The Santa Clara County Transit District shall be eligible to apply for appropriate state and federal funding. Operating funds from state or federal sources may not be applied to the costs of providing the service during its first two years of operation. If funds are appropriated for allocation to rail services pursuant to Section 14031.6, after the service has been operating for two years, those funds may be allocated to the service.

(2) The extended service is exempt from the requirements of Section 14031.9 during the first three years of operation.

SEC. 3. Section 160006 of the Public Utilities Code is amended to read:

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. Upon completion of the conditions specified in subdivision (a) of Section 14035.4 of the Government Code, the district may provide commuter rail service between San Jose and Gilroy.

(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.

CHAPTER 923

An act to add Section 2813.5 to the Penal Code, and to amend Section 286 of the Vehicle Code, relating to corrections.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 2813.5 is added to the Penal Code, to read:

2813.5. Notwithstanding any other provision of this chapter except subdivision (i) of Section 2808, the Director of Corrections may provide for the inmates in trade and industrial education or vocational training classes established under Section 2054 to restore and rebuild donated salvageable vehicles. Provided that these vehicles comply with Section 24007.5 of the Vehicle Code, they may be sold at public auction to private persons. No activity authorized by this section shall be established until the hearing, consideration, and approval requirements of subdivision (i) of Section 2808 have been completed with regard to that activity.

The proceeds of the sale after deduction of the cost of materials shall be deposited into a special account in the Special Deposit Fund by the Director of Corrections. Money in that account may, upon appropriation, be allocated by the director to a nonprofit agency to be used for the assistance of crime victims, or to the Restitution Fund in the State Treasury for indemnification of victims of crimes, but may not be used for any other purpose.

SEC. 2. Section 286 of the Vehicle Code is amended to read:

286. The term "dealer" does not include:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, or in performance of an official duty, or in

authority of any court of law; provided, the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court of competent jurisdiction.

(b) Persons who sell or distribute vehicles of a type subject to registration for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors; provided, however, that if any of those persons also sell vehicles at retail, they shall be deemed to be vehicle dealers and are subject to this code.

(c) Persons regularly employed as salesmen by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if, no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles but who are engaged in the business of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States shall be exempt from licensure as dealers only if their sales of the vehicles produces less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, provided that intermediate physical possession or control of, or an ownership interest in the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, "racing vehicle" means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a "lessor" as defined in Section 372.

(j) Any person who is a "renter" as defined in Section 508.

(k) Any "salvage pool" as defined in Section 543.

(*l*) Any yacht broker who is subject to the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used

boat trailers in conjunction with the sale of a vessel.

(m) Any licensed "automobile dismantler" as defined in Section 220 who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of Penal Code.

CHAPTER 924

An act to amend Sections 41304, 41306, 41900, 41903, and 41904 of the Education Code, relating to driver training, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 41304 of the Education Code is amended to read:

41304. (a) There is appropriated annually from the Driver Training Penalty Assessment Fund to the General Fund in the State Treasury and from the General Fund to the California Energy Extension Service of the Office of Planning and Research a sum as necessary to establish and maintain a unit for driver instruction within the State Department of Education as set forth in Section 41904.

(b) In addition, subject to Section 41305, there shall be appropriated from the Driver Training Penalty Assessment Fund to the General Fund, then to the State School Fund each fiscal year, the sum the Superintendent of Public Instruction certifies as necessary to reimburse on a quarterly basis for each current fiscal year school districts, county superintendents of schools, the Department of the Youth Authority, and the State Department of Education for the actual cost of instructing pupils in the operation of motor vehicles.

The amount shall not exceed ninety-seven dollars ($97) per pupil instructed in the laboratory phase of driver education in accordance with the rules and regulations of the State Board of Education.

(c) Subject to Section 41305, there shall also be appropriated from the Driver Training Penalty Assessment Fund the sum the Superintendent of Public Instruction shall certify as necessary to reimburse on a quarterly basis for each current fiscal year school districts, county superintendents of schools, the Department of the Youth Authority, and the State Department of Education for the actual cost of replacing vehicles and simulators used exclusively in the laboratory phase of driver education programs, but the amount shall not exceed three-fourths of that part of the actual cost of instructing pupils in the laboratory phase of driver education which

is: (1) in excess of ninety-seven dollars ($97) per pupil instructed, and (2) expended by the district, the county superintendent of schools, the Department of the Youth Authority, and the State Department of Education in replacing the vehicles and simulators. Reimbursement for vehicles shall be computed for only that portion of the total mileage used exclusively in the laboratory phase of driver education programs.

(d) In addition, subject to Section 41305, there shall be provided from the Petroleum Violation Escrow Account to the General Fund, then to the State School Fund each fiscal year the sum the Superintendent of Public Instruction certifies as necessary to reimburse on a quarterly basis for each current fiscal year school districts, county superintendents of schools, the Department of the Youth Authority, and the State Department of Education for the costs of fitting automobile driver training vehicles with the instrumentation required under Section 51854 and to reimburse on a quarterly basis for each current fiscal year school districts for the costs of transferring instrumentation providing instructional information on fuel consumption and vehicle fuel efficiency from one automobile driver training vehicle to another under Section 51854.

(e) In addition, subject to Section 41305, there shall be appropriated from the Petroleum Violation Escrow Account to the Driver Training Penalty Assessment Fund and from the Driver Training Penalty Assessment Fund to the General Fund, then to the Superintendent of Public Instruction each fiscal year the sum the Superintendent of Public Instruction certifies as necessary to reimburse on a quarterly basis for each current fiscal year the State Department of Education for the costs of workshops conducted by the department under Section 51854.

(f) For purposes of computing reimbursement, whenever a school district, a county superintendent of schools, the Department of the Youth Authority, or the State Department of Education replaces a driver training vehicle or simulator purchased by the district with a vehicle or simulator that is a gift or loan, the purchase price of the new or acquired equipment shall be deemed to be the market value of the vehicle or simulator acquired through a gift or loan.

A simulator is any device approved by the State Department of Education to be used in classrooms for purposes of laboratory instruction under simulated driving conditions.

SEC. 2. Section 41306 of the Education Code is amended to read:

41306. The Superintendent of Public Instruction shall also allow as otherwise provided in Section 41304 for the driver training instruction necessary to be safely tested for a driver's license at the Department of Motor Vehicles, those physically handicapped pupils, mentally retarded pupils who come within the provisions of former Section 56501 as amended by Chapter 1247 of the Statutes of 1977, and educationally handicapped pupils who are in attendance in a

public secondary school in California that offers qualified instruction, and who may qualify for a driver's license, or other license, issued by the California Department of Motor Vehicles, a total allowance not to exceed two hundred ninety dollars ($290) including the reimbursement provisions set forth in Section 41900 to each school district and county superintendent of schools All driver training for pupils herein described shall be provided by qualified teachers, as defined by Sections 41906 and 41907. The provisions of this section may not be applied if reimbursement allowable under Sections 41900 to 41912, inclusive, is sufficient to meet the total cost of instruction as herein described.

It is the intent of the Legislature that driver training instruction be provided pupils as a part of the high school curriculum, and the Legislature finds and declares that exceptional children are entitled to the benefit of that instruction so far as their individual capabilities permit, understanding that those pupils herein described often require individualized and amplified driver training instruction in order to succeed in becoming safe operators of motor vehicles. Since without a means of self-transportation much of the overall program of education and rehabilitation provided for by the Legislature would be of little avail to the person without the mobility required to become a productive and well-adjusted member of society, the Legislature further declares that it is incumbent upon the state to share in the cost of providing a most needed and desirable program of driver training instruction for these exceptional children.

SEC. 3. Section 41900 of the Education Code is amended to read:

41900. The Superintendent of Public Instruction shall allow to each school district maintaining a high school or high schools, county superintendent of schools, the Department of the Youth Authority, and the State Department of Education an amount equal to the actual cost, but not in excess of ninety-seven dollars ($97) per pupil instructed in the laboratory phase of driver education in accordance with Sections 41902 and 41905 and with regulations set forth by the State Board of Education to the districts, county superintendents of schools, the Department of the Youth Authority, and the State Department of Education for instructing pupils in the laboratory phase of driver education.

SEC. 4. Section 41903 of the Education Code is amended to read:

41903. The Superintendent of Public Instruction shall determine the amount of total direct and direct support cost incurred by each school district, each county superintendent of schools, the Department of the Youth Authority, and the State Department of Education during each current fiscal year for the establishment and maintenance of automobile driver training for pupils enrolled in the schools of the district, the county superintendent of schools, the Department of the Youth Authority, and the State Department of Education in accordance with regulations that he or she may prescribe.

"Total direct and direct support cost," as used in this section,

includes the total current expenditures incurred for instructing pupils in automobile driver training in special classes, including, but not limited to, automobile replacement, insurance, and upkeep and maintenance of automobiles used in the training.

"Special classes," as used in this section, includes classes providing automobile driver training for pupils who may be excused, for the purpose of taking instruction in automobile driver training.

SEC. 5. Section 41904 of the Education Code is amended to read:

41904. The Superintendent of Public Instruction may promote and direct the establishment and maintenance of courses of instruction in automobile driver education and driver training in the public schools. For this purpose, the superintendent may employ professional and other personnel as necessary to give full effect to this article. There is hereby established within the State Department of Education a unit for driver instruction to be comprised of three consultants and necessary support staff. All necessary costs and expenses incurred for purposes of this section shall be provided for from funds that may be appropriated by the Legislature from the Driver Training Penalty Assessment Fund.

SEC. 6. Sections 1 to 5, inclusive, of this act shall become operative on July 1, 1990.

CHAPTER 925

An act to amend Section 15277 of the Government Code, relating to communications.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 15277 of the Government Code is amended to read:

15277. There is hereby established within the department a Division of Telecommunications. The division shall include a policy and planning unit whose duties shall include, but not be limited to, all of the following:

(a) Assessing the overall long-range telecommunications needs and requirements of the state considering both routine and emergency operations, performance, cost, state-of-the-art technology, multiuser availability, security, reliability, and such other factors deemed to be important to state needs and requirements.

(b) Developing strategic and tactical policies and plans for telecommunications with consideration for the systems and requirements of state agencies, counties, and other local jurisdictions; and preparing an annual strategic telecommunications

plan which includes the feasibility of interfaces with federal and other state telecommunications networks and services.

(c) Recommending industry standards for telecommunications systems to assure multiuser availability and compatibility.

(d) Providing advice and assistance in the selection of telecommunications equipment to ensure that the telecommunications needs of state agencies are met and that procurements are compatible throughout state agencies and are consistent with the state's strategic and tactical plans for telecommunications.

(e) Providing management oversight of statewide telecommunications systems developments.

(f) Providing for coordination of, and comment on, plans and policies and operational requirements from departments which utilize telecommunications in support of their principal function, such as the Office of Emergency Services, National Guard, health and safety agencies, and others with primary telecommunications programs.

(g) Monitoring and participating on behalf of the state in the proceedings of federal and state regulatory agencies and in congressional and state legislative deliberations which have an impact on state government telecommunications activities.

(h) Preparing and transmitting annually, by March 31, a report to the Legislature which describes the actions taken by the department to plan and advocate the most advantageous use of telecommunications technology in state government operations and efforts to reduce costs. In the event that the department makes an award for an integrated voice and data telecommunications network (CALNET) contract, the division shall work with the advisory board to prepare for inclusion in the next following report required by this subdivision a full description of the awarded contract, which shall include the scope and functions of the contract, relative costs and technical attributes compared to the other proposals, any additional necessary equipment purchases by the state, and the prospective schedule and plan of implementation by the awarded vendor. The reports shall also include information compiled, after consultation with the Public Utilities Commission, regarding the impact the implementation of CALNET has had, if any, on the rates charged and the services provided by regulated local telephone utilities. Subsequent reports to the Legislature up to and including the report to be transmitted March 31, 1993, shall also include progress reports of the implementation and progress of CALNET.

(i) Developing plans and policy regarding teleconferencing as an alternative to state travel and regarding emergency communications.

CHAPTER 926

An act to amend Sections 976.6, 1612, 10200, 10201, 10202, 10203, 10205, 10206, 10209, 10212, and 10213.5 of, to amend and renumber Section 10218 of, to add Sections 10214.5 and 10218 to, and to repeal and add Sections 10204 and 10207 of, the Unemployment Insurance Code, relating to employment training, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 976.6 of the Unemployment Insurance Code is amended to read:

976.6. In addition to other contributions required by this division, every employer, except an employer defined by Section 676, 684, or 685, and except an employer which has elected an alternate method of financing its liability for unemployment compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall pay into the Employment Training Fund contributions at the rate of 0.1 percent of wages specified in Section 930. The contributions shall be collected in the same manner and at the same time as any contributions required under Sections 977 and 977.5.

This section shall remain in effect only until January 1, 1996, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. Section 1612 of the Unemployment Insurance Code is amended to read:

1612. This article shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1996, deletes or extends that date.

SEC. 3. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature declares as follows:

(a) There is an inadequate number of jobs in California to meet the needs of those seeking employment.

(b) Despite the large number of unemployed job seekers, many employers in new and expanding industries are having difficulty finding the skilled workers they need. A similar problem exists in industries where overall employment may not be expanding but where there is an acute need for skilled workers in particular occupations.

(c) The California economy is today being challenged by competition from other states and overseas. Our success in meeting that challenge will depend largely on our ability to maintain and improve a skilled and productive work force. Employers, workers,

organized labor, and government need to work together to ensure that California's labor force is prepared to succeed in the economic environment of the 1990's.

(d) Under existing law, all employer taxes paid into the unemployment insurance system compensate unemployment insurance recipients for being out of work. The intent of this chapter is to use a small portion of employer taxes to put unemployment insurance recipients to work by encouraging employers to locate and expand facilities in this state and training unemployment insurance recipients in skills needed by employers, and to prevent unemployment by increasing productivity through the retraining of existing employees.

(e) The purpose of this chapter is to establish an employment training program which shall foster job creation, minimize employers' unemployment costs, and meet employers' needs for skilled workers by providing skills training to unemployment insurance claimants, recent exhaustees of unemployment insurance who have remained unemployed, and potentially displaced workers who would otherwise become unemployment insurance claimants. It is the intent of the Legislature that training funded pursuant to this chapter should make a substantial contribution to the long-term job security of the trainees and that all training funded through this chapter result in jobs for those who successfully complete the training.

(f) The funds made available by this chapter shall supplement but not displace funds available through existing programs conducted by employers themselves and public programs such as the Job Training Partnership Act (JTPA), the Carl D. Perkins Vocational Education Act, the Greater Avenues for Independence program (GAIN), the Enterprise Zone Act, the Employment and Economic Incentive Act, and the Stewart B. McKinney Homeless Assistance Act, or apportionment funds allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that programs developed pursuant to this chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

(g) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the Job Training Partnership Act, the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related programs under the Employment Development Department and the Department of Commerce.

(h) The purposes of the 1989 amendments to this chapter are as follows:

(1) To encourage investment in the productivity and competiveness of California's workers through training.

(2) To encourage the panel to adapt its priorities to the changing needs of the labor market through the use of labor market data and information.

(3) To increase the panel's sensitivity to the training needs of small- and medium-sized businesses.

(4) To enhance the panel's ability to serve those who are unemployed.

(5) To increase the amount of coordination between this program and other programs involved in education and training.

(6) To modify the organizational structure of the panel to ensure that it is integrated into state government.

(7) To improve the effectiveness of the panel program as a mechanism for stimulating economic development.

SEC. 4. Section 10201 of the Unemployment Insurance Code is amended to read:

10201. As used in this chapter:

(a) "Employer" means any employer subject to Part 1 (commencing with Section 100) of Division 1, except any public entity, as defined by paragraph (3) of subdivision (a) of Section 135. Any nonprofit organization, as described in Section 608, that does not make contributions to the Employment Training Fund pursuant to Section 976.6 shall be deemed to be an employer only for purposes of placement of new hire trainees trained pursuant to this chapter.

(b) "Eligible participant" means any person who, prior to beginning training or employment pursuant to this chapter, is any of the following:

(1) Unemployed and either receiving unemployment insurance benefits, or has exhausted eligibility for unemployment insurance benefits within the previous 24 months.

(2) Employed, but is determined by the panel to be likely to be displaced and therefore claiming unemployment insurance benefits because of reductions in overall employment within a business, elimination of the person's current job, or a substantial change in the skills required to remain employed due to technological change or other factors. In making a finding of eligibility under this paragraph, the panel shall require the employer or contractor to provide, at the option of the employer or the contractor, either of the following:

(A) Certification of the specific facts which threaten the continued employment of the trainee, and a plan for assuring with reasonable certainty that the training being proposed will contribute to the long-term job security of the trainee. The plan shall include, but not be limited to, a general description, with respect to the facility at which the trainee is employed, of other actions planned by the employer, such as technological changes, additional training, management adjustments, and organizational changes, for the purposes of enhancing the effectiveness of the proposed training. The plan shall also include methods for assessing the effect on productivity attributable to the training and a statement of how the training will impact the regional and state economy. The panel may

modify the specific requirements of this subparagraph as they apply to small employers and to employers or contractors proposing projects which involve training for a significant number of small employers in the same project.

(B) Evidence that the workers proposed to receive retraining have been given written notice that their employment will be terminated within two years of the date the application is presented to the panel.

(3) Employed, but who is determined by the panel to be qualified to be trained or retrained in skills for which there is a demonstrable shortage and in a field where new employment opportunities will be created for other persons defined in paragraph (1) if this retraining takes place. In making a finding of eligibility under this paragraph, the panel shall require the employer or contractor to provide a job for at least one unemployed person for each person retrained.

(c) "Panel" means the Employment Training Panel created by Section 10202.

(d) "Fund" means the Employment Training Fund created by Section 1610.

(e) "Department" means the Employment Development Department.

(f) "Training agency" means any private training entity or local educational agency.

(g) "Job" means employment on a basis customarily considered full time for the occupation and industry. The employment shall have definite career potential and a substantial likelihood of providing long-term job security Furthermore, the employment shall provide earnings, upon completion of the employment requirement specified in subdivision (f) of Section 10209, equal to 55 percent, in the case of new hire training, or 65 percent, in the case of retraining, of the state average hourly wage. However, the panel may adjust these minimum wage requirements for specific occupations in specific regions of the state if it determines, after a review of labor market information, that the wage requirements are unreasonable, and provided that the adjusted wage requirement does not create unfair wage competition within the industry or region.

(h) "Private industry council" means an entity established pursuant to Section 15030.

(i) "New hire training" means employment training, including job-related literacy training, for persons who, at the start of training, are unemployed.

(j) "Retraining" means employment related skill and literacy training for persons who are employed prior to enrollment in training and will continue to be employed by the same employer for at least 90 days following completion of training.

(k) "Trainee" means an eligible participant.

(*l*) "State average hourly wage" means the average weekly wage paid by employers to employees covered by unemployment

insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year, divided by 40 hours.

SEC. 5. Section 10202 of the Unemployment Insurance Code is amended to read:

10202. (a) There is hereby established in the department the Employment Training Panel consisting of seven persons with experience and a demonstrated interest in business management and employment relations.

(b) Two members of the panel shall be appointed by the Speaker of the Assembly, two members of the panel shall be appointed by the President pro Tempore of the Senate, and three members of the panel shall be appointed by the Governor. The Governor shall designate a member to chair the panel, and the person so designated shall serve as the chair of the panel at the pleasure of the Governor.

(c) The members of the panel shall serve for two-year terms, except that of the initial members of the panel, one initial appointee of each appointing power shall serve for a one-year term

(d) Members of the panel shall receive the necessary traveling and other expenses incurred by them in the performance of their official duties out of appropriations made for the support of the panel. In addition, each voting member of the panel shall receive one hundred dollars ($100) for each day attending meetings of the panel.

SEC. 6. Section 10203 of the Unemployment Insurance Code is amended to read:

10203. The panel may meet as necessary at locations throughout the state. The panel shall maintain a minimum of three regional offices. The central office shall be located in Sacramento. Two regional offices shall be located in the southern part of the state, and one regional office shall be located in the northern part of the state.

The panel will assign one person, with experience in meeting the needs of small businesses, to each of the regional offices for the purpose of developing training projects for small businesses and expediting the processing of training proposals from small businesses. This person shall report directly to the deputy director responsible for small business training.

SEC. 7. Section 10204 of the Unemployment Insurance Code is repealed.

SEC. 8. Section 10204 is added to the Unemployment Insurance Code, to read:

10204. (a) The panel shall coordinate its programs with local and state entities of the federal Job Training Partnership Act, as provided in paragraphs (3) and (4) of subdivision (c) of Section 10205. This coordination shall include, but not be limited to, the adoption of a plan, including regular sharing of data, for the coordination of training authorized pursuant to this chapter with programs administered under Division 8 (commencing with Section 15000)

(b) For purposes of serving the needs of small businesses, the panel may delegate its authority to approve contracts for new hire

training to any entity defined in paragraphs (3) and (4) of subdivision (b) of Section 10205, provided the following conditions are met:

(1) The panel determines that an entity to which it is delegating this authority meets the same standards as required of training agencies in Section 10210.

(2) The panel delegates its authority pursuant to this section by a contract with the entity which limits the total amount of Employment Training Fund funds which are available to the entity, specifies a time limit within which those funds shall either be allocated or returned to the panel, specifies the reasonable administrative costs to be allowed in administering the contract, and provides that no subcontract approved by the entity shall exceed fifty thousand dollars ($50,000) per project without prior approval by the panel.

(3) The subcontracts with employers and training agencies approved by the private industry council entity shall be for new hire training only and shall meet all the requirements of this chapter and the policies established by the panel.

SEC. 9. Section 10205 of the Unemployment Insurance Code is amended to read.

10205. The panel shall do all of the following.

(a) Establish and update an annual plan, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The plan shall be submitted to the Governor and the Legislature. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills

(5) Evaluations of the effectiveness of training previously funded by the panel in improving security of employment for workers and benefiting the California economy. As part of these evaluations, the panel shall compare the wages of trainees in the year before training and in the year after training as reflected in the department's unemployment insurance tax records, and shall evaluate the effect of previous training projects on the productivity of participating firms and on the economy of the state.

(6) Changes in the demographics of the labor force and the population entering the labor market.

(7) Proposed expenditures by other agencies of federal Job

Training Partnership Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Submit its first annual plan by July 1, 1990. The panel shall maintain a system to continously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the distribution of funds between new hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals which meet the standards.

(3) A system for expedited review of proposals which are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals which meet the needs identified in paragraph (2).

(4) The panel's goals and operational objectives with respect to meeting the needs of small employers.

(5) Standards of accountability for retraining contracts that will be used in addition to the standards set forth in subdivision (f) of Section 10209 and elsewhere in this chapter. The additional standards shall provide that all payments not be considered earned until a showing by the contractor has been made that the training has resulted in measurable productivity or other improvements that result in a net benefit to the California economy. The method to be used for assessing the productivity or other improvements attributable to the training shall be specified in the contract. The standards shall be phased in beginning January 1, 1991, with repeat contracts and larger contracts, and by no later than July 1, 1992, shall be in use in all retraining contracts.

(6) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(7) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages. This list should identify those industries in which upgrade training is likely to encourage hiring of the unemployed on a backfill basis.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it and on the basis of the recommendations of the local review panels. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A private industry council with the approval of the

appropriate local elected officials in the service delivery area.

(4) A grant recipient or administrative entity selected pursuant to Section 103 of the Federal Job Training Partnership Act and Section 15021, with the approval of the local private industry council and the appropriate local elected officials

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. However, the panel shall set contracting objectives with respect to minority and woman owned businesses that are substantially similar to those required by Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code, Section 10108.5 of the Public Contract Code, and Article 1.5 (commencing with Section 10115 of Chapter 1 of Part 2 of Division 2 of the Public Contract Code). No trainee shall receive employment training under this chapter for a period of more than 18 months. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training

(d) Allocate the Employment Training Fund. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants in jobs with definite career potential and long-term job security, and to provide retraining to existing workers whose skills are outmoded due to changes in technology or the need to increase productivity. In no case shall the statewide allocation be based solely on population. In funding contracts, the panel shall give priority to proposals in the following order, except that within each priority category, proposals jointly developed by business management and worker representatives shall be given special consideration:

(1) New hire training and retraining for workers who have received notification of actual layoff.

(2) Retraining of eligible participants employed at the start of training by small businesses.

(3) Retraining for workers whose jobs are threatened by increased competition from outside the state.

(4) All other proposals.

Nothing in this chapter shall be construed to require the panel to set aside funds based on the priorities established in this subdivision, or to preclude the panel from entering into contracts for the provision of training in multijurisdictional areas of the state. In making determinations under this section, the panel shall give special consideration to proposals for training for new employees of firms locating or expanding in California, to new hire and retraining for firms located in enterprise zones and economic incentive areas designated by the Department of Commerce, and to training for veterans, and to training which supports approved apprenticeship

programs. The panel shall provide technical assistance to encourage the development of these proposals.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved which proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A full report of all training provided to participants who qualified pursuant to paragraph (3) of subdivision (b) of Section 10201.

(5) A description of the amount, type, and effectiveness of literacy training funded by the panel.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues. To assist in the preparation of the policy recommendations, the chair of the panel may appoint an advisory research council.

(i) Expedite the processing of contracts for firms considering

locating or expanding businesses in the state, as determined by the Department of Commerce.

(j) Coordinate and consult regularly with business groups and labor organizations, the State Job Training Coordinating Council, the State Department of Education, the office of the Chancellor of the California Community Colleges, the Employment Development Department, and the Department of Commerce.

(k) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(*l*) Adopt regulations and procedures providing reasonable confidentiality for proprietary information provided to it under subparagraph (A) of paragraph (2) of subdivision (b) of Section 10201.

SEC. 10. Section 10206 of the Unemployment Insurance Code is amended to read

10206. (a) The panel may allocate money in the fund for any of the following purposes:

(1) *Reimbursement of reasonable training costs and* administrative costs incurred by contractors. In making a determination of costs to be reimbursed under this paragraph, the panel may allocate funds in accordance with any of the following methods:

(A) For purposes of providing simplified fixed-fee performance contracts, a flat rate per hour for categories of training that are substantially similar with respect to content, methodology, and duration, as determined by the panel, not to exceed the reasonable and normal costs for the training, based upon the panel's experience. The panel shall periodically adjust the standardized rates established pursuant to this paragraph to reflect changes in training costs.

(B) A complete review of the proposal and its costs, including a budget listing the planned costs of training, including personnel, fringe benefits, equipment, supplies, fees paid for consulting or administrative services, and other costs attributable to training; the services provided by subcontractors; the length and complexity of the training; the method of training; the wages and occupations following training; whether the trainees are new hires or retrainees; and the cost of similar training that the panel has funded previously. The cost of program administration shall not exceed 15 percent of the training costs under this paragraph, except that for new hire training the panel may fund administrative costs of up to 20 percent of the training cost.

(2) Costs of program administration incurred under this chapter.

These costs shall be reviewed annually by the Department of Finance and the Legislature and determined through the normal budgetary process.

The panel's administrative costs exclusive of the cost of administering Section 976.6 shall not exceed 15 percent of the amount collected pursuant to Section 976.6. Expenditures for marketing and research provided under contract to the panel under paragraph (1) which otherwise would have been provided directly by the panel shall be included in this limitation.

(3) Costs of an impartial evaluation of the program authorized by this chapter. This evaluation shall include, but not be limited to, a review of the effects of the program on eligible participants, on employers, and on productivity and competitiveness. The evaluation shall also address issues of program administration. The evaluation shall be completed and submitted to the Governor, and the appropriate policy and fiscal committees of the Legislature, by November 15, 1992. The Auditor General, following consultation with the panel, shall designate either a public or a private entity to conduct this evaluation.

(4) Service related to the purposes of this chapter provided by the Small Business Development Centers pursuant to an interagency agreement with the Department of Commerce.

(b) The panel may modify the specific requirements of paragraph (1) of subdivision (a) as they apply to employers or contractors proposing projects which involve training for a significant number of small employers in the same project.

(c) For all training contracts, the panel shall establish requirements for in-kind contributions by either the contractor or the employer that reflect a substantial commitment on the part of the contractor or the employer to the value of the training. In developing these requirements, the panel shall take into account the ability of the contractor or the employer, because of size or financial condition, to make such a contribution, and the ability of the Employment Training Fund to meet the demand for training authorized by this chapter. In developing policies regarding in-kind contributions, the panel shall hold public hearings.

(d) For new hire training contracts, the panel may develop a system of new hire cost reimbursements for each new hire trainee who successfully completes both the training and the job placement requirements of the contract. The purpose of this system shall be to reimburse contractors for demonstrated additional costs and risks associated with new hire trainees. New hire cost reimbursements shall not be paid unless at least 60 percent of the new hire trainees enrolled at the start of the project successfully complete both the training and the placement requirements of the contract. This system shall be designed to discourage over-enrollment of trainees and prohibit amendments to contracts for the purpose of meeting the requirements for new hire cost reimbursements.

(e) No more than two million seven hundred thousand dollars

($2,700,000) of the annually appropriated funds in the Employment Training Fund shall be allocated for purposes of training persons eligible under paragraph (3) of subdivision (b) of Section 10201.

(f) The panel shall give special consideration for funding to those projects that provide special opportunities to veterans and shall provide technical assistance to encourage the development of those projects.

SEC. 11. Section 10207 of the Unemployment Insurance Code is repealed.

SEC. 12. Section 10207 is added to the Unemployment Insurance Code, to read:

10207. (a) The panel shall accept or reject a completed application within 60 days of the receipt by the panel.

(b) The panel shall develop expedited procedures for reviewing proposals submitted by the state agencies which are participants in a special interagency agreement with the panel for purposes of this chapter.

SEC. 13. Section 10209 of the Unemployment Insurance Code is amended to read.

10209. (a) Contracts shall only be made for training in job related basic skills, including literacy skills, and job related vocational skills that are necessary for participants to attain a new job or retain an existing job with definite career potential and long-term job security.

(b) Contracts for projects involving on-the-job training shall specify the specific skills and competencies to be gained as a result of the on-the-job training component of the project.

(c) The panel shall not approve any training proposal which facilitates the change in ownership of a business leading to the likelihood that an existing collective bargaining agreement would be declared void.

(d) To encourage a broad and equitable distribution of funds, the panel may require an employer who has previously received funds pursuant to this chapter for retraining of workers at a facility to contribute proportionately more to the cost of training in subsequent panel contracts for training of workers at the same facility.

(e) The panel may delegate to the executive director the authority to approve training contracts of up to fifty thousand dollars ($50,000), provided the contracts meet the requirements of this chapter and the policies established by the panel, and provided that the panel regularly reviews the actions taken by the executive director pursuant to this subdivision.

(f) Payments shall be made in accordance with a performance contract under which partial payments may be made during training, a partial payment may be made on placement or retention of each trainee, and not less than 25 percent of the negotiated fee is withheld until the trainee has been retained in employment for 90 days after the end of training with a single employer, except for those occupations in which it is not customary for a worker to be employed

90 consecutive days with a single employer. In these latter cases, the panel may substitute a period similar to the probationary period customary to the occupation. The probationary period shall not be less than 500 work hours and shall be completed within 272 days of the completion of the training. In no case shall any payment be considered to have been earned until the trainee has been retained in employment for 90 days or the equivalent probationary period for an occupation in which it is not customary for a worker to be employed 90 consecutive days with a single employer.

(g) Contracts for new hire training shall require the contractor to provide the placement services necessary to ensure the trainees are placed in jobs for which they have been trained.

SEC. 14. Section 10212 of the Unemployment Insurance Code is amended to read:

10212. (a) The panel may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for an executive director, and two assistant directors, who shall be exempt from state civil service.

(b) The executive director shall be appointed by the Governor, and shall be well qualified for the position with experience in government. The appointment shall be for a term of four years, beginning January 1, 1990. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the panel, with the approval of the panel The executive director shall administer this chapter, with the approval of the panel, in the manner he or she deems necessary to conduct the work of the panel properly. With the approval of the panel, the executive director may create divisions and subdivisions as necessary, and change and abolish these divisions and subdivisions from time to time. The executive director may be removed from office, for cause, by a vote of five of the seven members of the panel.

(c) The Governor shall appoint two assistant directors, to serve at the pleasure of the Governor. The assistant directors shall have the duties specified in subdivisions (d) and (e), and other duties as assigned, from time to time, by the executive director, and shall be responsible to the executive director for the performance of their duties.

(d) One assistant director shall have experience in serving the needs of small businesses, and shall, under the supervision of the executive director, do all of the following:

(1) Manage the panel's efforts to ensure that employment training services are available to small businesses.

(2) Coordinate the panel's programs with other local, state, and federal training programs and educational agencies.

(e) The other assistant director shall be responsible for developing and managing the panel's audit and compliance

programs.

SEC. 15. Section 10213.5 of the Unemployment Insurance Code is amended to read:

10213.5. (a) The Department of Commerce shall determine those firms considering locating or expanding businesses in the state in order to enable the Employment Training Panel to expedite the processing of contracts for these firms pursuant to subdivision (g) of Section 10205. The Department of Commerce shall also provide technical assistance by marketing the Employment Training Fund to newly locating or expanding businesses in the state and by assisting in the packaging of employer contracts for training of eligible participants from the Employment Training Fund.

(b) The Small Business Development Center program in the Office of Small Business in the Department of Commerce shall provide information and applications for funding by the panel to its clients.

SEC. 16. Section 10214.5 is added to the Unemployment Insurance Code, to read:

10214.5. (a) The panel may allocate up to two million seven hundred thousand dollars ($2,700,000) annually for the purpose of funding special employment training designed as research projects for the purposes of increasing understanding of the requirements for effective new hire and retraining programs, especially as they relate to diverse sectors of the population and to businesses that are difficult to serve under the panel's standard project format. These projects shall also contribute to the panel's understanding of the relationship between various training designs and the achievement of employers' training objectives. Notwithstanding any other provision of this chapter, participants in these research projects need not meet the same eligibility criteria as outlined in Section 10201. In addition, the panel may allocate funds under this section for reasonable child care and transportation costs of trainees.

(b) The panel shall adopt minimum standards for consideration of proposals to be funded pursuant to this section.

(c) The panel may not delegate its authority to approve contracts written pursuant to this section.

(d) It is the intent of the Legislature in providing the authority for these demonstration research projects that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.

SEC. 17. Section 10218 of the Unemployment Insurance Code is amended and renumbered, to read:

10218.5. This chapter 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 January 1, 1994, deletes or extends that date.

SEC 18. Section 10218 is added to the Unemployment Insurance Code, to read:

10218. On January 1, 1990, the terms of all previously appointed

members of the panel shall be deemed to have expired. The appointing authorities shall appoint members to serve new terms beginning on that date. Members of the panel shall serve four-year terms, except that one of the members appointed by each appointing authority to serve terms starting on January 1, 1990, shall serve for a two-year term.

CHAPTER 927

An act to amend Sections 1225, 1300, 1320, 1321, and 1322 of, to amend, repeal, and add Section 1270 of, to add Sections 1211.5, 1270.5, 1271, 1272, 1272.4, 1272.6, 1274, 1323, 1324, 1325, 1326, and 1327 to, and to add and repeal Section 1272.5 of, the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. The intent of the Legislature in enacting this act is:

(a) To protect the public health and safety by adopting licensure and competency requirements for cytotechnologists.

(b) To enact state laws regulating clinical laboratories and clinical laboratory personnel that are consistent with the federal Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578; 42 U.S.C. Sec. 263a, Section 353 of the Public Health Service Act).

(c) To enact state laws that are at least as stringent as the requirements of federal law or federal regulations issued pursuant thereto.

(d) To enact state laws which permit use of the services or facilities of the state in carrying out the federal law.

(e) To enact state laws which permit the state to be approved as an accreditation body under federal law.

(f) To enact state laws which permit the department to enter into agreements with the Secretary of Health and Human Services under federal law.

SEC. 1.5. Section 1211.5 is added to the Business and Professions Code, to read:

1211.5. For the purposes of this chapter, "cytological slides" shall refer to cellular materials submitted for preliminary cytologic examination.

SEC. 2. Section 1225 of the Business and Professions Code is amended to read:

1225. (a) In order to carry out this chapter, any duly authorized representative of the department may do any of the following:

(1) Enter or inspect on an announced or unannounced basis any building, premise, equipment, materials, records, or information at

any reasonable time to secure compliance with, or prevent a violation of this chapter or the regulations adopted pursuant thereto.

(2) Inspect, photograph, or copy any records, reports, test results, test specimens, or other information related to the requirements of this chapter or the regulations adopted pursuant thereto.

(3) Secure any sample, photograph, or other evidence from any building or premise for the purpose of enforcing this chapter or the regulations adopted pursuant thereto.

(b) The department may cooperate with, or assist persons licensed under this chapter, or other qualified persons, in evaluating laboratory procedures and techniques necessary to achieve and maintain high quality performance in clinical laboratories.

SEC. 3. Section 1270 of the Business and Professions Code is amended to read:

1270. (a) Persons engaging in cytotechnology shall meet standards established by the department. Such persons may perform the necessary procedures relating to the preliminary evaluation of cellular material only under the supervision of a person duly authorized to direct a laboratory. Before such persons are permitted to perform cytologic examinations, they shall satisfactorily demonstrate their ability to do so in accordance with procedures prescribed by the department.

(b) This section shall be operative until January 1, 1991, and on that date is repealed.

SEC 4. Section 1270 is added to the Business and Professions Code, to read:

1270 (a) On and after January 1, 1991, no person may perform examinations of cytological slides without first obtaining a license as a cytotechnologist from the department, except that those persons employed by licensed clinical laboratories as cytotechnologists and certified as cytotechnologists by the department on or before January 1, 1991, shall be licensed by the department on or before January 1, 1993 Cytotechnologist licenses shall be issued and renewed by the department for periods of two years. This subdivision shall not apply to persons holding a valid, unrevoked, unsuspended physician's and surgeon's certificate issued pursuant to Chapter 5 (commencing with Section 2000).

(b) The issuance of a cytotechnologist license shall be contingent upon the applicant's satisfactory performance, as defined in regulation, in a competency testing program for cytotechnologists which may be administered by the department or by a competency testing service or program approved by the department. The competency testing program established pursuant to this section shall be periodically reviewed and revised by the department, if necessary, to ensure that the program is consistent with federal competency testing requirements issued under the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578; 42 U S.C. Sec. 263a, Section 353 of the Public Health Service Act).

(c) This section shall become operative on January 1, 1991

SEC. 5. Section 1270.5 is added to the Business and Professions Code, to read:

1270.5. (a) Notwithstanding Section 1301, an application for the renewal of, and payment of the renewal fees for, a cytotechnologist license shall be governed by this section.

(b) Application for renewal of a cytotechnologist license, accompanied by the fee set forth in Section 1300, shall be filed with the department not less than 30 days prior to the expiration date.

SEC. 6. Section 1271 is added to the Business and Professions Code, to read:

1271. (a) A cytotechnologist shall not examine more than 80 gynecologic slides in a 24-hour period.

(b) The maximum workload limit in subdivision (a) is the maximum number of gynecologic slides that a cytotechnologist shall examine in a 24-hour period without regard to the number of clinical laboratories or other persons for which the work is performed. Cytotechnologists who examine both gynecologic and nongynecologic slides shall do so on a pro rata basis such that the maximum workload limit in subdivision (a) is not exceeded, and such that the number of gynecologic slides examined is reduced proportionally if both gynecologic and nongynecologic slides are examined in a 24-hour period.

(c) The maximum workload limit in subdivision (a) is for a cytotechnologist who has no duties other than the evaluation of gynecological slides. Cytotechnologists who have other duties, such as the preparation and staining of cytologic slides, shall decrease on a pro rata basis the number of slides examined.

(d) All cytologic slides shall be examined in a clinical laboratory which has been licensed by the department, or in a municipal or county laboratory established under Section 1000 of the Health and Safety Code. All slides examined under the name of a clinical laboratory shall be examined on the premises of that laboratory.

(e) Each clinical laboratory shall staff one full-time equivalent for each 19,200 gynecologic slides examined per a 12-month period. A full-time equivalent means a cytotechnologist working eight hours per day in a 40-hour week.

(f) Each clinical laboratory shall maintain records of the number of cases and slides for gynecologic and nongynecologic samples examined on a monthly and annual basis.

(g) Each cytotechnologist shall maintain records in a form prescribed by the department of hours worked and the name and address of the clinical laboratory or other person for whom slides were examined.

(h) Each clinical laboratory shall retain all cytology slides and cell blocks examined for a minimum of five years and all cytology reports for a minimum of 10 years.

(i) The presence of any factor which would prohibit the proper examination of a cytologic slide, including, but not limited to, damaged slides or inadequate specimens, as determined by the

director of the laboratory, shall result in the issuance of a statement of inadequacy to the referring physician and no report of cytologic findings shall be issued on that slide.

(j) Each clinical laboratory shall maintain records of the number of cases and slides for gynecologic and nongynecologic slides each cytotechnologist in the laboratory reads each 24-hour period, the number of hours devoted during each 24-hour period to screening cytology slides by each individual, and shall determine weekly and cumulatively the frequency of abnormal slides found by each cytotechnologist employed.

(k) Ten percent of the negative or normal slides examined by each cytotechnologist employed by a clinical laboratory shall be rescreened by a cytopathologist or supervising cytotechnologist other than the original examiner.

SEC. 7. Section 1272 is added to the Business and Professions Code, to read:

1272. A clinical laboratory shall participate in a state-approved proficiency testing program and demonstrate satisfactory performance in all of the laboratory specialities that include tests performed in the laboratory. Proficiency shall be tested in the following specialties: microbiology, serology, clinical chemistry, hematology, cytology, and immunohematology.

SEC. 8. Section 1272.4 is added to the Business and Professions Code, to read:

1272.4. The department shall establish standards for the evaluation of cytologic slides, for reporting the adequacy of cytologic slides, for a cytotechnologist competency program, and for a proficiency testing program for clinical laboratories providing cytology services.

SEC. 9. Section 1272.5 is added to the Business and Professions Code to read:

1272.5. (a) A laboratory in a state other than California which is regularly providing cytology services for laboratories, physicians, or beneficiaries located in California shall be certified by the department as substantially meeting the requirements for a California clinical laboratory license, including the requirements relating to the practice of diagnostic cytology.

(b) The department shall issue guidelines as the basis for issuing letters of substantial equivalency to out-of-state clinical laboratories providing cytology services. For the purposes of determining substantial equivalency to California standards for diagnostic cytology, the department may require the annual submission of an application containing information as the department may determine to be necessary to properly evaluate the laboratory. If, in the opinion of the department, the information provided by the applicant is not sufficient or adequate for the purposes of determining substantial equivalency, the department may require a site visit by departmental personnel to the applicant's laboratory. If a site visit is required, the applicant shall agree to reimburse the State

of California for the actual cost of expenses incurred for not more than two persons from the staff of the department.

(c) The department may establish a schedule of fees to be paid by out-of-state clinical laboratories which make applications to the department for letters of substantial equivalency, which fees shall be set at a level to fully offset, but not exceed, the total cost to the department of reviewing applications for substantial equivalency from the out-of-state clinical laboratories.

This section shall be operative until January 1, 1995, and as of that date is repealed.

SEC. 9.5. Section 1272.6 is added to the Business and Professions Code, to read:

1272.6. The department shall, on or before January 1, 1991, develop or adopt a proficiency testing program for laboratories providing cytology services which may be administered by the department or by a proficiency testing service or program approved by the department. The proficiency program established pursuant to this section shall include announced and unannounced onsite proficiency testing, with that testing to take place, to the extent practicable, under normal working conditions.

SEC. 10. Section 1274 is added to the Business and Professions Code, to read:

1274. (a) Laboratories shall send to persons submitting cytologic samples for evaluation, on a quarterly basis, informational letters on all cases of dysplasia (Cervical Intraepithelial Neoplasia) through malignancy. Copies of letters to those persons, and any responses received to those letters, shall be maintained on file by the laboratories for a period of five years.

(b) Whenever it becomes known to a clinical laboratory that an abnormality has been identified for a patient for whom the clinical laboratory earlier reported a normal finding, all previous available cytologic slides on that patient shall be reexamined by the clinical laboratory.

(c) Records of the review of any previous slides required by subdivision (b) shall be maintained by the clinical laboratory, including the name of the individual performing the earlier examination.

(d) Each clinical laboratory shall maintain records of all false positive and false negative cases.

When any errors in the reporting of a smear evaluation are discovered, a corrected report shall be immediately sent, when medically applicable. Copies of corrected reports shall be maintained in the laboratory records for a period of 10 years.

SEC. 11. Section 1300 of the Business and Professions Code is amended to read:

1300. The amount of application and license fee under this chapter shall be as follows:

(a) The application fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical

microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars ($38). This fee shall be sixty-three dollars ($63) commencing on July 1, 1983.

(b) The annual renewal fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars ($38). This fee shall be sixty-three dollars ($63) commencing on July 1, 1983.

(c) The application fee for a clinical laboratory technologist's or limited technologist's license is twenty-three dollars ($23). This fee shall be thirty-eight dollars ($38) commencing on July 1, 1983.

(d) The application and annual renewal fee for a cytotechnologist's license shall be fifty dollars ($50) commencing on January 1, 1991.

(e) The annual renewal fee for a clinical laboratory technologist's or limited technologist's license is fifteen dollars ($15). This fee shall be twenty-five dollars ($25) commencing on July 1, 1983.

(f) The application fee for a clinical laboratory license is one hundred fifty dollars ($150); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county or city and county, or an official thereof, no fee shall be required This fee shall be two hundred forty-eight dollars ($248) commencing on July 1, 1983.

(g) The annual renewal fee for a clinical laboratory license is one hundred eighteen dollars ($118); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county, or city and county, or official thereof, no fee shall be required. This fee shall be one hundred ninety-six dollars ($196) commencing on July 1, 1983.

(h) In addition, clinical laboratories providing cytology services shall pay an annual fee which shall be set by the department in an amount needed to meet but not exceed the department's costs of proficiency testing and special site surveys for these laboratories, and which shall be based upon the volume of cytologic slides examined by a laboratory. If the amount collected exceeds the amount needed for these purposes, the amount of fees collected from those laboratories in the following year shall be reduced accordingly.

(i) The application fee for a trainee's license is eight dollars ($8). This fee shall be thirteen dollars ($13) commencing on July 1, 1983.

(j) The annual renewal fee for a trainee's license is five dollars ($5). This fee shall be eight dollars ($8) commencing on July 1, 1983.

(k) The application fee for a duplicate license is three dollars ($3). This fee shall be five dollars ($5) commencing on July 1, 1983.

(*l*) The delinquency fee is equal to the annual renewal fee.

(m) The director may establish a fee for examinations required under this chapter. The fee shall not exceed the total cost to the department in conducting the examination.

SEC. 12. Section 1320 of the Business and Professions Code is amended to read:

1320. The department may deny, suspend, or revoke any license issued under this chapter for any of the following reasons:

(a) Conduct involving moral turpitude or dishonest reporting of tests.

(b) Violation by the applicant or licensee of this chapter or any rule or regulation adopted pursuant thereto.

(c) Aiding, abetting, or permitting the violation of a provision of this chapter, the rules or regulations adopted under this chapter or the provisions of the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(d) Permitting a licensed trainee to perform tests or procure specimens unless under the direct and responsible supervision of a person duly licensed under this chapter or physician and surgeon other than another licensed trainee.

(e) Violation of any provision of the Business and Professions Code governing the practice of medicine and surgery.

(f) Proof that an applicant or licensee has made false statements in any material regard on the application for a license or renewal issued under this chapter.

(g) Conduct inimical to the public health, morals, welfare, or safety of the people of the State of California in the maintenance or operation of the premises or services for which a license is issued under this chapter.

(h) Proof that the applicant or licensee has used any degree, or certificate, as a means of qualifying for licensure which has been purchased or procured by barter or by any unlawful means or obtained from any institution which at the time said degree, certificate, or title was obtained was not recognized or accredited by the department of education of the state where said institution is or was located to give training in the field of study in which the degree, certificate, or title is claimed.

(i) Violation of any of the provisions of the premarital or prenatal laws or regulations pertaining thereto in Article 3 (commencing with Section 4300) of Chapter 2 of Title 1 of Part 5 of Division 4 of the Civil Code and Article 1 (commencing with Section 1125) of Group 4 of Subchapter 1 of Chapter 2 of Part 1 of Title 17 of the California Code of Regulations, or of the provisions of Article 2 (commencing with Section 3220) of Chapter 4 of Division 4 of the Health and Safety Code.

(j) Knowingly accepting an assignment for clinical laboratory tests or specimens from and the rendering a report thereon to persons not authorized by law to submit such specimens or assignments.

(k) Rendering a report on clinical laboratory work actually performed in another clinical laboratory without designating clearly the name of the laboratory in which the test was performed.

(*l*) Conviction of a felony or of any misdemeanor involving moral turpitude under the laws of any state or of the United States arising out of or in connection with the practice of clinical laboratory

technology. The record of conviction or a certified copy thereof shall be conclusive evidence of such conviction.

(m) Unprofessional conduct.

(n) The use of drugs or alcoholic beverages to the extent or in such manner as to be dangerous to a person licensed under this chapter, or any other person to the extent that such use impairs the ability of the licensee to conduct with safety to the public the practice of clinical laboratory technology.

SEC. 13. Section 1321 of the Business and Professions Code is amended to read:

1321. For purposes of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action to deny, revoke, or suspend the license may be taken when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of a sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting withdrawal of a plea of guilty, or setting aside a verdict of guilty or dismissing the accusation, information, or indictment. The director shall take into account all competent evidence or rehabilitation furnished.

SEC. 14 Section 1322 of the Business and Professions Code is amended to read:

1322. The proceedings under this chapter for the suspension or revocation of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the department shall have all the powers granted therein.

SEC. 15. Section 1323 is added to the Business and Professions Code, to read:

1323. The department may temporarily suspend a license prior to any hearing, when it has determined that the action is necessary to protect the public welfare. The department shall notify the licensee of the temporary suspension and the effective date thereof and at the same time shall serve the licensee with an accusation. Upon receipt of a notice of defense by the licensee, the matter shall, within 15 days, be set for hearing. The hearing shall be held as soon as possible, but not later than 30 days after receipt of that notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the department has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the department fails to make a final decision within 60 days after the hearing has been completed.

SEC. 16. Section 1324 is added to the Business and Professions Code, to read:

1324. No person or entity who has owned or operated a clinical laboratory which had its license revoked may, within two years of the revocation of the license, own or operate a laboratory for which a license has been issued under this section.

SEC. 17. Section 1325 is added to the Business and Professions Code, to read:

1325. The license of a clinical laboratory which has been involuntarily excluded from participation under the Medicare program under Title XVIII of the Social Security Act (42 U.D.S. Sec. 1395 et seq.), under the Medicaid Program under Title XIX of the Social Security Act (42 U.S.C. Sec. 1396), or which had its certificate revoked under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a), shall have its license automatically suspended by the department for the period the laboratory is so excluded or has its certificate revoked.

SEC. 18. Section 1326 is added to the Business and Professions Code, to read:

1326. The department may bring an action to enjoin the violation or threatened violation of this chapter or the regulations adopted pursuant thereto in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the department shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. With respect to any action brought pursuant to this action alleging actual violation of this chapter or the regulations adopted pursuant thereto, the court shall, if it finds the allegations to be true, issue its order enjoining the discontinuance of the violation.

SEC. 19. Section 1327 is added to the Business and Professions Code, to read:

1327 The department may enter into agreements with the Secretary of Health and Human Services for any or all of the following reasons:

(a) For use of the services or facilities of the department for carrying out the provisions of the Clinical Laboratory Improvement Amendments of 1988 (P. L. 100-578; 42 U.S.C. Sec. 263a).

(b) To allow the department to be approved as an accreditation body under federal law.

SEC. 20. The State Department of Health Services shall submit a preliminary report to the Legislature on or before January 1, 1992, and a final report on or before January 1, 1994, relative to regulations developed and adopted pursuant to this act. Whenever the federal government implements the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578, 42 U.S.C. Sec. 263a, Sec. 353 of the Public Health Service Act) with the issuance of regulations, the department shall review those regulations and shall submit a report to the Legislature concerning whether the requirements imposed by this act are at least as stringent as those imposed by the federal regulations, and concerning any inconsistencies between this act and the federal regulations.

The department shall also report to the Legislature by January 1,

1991, concerning state costs associated with competency testing programs for cytotechnologists and proficiency testing programs for laboratories providing cytology services, and concerning whether approved programs exist to provide these testing services in lieu of state administration of such programs.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 928

An act to amend the heading of Chapter 3.1 (commencing with Section 4215) of Division 5 of Title 1 of, to add the heading of Article 1 (commencing with Section 4215) to Chapter 3.1 of Division 5 of Title 1, to add Article 2 (commencing with Section 4216) to Chapter 3.1 of Division 5 of Title 1 of, and to repeal Sections 4216 and 4217 of, the Government Code, relating to underground installations.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. The heading of Chapter 3.1 (commencing with Section 4215) of Division 5 of Title 1 of the Government Code is amended to read:

CHAPTER 3.1. PROTECTION OF UNDERGROUND INFRASTRUCTURE

SEC. 2. The heading of Article 1 (commencing with Section 4215) of Chapter 3.1 of Division 5 of Title 1 is added to the Government Code, to read:

Article 1. Public Utility Protection in Public Contracts

SEC. 3. Section 4216 of the Government Code is repealed.

SEC. 4. Article 2 (commencing with Section 4216) is added to Chapter 3.1 of Division 5 of Title 1 of the Government Code, to read:

Article 2. Regional Notification Center System

4216. As used in this article the following definitions apply:

(a) "Approximate location of subsurface installations" means a strip of land not more than 24 inches on either side of the exterior surface of the subsurface installation. "Approximate location" does not mean depth.

(b) "Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

(c) Except as provided in Section 4216.8, "excavator" means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, business trust, public agency, or other entity which, with their, or his or her, own employees or equipment performs any excavation.

(d) "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Unexpected occurrence" includes, but is not limited to, fires, floods, earthquakes or other soil or geologic movements, riots, accidents, damage to a subsurface installation requiring immediate repair, or sabotage.

(e) "Inquiry identification number" means the number which is provided by a regional notification center to every person who contacts the center pursuant to Section 4216.2. The inquiry identification number shall remain valid for not more than 14 calendar days from the date of issuance, and after that date shall require regional notification center revalidation.

(f) "Local agency" means a city, county, city and county, school district, or special district.

(g) "Operator" means any person, corporation, partnership, business trust, public agency, or other entity which owns, operates, or maintains a subsurface installation. For purposes of Section 4216.1 an "operator" does not include an owner of real property where subsurface facilities are exclusively located if they are used exclusively to furnish services on that property and the subsurface facilities are under the operation and control of that owner.

(h) "Regional notification center" means a nonprofit association or other organization of operators of subsurface installations which provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(i) "State agency" means every state agency, department, division, bureau, board, or commission.

(j) "Subsurface installation" means any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized

sewerlines, nonpressurized storm drains, or other nonpressurized drain lines.

4216.1. Every operator of a subsurface installation, except the Department of Transportation, shall become a member of, participate in, and share in the costs of, a regional notification center. Operators of subsurface installations who are members of, participate in, and share in, the costs of a regional notification center, including, but not limited to, the South Shore Utility Coordinating Council, the Underground Service Alert—Northern California or the Underground Service Alert—Southern California are in compliance with this section and Section 4216.9.

4216.2. (a) Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center, at least two working days, but not more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(b) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated.

(c) The regional notification center shall provide an inquiry identification number to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. An inquiry identification number may be validated for more than 14 days when mutually agreed between the excavator and any member operator so notified that has a subsurface installation in the area of the proposed excavation; and, it may be revalidated by notification to the regional notification center by the excavator prior to the time of its expiration.

(d) A record of all notifications by excavators and operators to the regional notification center shall be maintained for a period of not less than three years. The records shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

(e) As used in this section, the delineation is practical when any of the following conditions exist:

(1) When delineating a prospective excavation site with white paint could not be misleading to those persons using affected streets and highways.

(2) When the delineation could not be misinterpreted as a traffic or pedestrian control.

(3) Where an excavator can determine the exact location of an excavation prior to the time an area has been field marked pursuant to Section 4216.3.

(4) Where delineation could not be construed as duplicative.

(f) Where an excavator makes a determination that it is not practical to delineate the area to be excavated, the excavator shall contact the regional notification center to advise the operators that the excavator shall identify the area to be excavated in another manner sufficient to enable the operator to determine the area of the excavation to be field marked pursuant to Section 4216.3.

4216.3. (a) Any operator of a subsurface installation who receives timely notification of any proposed excavation work in accordance with Section 4216.2 shall, within two working days of that notification, excluding weekends and holidays, or before the start of the excavation work, whichever is later, or at a later time mutually agreeable to the operator and the excavator, locate and field mark the approximate location and, if known, the number of subsurface installations which may be affected by the excavation to the extent and degree of accuracy that the information is available either in the records of the operator or as determined through the use of standard locating techniques other than excavating, otherwise advise the person who contacted the center of the location of the operator's subsurface installations which may be affected by the excavation, or advise the person that the operator does not operate any subsurface installations that would be affected by the proposed excavation.

(b) Every operator of a subsurface installation who field marks the location of a subsurface installation shall make a reasonable effort to make field markings in conformance with the following color code and type of installation:

(1) Safety Red—electric power, distribution, and transmission installations, or municipal electric installations.

(2) High Visibility Safety Yellow—gas distribution and transmission installations, oil distribution and transmission installations, or installations containing or transporting dangerous materials, products, or steam.

(3) Safety Alert Orange—telephone and telegraph installations, police and fire communication installations, and cable television installations.

(4) Safety Precaution Blue—water installations and slurry pipelines.

(5) Safety Green—sewer installations.

(c) If, at any time during an excavation for which there is a valid inquiry identification number, an operator's field markings are no longer reasonably visible, the excavator shall contact the appropriate regional notification center The regional notification center shall contact any member, if known, who has a subsurface installation in the area of the excavation. Upon receiving timely notification or

renotification pursuant to this subdivision, the operator shall re-locate and re-mark, within two working days, those subsurface installations which may be affected by the excavation to the extent necessary, in conformance with this section.

(d) The excavator shall notify the appropriate regional notification center of the failure of an operator to comply with this section. The notification shall include the inquiry identification number issued by the regional notification center. A record of all notifications received pursuant to this subdivision shall be maintained by the regional notification center for a period of not less than three years. The records shall be available for inspection pursuant to subdivision (d) of Section 4216.2.

4216.4. (a) The excavator shall determine the exact location of subsurface installations in conflict with the excavation by excavating with hand tools within the area of the approximate location of subsurface installations as determined by the field marking provided in accordance with Section 4216.3 before using any power-operated or power-driven excavating or boring equipment within the approximate location of the subsurface installation, except that power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there are no subsurface installations contained in the pavement If mutually agreeable with the operator and the excavator, the excavator may utilize power-operated or power-driven excavating or boring equipment within the approximate location of a subsurface installation and to any depth.

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation.

4216.5 The requirements of this article apply to state agencies and to local agencies which own or operate subsurface installations, except as otherwise provided in Section 4216.1. A local agency which is required to provide the services described in Section 4216.3 may charge a fee in an amount sufficient to cover the cost of providing that service.

4216.6. (a) (1) Any operator or excavator who negligently violates this article is subject to a civil penalty in an amount not to exceed ten thousand dollars ($10.000).

(2) Any operator or excavator who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars ($50,000).

(3) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that

damage.

(4) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) An action may be brought by the Attorney General, the district attorney, or the local or state agency which issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section. If penalties are collected as a result of a civil suit brought by a state or local agency for collection of those civil penalties, the penalties imposed shall be paid to the general fund of the agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting these fees.

4216.7. (a) In the case where an excavator has failed to comply with the notification requirements of Section 4216.2 and the requirements of Section 4216.4, the excavator shall be liable for any claim for damages to the subsurface installation arising from the excavation, by an owner or operator who has complied with the requirements of Section 4216.1 and Section 4216.3, to the extent that the damage was proximately caused by the excavator's failure to comply. This subdivision shall not affect claims including, but not limited to, third-party claims, brought against the excavator by other parties for damages arising from the excavation.

(b) In the case where an owner or operator of a subsurface installation has failed to comply with the regional notification center system requirements of Section 4216.1, that owner or operator shall forfeit his or her claim for damages to his or her subsurface installation arising from the excavation against an excavator who has complied with the requirements of Section 4216.2 to the extent damages were proximately caused by the owner or operator's failure to comply. This subdivision shall not affect claims including, but not limited to, third-party claims, brought against the excavator by other parties for damages arising from the excavation.

(c) In the case where an owner or operator of a subsurface installation receives timely notification of proposed excavation work pursuant to Section 4216.2 but fails to comply with subdivision (a) of Section 4216.3, that owner or operator shall forfeit his or her claim for damages to his or her subsurface installation arising from the excavation against an excavator who has complied with the notification requirements of Section 4216.2 to the extent damages were proximately caused by the owner or operator's failure to comply. This subdivision shall not affect claims including, but not limited to, third-party claims, brought against the excavator by other parties for damages arising from the excavation.

4216.8. This article does not apply to any of the following persons:

(a) An owner of real property who contracts for an excavation project on the property, not requiring a permit issued by a state or

local agency, with a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code.

(b) An owner of residential real property, not engaged as a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, who as part of improving his or her principal residence or appurtenances thereto is performing or having performed excavation work not requiring a permit issued by a state or local agency.

4216.9. (a) No permit to excavate issued by any local agency, as defined in Section 4216, or any state agency, shall be valid unless the applicant has been provided an initial inquiry identification number by a regional notification center pursuant to Section 4216.2. For purposes of this section, "state agency" means every state agency, department, division, bureau, board, or commission, including the Department of Transportation.

(b) This article does not exempt any person or corporation from Sections 7951, 7952, and 7953 of the Public Utilities Code.

SEC. 5. Section 4217 of the Government Code is repealed.

CHAPTER 929

An act to amend Sections 48645 and 48645.1 of the Education Code, and Section 889 of the Welfare and Institutions Code, relating to education.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 48645 of the Education Code is amended to read:

48645. The purpose of this article is to provide for the administration and operation of public schools in juvenile halls, juvenile homes, day centers, juvenile ranches, juvenile camps, regional youth educational facilities, or Orange County youth correctional centers in existence and providing services prior to the effective date of the amendments to this section made by the Statutes of 1989, established pursuant to Article 23 (commencing with Section 850), Article 24 (commencing with Section 880), Article 24.5 (commencing with Section 894) of Chapter 2 of Division 2, or Article 9 (commencing with Section 1850) of Chapter 1 of Division 2.5, of the Welfare and Institutions Code or in any group home housing 25 or more children placed pursuant to Sections 362, 727, and 730, of the Welfare and Institutions Code or in any group home housing 25 or more children and operating one or more additional

sites under a central administration for children placed pursuant to Section 362, 727, or 730 of the Welfare and Institutions Code, with acceptable school structures at one or more centrally located sites to serve the single or composite populations, and to provide the juvenile court school pupils therein detained with quality education and training.

Nothing in this section shall be construed as indicating that it is the intent of the Legislature to prevent juvenile court school pupils who are housed in group homes from enrolling in regular public schools, or that it is the intent of the Legislature to transfer the responsibility for any costs associated with the operation of group homes to the counties.

The Orange County Office of Education shall only provide educational services in youth correctional centers for individuals up to 19 years of age.

SEC. 2. Section 48645.1 of the Education Code is amended to read:

48645.1. Public schools or classes in any juvenile hall, juvenile home, day center, juvenile ranch, juvenile camp, regional youth educational facility, or Orange County youth correctional center in existence and providing services prior to the effective date of the amendments to this section made by the Statutes of 1989, established in accordance with Article 23 (commencing with Section 850), Article 24 (commencing with Section 880), and Article 24.5 (commencing with Section 894) of Chapter 2 of Division 2, or Article 9 (commencing with Section 1850) of Chapter 1 of Division 2.5, of the Welfare and Institutions Code, or in any group home housing 25 or more children and operating one or more additional sites under a central administration, with acceptable school structures at one or more centrally located sites to serve the single or composite populations of juvenile court school pupils detained therein in accordance with the provisions of Section 362, 727, or 730 of the Welfare and Institutions Code, shall be known as juvenile court schools.

SEC. 3. Section 889 of the Welfare and Institutions Code is amended to read:

889. The board of education shall provide for the administration and operation of public schools in any juvenile home, hall, day center, ranch, camp, regional youth educational facility, or Orange County youth correctional center in existence and providing services prior to the effective date of the amendments to this section made by the Statutes of 1989, established pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 of the Education Code, or Article 9 (commencing with Section 1850) of Chapter 1 of Division 2.5 of the Welfare and Institutions Code.

SEC. 4. No Orange County youth correctional center, or employee or agent of a youth correctional center, in existence and providing services prior to the effective date of this act, established pursuant to Article 9 (commencing with Section 1850) of Chapter 1

of Division 2.5 of the Welfare and Institutions Code, or county board of education, shall be liable for the repayment or reimbursement of any funds received prior to January 1, 1990, and expended for the operation of any youth correctional center.

SEC. 5. Any Orange County youth correctional center existing and providing services prior to the effective date of this act, established pursuant to Article 9 (commencing with Section 1850) of Chapter 1 of Division 2.5 of the Welfare and Institutions Code, is declared to be a juvenile court school under Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 of the Education Code, and is hereby confirmed, validated, and declared legally established.

SEC. 6. Due to the unique facts and circumstances applicable to Orange County youth correctional centers that were intended to operate as juvenile court schools and continued to receive funding as juvenile court schools although not specifically designated in Section 48645, 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. Special legislation is, therefore, necessarily applicable to only Orange County.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 930

An act to amend, repeal, and add Sections 186.2, 186.22, 487, 499b.1, and 666.5 of, and to add and repeal Sections 487h and 666.7 of, the Penal Code, to amend, repeal, and add Section 10851 of the Vehicle Code, and to amend, repeal, and add Section 653.5 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 26, 1989. Filed with Secretary of State September 27, 1989.]

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

SECTION 1. The Legislature finds and declares that the rapid increase in motor vehicle theft has reached crisis proportions within the state, and that there is a lucrative vehicle theft industry which has spawned the development of sophisticated criminal operations. The Legislature further finds that the escalating problem of vehicle theft is nurtured by the lack of any serious deterrent to this crime, and that vehicle thieves consider sanctions under existing law merely

as routine operating costs.

Therefore, the Legislature believes that it is in the best interest for public safety to enhance the penalties for the crimes of vehicle theft and receiving stolen vehicles. Moreover, the Legislature believes that existing laws should be utilized to the fullest extent possible to actively pursue innovative programs to deter vehicle theft and to improve the recovery of stolen vehicles, including the vigorous application of the asset forfeiture provisions of the criminal profiteering laws (Chapter 9 (commencing with Section 186) of Title 7 of Part 1 of the Penal Code).

SEC. 2. This act shall be known as the "Omnibus Motor Vehicle Theft Act of 1989."

SEC. 3. Section 186.2 of the Penal Code, as amended by Section 6 of Chapter 828 of the Statutes of 1987, is amended to read:

186.2. For purposes of the application of this chapter, the following definitions shall govern:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Theft or taking of any motor vehicle, trailer, or vessel as described in Section 487h of this code or any vehicle as described in Section 10851 of the Vehicle Code.

(18) Trafficking in controlled substances, as defined in Sections 11351, 11351.5, 11352, and 11353 of the Health and Safety Code.

(19) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(20) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter

7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(21) Presentation of a false or fraudulent claim, as defined in Section 556 of the Insurance Code.

(22) Money laundering, as defined in Section 186.10.

(23) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, which meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts which would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime which is of a conspiratorial and (1) organized nature and which seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography or, (2) through planning and coordination of individual efforts, to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

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. If that date is not deleted or extended, then, on and after January 1, 1992, pursuant to Section 9611 of the Government Code, Section 186.2 of the Penal Code, as amended by Section 2 of Chapter 1205 of the Statutes of 1985, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 4. Section 186.2 of the Penal Code, as amended by Section 7 of Chapter 828 of the Statutes of 1987, is amended to read:

186.2. For purposes of the application of this chapter, the following definitions shall govern:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which

act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Theft or taking of any motor vehicle, trailer, or vessel as described in Section 487h of this code or any vehicle as described in Section 10851 of the Vehicle Code.

(18) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(19) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(20) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(21) Presentation of a false or fraudulent claim, as defined in Section 556 of the Insurance Code.

(22) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, which meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts which would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act

occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime which is of a conspiratorial and (1) organized nature and which seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography or, (2) through planning and coordination of individual efforts, to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

(f) 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. 4.1. Section 186.2 is added to the Penal Code, to read:

186.2. For purposes of the application of this chapter, the following definitions shall govern:

(a) "Criminal profiteering activity" means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(18) Violation of the laws governing corporate securities, as

defined in Section 25541 of the Corporations Code.

(19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter which may be prosecuted as a felony.

(20) Presentation of a false or fraudulent claim, as defined in Section 556 of the Insurance Code.

(21) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(b) "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this act, which meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts which would constitute a "pattern of criminal profiteering activity" may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) "Prosecuting agency" means the Attorney General or the district attorney of any county.

(d) "Organized crime" means crime which is of a conspiratorial and (1) organized nature and which seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography or, (2) through planning and coordination of individual efforts, to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors.

(e) "Underlying offense" means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

SEC. 5. Section 186.22 of the Penal Code, as amended by Chapter 144 of the Statutes of 1989, is amended to read:

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) (1) Except as provided in paragraph (2), any person who is convicted of a felony 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, 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.

(2) 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.

(c) Any person who is convicted of a public offense punishable as 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 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 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.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors 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.

(e) 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.

(8) Grand theft of any vehicle, trailer, or vessel as described in Section 487h.

(f) 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 (8), inclusive, of subdivision (e), 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.

(g) 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. 5.1. Section 186.22 is added to the Penal Code, to read:

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) (1) Except as provided in paragraph (2), any person who is convicted of a felony 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, 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.

(2) 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.

(c) Any person who is convicted of a public offense punishable as 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 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 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.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors 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.

(e) 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.

(f) 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 (e), 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.

SEC. 6. Section 487 of the Penal Code is amended to read:

487. Grand theft is theft committed in any of the following cases:

1. When the money, labor or real or personal property taken is of a value exceeding four hundred dollars ($400); provided, that when domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100); provided, further, that when fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars ($100); provided, further, that where the money, labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates four hundred dollars ($400) or more in any 12 consecutive month period, then the same shall constitute grand theft.

For purposes of establishing that the value of avocados or citrus fruit under this subdivision exceeds one hundred dollars ($100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars ($100) in wholesale value.

2. When the property is taken from the person of another.

3. When the property taken is a firearm, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow or pig.

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. 6.1. Section 487 is added to the Penal Code, to read:

487. Grand theft is theft committed in any of the following cases:

1. When the money, labor or real or personal property taken is of a value exceeding four hundred dollars ($400); provided, that when domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100); provided, further, that when fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars ($100), provided, further, that where the money, labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates four hundred dollars ($400) or more in any 12 consecutive month period, then the same shall constitute grand theft.

For purposes of establishing that the value of avocados or citrus fruit under this subdivision exceeds one hundred dollars ($100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars ($100) in

wholesale value.

2. When the property is taken from the person of another.

3. When the property taken is an automobile, firearm, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow or pig.

SEC. 7. Section 487h is added to the Penal Code, to read:

487h. (a) Every person who feloniously steals or takes any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, is guilty of grand theft, and upon conviction thereof, is punishable by imprisonment in the state prison for two, three, or four years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in the county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) Any person who, having been convicted of two previous violations of subdivision (a), former paragraph (3) of Section 487, involving an automobile, or Section 10851 of the Vehicle Code, or any combination, is subsequently convicted of a violation of subdivision (a) is punishable for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(c) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a) or (b), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a), the offense set forth in former paragraph (3) of Section 487, involving a vehicle, or the offense set forth in Section 10851 of the Vehicle Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses, nor shall an alternative sentence in county jail be given pursuant to Section 18.

(d) If the court grants probation under subdivision (c), it shall specify on the court record the reason or reasons for that order.

(e) This section shall remain in effect only until January 1, 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. 8. Section 499b.1 of the Penal Code is amended to read:

499b.1. (a) Any person who, having been convicted of a previous violation of Section 10851 of the Vehicle Code, or of subdivision (3) of Section 487, involving a vehicle or vessel, and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for such offense, is subsequently convicted of a violation of Section 499b, involving a vehicle or vessel, is punishable for such subsequent offense by imprisonment in the county jail not exceeding one year or the state prison for 16 months, two, or three years.

(b) Any person convicted of a violation of Section 499b, who has

been previously convicted under charges separately brought and tried two or more times of a violation of Section 499b, all such violations involving a vehicle or vessel, and who has been imprisoned therefore as a condition of probation or otherwise at least once, is punishable by imprisonment in the county jail for not more than one year or in the state prison for 16 months, two, or three years.

(c) Any person convicted of a violation of Section 499b, who has been previously convicted under charges separately brought and tried three or more times of a violation of Section 499b, all the violations involving a vehicle or vessel, is punishable by imprisonment in the state prison for 16 months, two, or three years.

(d) Any person convicted of a violation of Section 499b, who has twice been previously convicted under charges separately brought and tried of a violation of Section 499b, all the violations involving a vehicle or vessel, and who has been previously convicted of a violation of Section 487h, former paragraph (3) of Section 487, involving an automobile, or Section 10851 of the Vehicle Code, is punishable by imprisonment in the state prison for 16 months, two, or three years.

(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. 8.1. Section 499b.1 is added to the Penal Code, to read:

499b.1. (a) Any person who, having been convicted of a previous violation of Section 10851 of the Vehicle Code, or of subdivision (3) of Section 487, involving a vehicle or vessel, and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for such offense, is subsequently convicted of a violation of Section 499b, involving a vehicle or vessel, is punishable for such subsequent offense by imprisonment in the county jail not exceeding one year or the state prison for 16 months, two, or three years.

(b) Any person convicted of a violation of Section 499b, who has been previously convicted under charges separately brought and tried two or more times of a violation of Section 499b, all such violations involving a vehicle or vessel, and who has been imprisoned therefore as a condition of probation or otherwise at least once, is punishable by imprisonment in the county jail for not more than one year or in the state prison for 16 months, two, or three years.

SEC. 9. Section 666.5 of the Penal Code is amended 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 or of Section 487h, 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 three, four, or five 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.

(c) 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. 9.1. 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.

SEC. 10. Section 666.7 is added to the Penal Code, to read:

666.7. (a) Every person who, having been twice previously convicted of receiving stolen property in violation of subdivision (1) of Section 496, involving any vehicle, trailer, or vessel, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of that offense involving any vehicle, trailer, or vessel, 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 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.

(c) 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. 11. Section 10851 of the Vehicle Code is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily to deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or

an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in the state prison for two, three, or four years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in the county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) Any person who, having been convicted of two previous violations of subdivision (a), former paragraph (3) of Section 487 of the Penal Code, involving an automobile, or Section 10851 of the Vehicle Code, is subsequently convicted of a violation of subdivision (a) is punishable for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(c) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, four, or six years and by a fine of not more than ten thousand dollars ($10,000).

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a), (b), or (c), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a) or (c), the offense set forth in former paragraph (3) of Section 487 of the Penal Code, involving a vehicle, or the offense set forth in Section 487h of the Penal Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses, nor shall an alternative sentence in county jail be given pursuant to Section 18.

(2) If the court grants probation under paragraph (1), it shall specify on the court record the reason or reasons for that order.

(e) In any prosecution for a violation of subdivision (a) or (c), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(f) The existence of any fact which makes subdivision (c) applicable shall be alleged in the accusatory pleading, and either

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

(g) 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. 11.1. Section 10851 is added to the Vehicle Code, to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, three, or four years or by a fine of not more than ten thousand dollars ($10,000), or by both the fine and imprisonment.

(c) In any prosecution for a violation of subdivision (a) or (b), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

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

SEC. 12. Section 653.5 of the Welfare and Institutions Code is amended to read

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall

be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

The provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which

the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(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. 12.1. Section 653.5 of the Welfare and Institutions Code is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(7) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(8) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(9) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for the offenses listed in paragraph (6), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(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. 12.2. Section 653.5 is added to the Welfare and Institutions Code, to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile

court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

The provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1993, unless a later enacted statute which is enacted before January 1, 1993, changes that date.

SEC. 12.3. Section 653.5 is added to the Welfare and Institutions Code, to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall

be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for the offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set

forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, changes that date.

SEC. 12.5. Sections 4.1, 5.1, 6.1, 8.1, 9.1, and 11.1 of this act shall become operative on January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, changes that date.

SEC. 12.6. Sections 12.1 and 12.3 of this bill incorporate amendments to Section 653.5 of the Welfare and Institutions Code proposed by both this bill and SB 1275. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) SB 1275 amends Section 653.5 of the Welfare and Institutions Code, (3) this bill amends, repeals, and adds Section 653.5 to the Welfare and Institutions Code, and (4) this bill is enacted after SB 1275, in which case Sections 12 and 12.2 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 931

An act to add Chapter 6.8 (commencing with Section 8930) to Part 6 of the Education Code, and to repeal and add Article 3.6 (commencing with Section 11335) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Chapter 6.8 (commencing with Section 8930) is added to Part 6 of the Education Code, to read:

CHAPTER 6.8. NEW CHANCE PROGRAM

8930. The Legislature hereby finds and declares that teenage mothers do not receive the comprehensive services needed to prevent them from dropping out of school and applying for public assistance or in addressing comprehensively the needs of those who have dropped out and gone on welfare. The Legislature finds that studies have demonstrated that teenage mothers are more likely to drop out of school than other parents, and that more than half of teenage mothers drop out of school prior to the birth of their child. Studies have also demonstrated that teenage mothers are much more likely to deliver infants who are seriously underweight, resulting in higher medical costs and infant mortality rates.

The Legislature further finds and declares that the connection between teenage parenting and long-term welfare dependency is well documented by social science research. These studies show that over one-third of teenage parents who receive public assistance will require that assistance for 10 or more years. An estimated 60 percent of parents currently receiving public assistance were once teenage parents, which is a significantly higher rate than that for the general population. In total, these findings indicate that teen parents who have dropped out of school and become AFDC recipients require special services to return to school, health, parenting and family planning instruction and other services, and vocational training opportunities that will lead to the ability to support her family.

The Legislature further finds and declares that the New Chance

Program developed by the Manpower Development Research Corporation, a public nonprofit corporation based in the State of New York, offers the state a unique opportunity to invest a small amount of state funds to test the effectiveness of providing a variety of education, health, personal and social development, and employment services, including child care and case management services, to teenage parents in an effort to improve their current and prospective health, educational, and employment status. To the maximum extent possible, services shall be provided onsite and at a single location. The Legislature also finds that the New Chance Program has also been designed to assist the children of young mothers-to-be to develop cognitively and emotionally, thereby reducing the likelihood that these children will develop a lifetime dependency on public assistance

8931. (a) There is hereby established the New Chance Program, which shall be administered for a three-year period.

(b) Up to four program sites may elect to participate in the program to implement and test the effectiveness of the program model designed by the Manpower Development Research Corporation.

(c) The State Department of Education shall administer resources provided by the state during that three-year period, in cooperation with the State Department of Social Services and the Manpower Development Research Corporation.

(d) The allocation and use of state funds appropriated for the purposes of the program shall be conditioned upon the availability of funds provided by the Manpower Development Research Corporation.

8932. Each participating program site, in participating in the New Chance Program, shall give priority to individuals who meet all of the following criteria:

(a) The individual is a recipient of AFDC assistance or is a member of a family which is receiving AFDC assistance.

(b) The individual is a high school dropout.

(c) The individual is not younger than 17 years of age or older than 21 years of age.

(d) The individual began parenting prior to the individual's 20th birthday

8933. (a) Each program site shall ensure that a minimum of 100 teenage mothers are provided the following range of services:

(1) Education geared to achievement of a high school diploma or its equivalent.

(2) Employability development, career exposure, work experience, and job skills training.

(3) Maternal and pediatric health services, education in contraceptive practices with the goal of pregnancy prevention, acquired immune deficiency syndrome and substance abuse prevention programs, parenting programs, and life skills and self-esteem development programs.

(4) Support services including, but not limited to, child care and individual and group counseling programs.

(b) To the extent possible, the services specified in subdivision (a) shall be provided onsite.

8934. The New Chance Program shall be evaluated by using random assignment of eligible applicants to New Chance Program services or to a control group of persons who are not eligible for those services, but who shall be eligible for other community services. The evaluations shall measure the effectiveness of the program relating to each of the following:

(a) Advanced educational achievement.

(b) The acquisition of employment.

(c) Reductions in public assistance dependency.

(d) The acquisition of improved health habits and opportunities to utilize preventative and acute health care programs.

(e) Improved parenting skills.

8935. The State Department of Education shall ensure that each program site coordinates existing resources and programs available to school districts for teenage parents with those made available at the program site. To the extent feasible, these existing resources shall be utilized to reduce the costs incurred at the program sites. The department shall also encourage program sites to develop additional funding sources for the program from public and private agencies and organizations, or any other appropriate source.

8936. The State Department of Education shall seek the approval of the Job Training Coordinating Council to utilize education coordination grant funds made available under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) which are set aside for the Greater Avenues for Independence (GAIN) program to pay for the state share of the New Chance Program costs for the second and third years of operation. The first year of operating funds shall come from discretionary funds made available under the federal Carl D. Perkins Vocational Education Act (P.L. 98-524). The availability of these funds shall be conditioned upon the receipt of additional funds from the Manpower Development Research Corporation. In the event that federal funding from these sources is not available for the full duration of the program, it is the intent of the Legislature that the program shall be funded through the department's regular budget process.

SEC. 2. Article 3.6 (commencing with Section 11335) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 3. Article 3.6 (commencing with Section 11335) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.6. New Chance Program

11335. The department shall cooperate with the State Department of Education in the provision and coordination of services to teenage parents under the New Chance Program established pursuant to Chapter 6.8 (commencing with Section 8930) of Part 6 of the Education Code. Notwithstanding Section 11310, participation in the New Chance Program shall satisfy any mandatory participation requirement for the Greater Avenues for Independence (GAIN) program. The department shall cooperate with the State Department of Education to determine the acceptable levels of participation for purposes of Section 11320.6.

11336. County GAIN programs shall cooperate with the department and the State Department of Education in the provision and coordination of services under the New Chance Program at program sites. To the extent consistent with the county plan adopted pursuant to Section 11320.2, county programs shall provide supportive services, and, if not available from other sources, education and training services, to teenage parents who participate in the New Chance Program. These services shall be administered in a manner which is consistent with services provided under the New Chance Program at program sites.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because funding is provided in the annual Budget Act pursuant, in part, to Section 14.5 of Chapter 1025 of the Statutes of 1985, 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 932

An act to add Sections 27562 and 30150.7 to the Streets and Highways Code, relating to highways.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 27562 is added to the Streets and Highways Code, to read:

27562. Whenever the district offers for sale to the public coupons or commuter ticket books redeemable for the toll on the Golden Gate Bridge, the district shall make the coupons or commuter ticket

books available at locations convenient to the public, which shall not be limited to toll bridge facilities, and by mail.

SEC. 2. Section 30150.7 is added to the Streets and Highways Code, to read:

30150.7. Whenever the department offers for sale to the public coupons or commuter ticket books redeemable for the toll on any toll bridge located within the region under the jurisdiction of the Metropolitan Transportation Commission, as specified in Section 66502 of the Government Code, the department shall make the coupons or commuter ticket books available at locations convenient to the public, which shall not be limited to toll bridge facilities, and by mail.

SEC. 3. (a) The Department of Transportation, with the assistance and cooperation of the Metropolitan Transportation Commission, shall study the feasibility of making any toll bridge coupon or commuter ticket book offered for sale to the public within the region under the jurisdiction of the Metropolitan Transportation Commission redeemable at any toll bridge within that region for which the same toll is charged. The study shall evaluate prohibiting the sale of commuter ticket books at toll bridge toll booths and shall consider the convenience to commuters and the public and the cost effectiveness of these matters in addition to the findings, conclusions, and recommendations of the department. The department shall consider the permissibility of commuter tickets valid on any such bridge under existing toll bridge bond resolutions.

(b) The department shall transmit the report to the Legislature on or before July 1, 1990.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 933

An act to repeal Article 10 (commencing with Section 1861) of Chapter 9 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Article 10 (commencing with Section 1861) of Chapter 9 of Part 2 of Division 1 of the Insurance Code, as added by Chapter 1639 of the Statutes of 1988, is repealed.

CHAPTER 934

An act relating to water facilities, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. (a) Pursuant to Section 13466 of the Water Code, the State Water Resources Control Board is hereby authorized to make a loan in the amount of one hundred thousand dollars ($100,000) 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 Buena Vista Water Storage District for a groundwater feasibility study.

(b) The board, 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 935

An act to add Section 12670 to the Water Code, relating to flood control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 12670 is added to the Water Code, to read:

12670. The Cache Creek Settling Basin Unit of the plan of improvement for flood control and other purposes on Cache Creek is hereby adopted and authorized substantially in accordance with the recommendations of the Chief of Engineers, in the report dated

April 27, 1981, and adopted and authorized by the Act of Congress approved November 17, 1986 (Public Law 99-662), at an estimated cost to the state of such sums as may be appropriated for state participation by the Legislature upon the recommendation and advice of the Reclamation Board. This authorization shall not be deemed to confer preference on this project over the needs of other statewide programs in appropriation of available funds. Notwithstanding Section 12585.5, the state shall pay all of the nonfederal costs required by Public Law 99-662. Notwithstanding Sections 12642 and 12828, the state shall maintain and operate the unit and, through the Reclamation Board, shall hold the United States harmless from damages due to the construction of the works. Notwithstanding Section 12847, the state may pay all of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the unit.

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:

The Yolo Bypass is the critical feature of the Sacramento River Flood Control Project. Its proper functioning requires that its capacity not be reduced by sediment inflow from Cache Creek. The existing capacity of Cache Creek Settling Basin is exhausted and must be increased. This act will authorize that increase and protect the public safety of the Sacramento Valley. It is necessary, therefore, that this act take effect immediately.

CHAPTER 936

An act to amend Section 1203 of the Penal Code, and to amend Sections 725 and 727 of the Welfare and Institutions Code, relating to courts.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized

whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court

shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with such a weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a deadly weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machinegun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within subdivision (e), 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.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer shall obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate

Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC 1.5. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be

required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit

one or more of those crimes and was armed with such a weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288.5, or 288a, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a deadly weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a

short-barreled shotgun under Section 12020, a machinegun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within subdivision (e), 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.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer shall obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 2. Section 725 of the Welfare and Institutions Code is amended to read:

725. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

(a) If the court has found that the minor is a person described by

Section 601 or 602, it may, without adjudging the minor a ward of the court, place, the minor on probation, under the supervision of the probation officer, for a period not to exceed six months. If the court has found that the minor is a person described by Section 602 because the minor violated an offense specified in subdivision (b) of Section 707, any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or Section 12220 of the Penal Code, this subdivision shall apply only in unusual cases when the court determines that the interests of justice would be best served and states reasons on the record for that determination.

(b) If the court has found that the minor is a person described by Section 601 or 602, it may order and adjudge the minor to be a ward of the court.

SEC. 3. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or Section 602 the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court.

In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of justice would best be served and states reasons on the record for that determination.

In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The home of a relative.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(b) Where the court has ordered a specific minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, provided that all the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of subdivisions (a) and (b), including orders to appear before a county financial evaluation officer.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 2212. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 1203 of the Penal Code, and (3) this bill is enacted after AB 2212, 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 only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 937

An act to add Section 6366.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 6366.5 is added to Revenue and Taxation Code, to read:

6366.5. (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 in this state of endangered animal and plant species if both the seller and the purchaser are nonprofit zoological societies.

(b) For purpose of this section, "endangered animal and plant species" means animals and plants which are (1) identified as endangered under a Species Survival Plan; (2) listed in the Endangered Species Act; (3) listed as endangered by the Convention for International Trade of Endangered Species; (4) listed as endangered by the United States Department of Fish and Wildlife or the United States Department of Agriculture; or (5) listed as endangered by the International Union for Conservation of Nature and Natural Resources.

SEC. 2. 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. 3. 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.

CHAPTER 938

An act to add Section 25503.2 to the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

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

(a) The current hazardous materials data reporting system creates a hodgepodge of data that cannot easily be analyzed. Businesses that generate, handle, store, and dispose of hazardous materials are required to submit data at different time intervals and to different state, federal, and local agencies in a variety of formats. Reporting is often duplicative, late, and inaccurate. This multiple reporting is also very costly to businesses and governmental agencies.

(b) This act is intended to be the first step, in a three-step process, to increase the compliance and accuracy of current reporting forms, decrease data processing costs for both businesses and governmental agencies, and to allow the state to plan for future hazardous waste treatment and disposal capacity to accommodate the needs of businesses. This three-step process includes the following actions:

(1) The development of a hazardous materials compliance assistance manual.

(2) The adoption, to the extent possible, of a single filing date for the numerous hazardous materials reporting forms

(3) The creation and use of a single comprehensive hazardous materials reporting form for businesses to submit to the appropriate state and local agencies.

(c) Neither the state nor businesses that generate, handle, store, and dispose of hazardous materials have a single comprehensive hazardous materials inventory needed to adequately measure and reduce the amount of hazardous waste generated. Consequently, the state cannot track all of its hazardous materials, and businesses cannot identify where hazardous materials can be reduced.

SEC. 2. Section 25503.2 is added to the Health and Safety Code, to read:

25503.2. (a) The Environmental Affairs Agency, with the guidance of the Chemical Emergency Planning and Response Commission, as specified in Section 25503.1, shall develop a hazardous materials compliance assistance manual, which shall include all of the following:

(1) A copy of each form required by federal and state agencies for the reporting of activities concerning hazardous materials and criteria as to who is required to file the form.

(2) The due date for each form specified in paragraph (1).

(3) The address, telephone number, and contact person of each federal and state agency which requires the reporting forms specified in paragraph (1).

(4) An insert which contains a copy of each form used for the reporting of activities concerning hazardous materials required by each local agency under whose jurisdiction the person requesting the manual conducts business, including the due date for each form, and the address, telephone number, and contact person of each local agency.

(5) Any other information which the Environmental Affairs Agency determines to be necessary.

(b) On or before July 1, 1991, the Environmental Affairs Agency, with the guidance of the Chemical Emergency Planning and Response Commission, shall make known to businesses and other interested parties, and distribute, upon request, the hazardous materials compliance assistance manual developed pursuant to subdivision (a). The Secretary of the Environmental Affairs Agency may impose a fee for the manual to pay for all costs related to the development, maintenance, reproduction, and distribution of the manual.

(c) On or before July 1, 1991, the Environmental Affairs Agency, with the guidance of the Chemical Emergency Planning and Response Commission, shall submit a report to the Legislature on the status of the development and distribution of the hazardous materials compliance assistance manual program. The report shall also contain a discussion of the feasibility of the adoption of a single filing date for state and local hazardous materials reporting forms, including recommendations for implementation of a single filing date for these forms, and the use of a single comprehensive hazardous materials reporting form for businesses to submit to the appropriate state and local agencies.

CHAPTER 939

An act to amend Sections 19596.5 and 19596 6 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 19596.5 of the Business and Professions Code, as amended by Section 2 of Chapter 74 of this Statutes of 1989, is amended to read:

19596.5. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing

meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure, and may, with the approval of the Department of Food and Agriculture, authorize any county fair, district agricultural association fair, or citrus fruit fair in the northern zone eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting or authorized pursuant to Section 19596.7, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the northern zone, if all of the following conditions are met:

(1) An organization described in subdivision (c) of Section 19596.4 has executed agreements, which are approved by the board, with the association conducting a racing meeting in the northern zone and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted. Notwithstanding any other provision of law or any agreement under this subdivision, for purposes of determining license fees and breakage at the racetrack where the racing meeting is conducted, wagers at a satellite wagering facility shall not be included in the conventional or exotic pools of the association conducting the racing meeting.

(2) The horsemen's organization which represents the horsemen at the association which conducts the racing meeting on which wagers are accepted consents to the acceptance of wagers at the satellite wagering facility, except that the association or fair operating the satellite wagering facility may appeal the withholding of consent to the board which may determine that consent is not required.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering has been approved by the board

(5) Except as provided in Section 19596.9, any fair which conducts satellite wagering shall conduct wagering on all racing offered to the satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association. Any association that operates a satellite wagering facility may accept an audiovisual signal, but is not required to do so.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses which would

be incurred regardless of the acceptance of night wagers shall be considered.

(b) Notwithstanding subdivision (a), the live audiovisual signal of night harness or quarter horse races in the central or southern zone may be offered to satellite wagering facilities in the northern zone, provided, however, (1) that racing associations may accept that audiovisual signal, but are not required to do so, and (2) that satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be

distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition to the distributions in paragraph (1) or (2), on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent of the total amount handled by the satellite wagering facility shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) On thoroughbred meetings only, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(e) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses at the association conducting the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(f) Except as provided in subdivisions (g) and (h), all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of

issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at fairs.

(4) For support purposes of fairs generally.

(g) Seven and one-half percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in the General Fund.

(h) Up to 10 percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of subdivision (i). The department shall annually determine the percentage of revenues payable to the special account under this subdivision based on the amount necessary to achieve the purposes of subdivision (i).

(i) It is the intent of the Legislature that funds allocated pursuant to subdivision (h) be used primarily at fair racing meetings in the northern zone with a daily average handle of more than three hundred thousand dollars ($300,000). The Legislature further finds that its intent is that these allocations be used to bring the purses at these fairs, exclusive of purses for stakes races and special events, to a level of at least 80 percent of purses for similar classes of horses at private racing associations in the northern zone. The funds shall be used among all breeds. For fair racing meetings in the northern zone

with a daily average handle of three hundred thousand dollars ($300,000) or less, it is the intent of the Legislature to bring the purses to a level of at least 25 percent of purses for similar classes of horses at private racing associations in the northern zone.

SEC. 2. Section 19596.5 of the Business and Professions Code, as amended by Section 2 of Chapter 74 of the Statutes of 1989, is amended to read:

19596.5. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure, and may, with the approval of the Department of Food and Agriculture, authorize any county fair, district agricultural association fair, or citrus fruit fair in the northern zone eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting or authorized pursuant to Section 19596.7, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the northern zone, if all of the following conditions are met:

(1) An organization described in subdivision (c) of Section 19596.4 has executed agreements, which are approved by the board, with the association conducting a racing meeting in the northern zone and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted. Notwithstanding any other provision of law or any agreement under this subdivision, for purposes of determining license fees and breakage at the racetrack where the racing meeting is conducted, wagers at a satellite wagering facility shall not be included in the conventional or exotic pools of the association conducting the racing meeting.

(2) The horsemen's organization which represents the horsemen at the association which conducts the racing meeting on which wagers are accepted consents to the acceptance of wagers at the satellite wagering facility, except that the association or fair operating the satellite wagering facility may appeal the withholding of consent to the board which may determine that consent is not required.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering has been approved by the board.

(5) Except as provided in Section 19596.9, any fair which conducts satellite wagering shall conduct wagering on all racing offered to the satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or night meeting, as

determined by the board, and, if sustaining a loss on either a day meeting or night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association. Any association that operates a satellite wagering facility may accept an audiovisual signal, but is not required to do so.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses which would be incurred regardless of the acceptance of night wagers shall be considered.

(b) Notwithstanding subdivision (a), the live audiovisual signal of night harness or quarter horse races in the central or southern zone may be offered to satellite wagering facilities in the northern zone, provided, however, (1) that racing associations may accept that audiovisual signal, but are not required to do so, and (2) that satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, the amount of actual operating expenses, as determined by the board, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of

Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition to the distributions in paragraph (1) or (2), on thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility shall be allocated to the facility for promotion of that meeting's program. For harness, quarter horse, and mixed breed meetings, 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities.

(4) In addition to the distributions in paragraphs (1), (2), and (3), on thoroughbred meetings only, four-tenths of 1 percent of the total amount handled at each satellite wagering facility shall be allocated to the association providing the racing program to reimburse it for any costs of offsite stabling and vanning which are required pursuant to Section 19535. The amount of the reimbursement payable to an association for offsite stabling shall not exceed the actual cost to the association of maintaining stalls at its racetrack plus the actual costs incurred by the association to provide vanning and transportation of racehorses from offsite stabling facilities to its racetrack.

(5) In addition to the distributions in paragraphs (1), (2), and (3), on fair meetings only, four-tenths of 1 percent of the total amount handled at each satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this paragraph, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this paragraph, "actual cost" does not

include fixed overhead or administrative expenses which would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(6) Any of the promotional funds distributed pursuant to paragraph (3) that are not expended in the year in which they are collected may be expended in the following year and, if promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(7) Any of the stabling and vanning reimbursement funds distributed pursuant to paragraph (4) or (5) that are not expended within 90 days of the end of the meeting at which they are collected shall be reallocated for promotion of the program at satellite wagering facilities, as provided in paragraph (3).

(8) Additionally, on thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) On thoroughbred meetings only, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(e) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses at the association conducting the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(f) Except as provided in subdivisions (g) and (h), all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2).

(1) For repayment of the principal of, interest on, and costs of

issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at fairs.

(4) For support purposes of fairs generally.

(g) Seven and one-half percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in the General Fund.

(h) Up to 10 percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of subdivision (i). The department shall annually determine the percentage of revenues payable to the special account under this subdivision based on the amount necessary to achieve the purposes of subdivision (i).

(i) It is the intent of the Legislature that funds allocated pursuant to subdivision (h) be used primarily at fair racing meetings in the northern zone with a daily average handle of more than three hundred thousand dollars ($300,000). The Legislature further finds that its intent is that these allocations be used to bring the purses at these fairs, exclusive of purses for stakes races and special events, to a level of at least 80 percent of purses for similar classes of horses at private racing associations in the northern zone. The funds shall be used among all breeds. For fair racing meetings in the northern zone

with a daily average handle of three hundred thousand dollars ($300,000) or less, it is the intent of the Legislature to bring the purses to a level of at least 25 percent of purses for similar classes of horses at private racing associations in the northern zone.

(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. 3. Section 19596.5 of the Business and Professions Code, as amended by Section 2 of Chapter 74 of the Statutes of 1989, is amended to read:

19596.5. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure, and may, with the approval of the Department of Food and Agriculture, authorize any county fair, district agricultural association fair, or citrus fruit fair in the northern zone eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting or authorized pursuant to Section 19596.7, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the northern zone, if all of the following conditions are met:

(1) An organization described in subdivision (c) of Section 19596.4 has executed agreements, which are approved by the board, with the association conducting a racing meeting in the northern zone and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted. Notwithstanding any other provision of law or any agreement under this subdivision, for purposes of determining license fees and breakage at the racetrack where the racing meeting is conducted, wagers at a satellite wagering facility shall not be included in the conventional or exotic pools of the association conducting the racing meeting.

(2) The horsemen's organization which represents the horsemen at the association which conducts the racing meeting on which wagers are accepted consents to the acceptance of wagers at the satellite wagering facility, except that the association or fair operating the satellite wagering facility may appeal the withholding of consent to the board which may determine that consent is not required.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering has been approved by the board.

(5) Except as provided in Section 19596.9, any fair which conducts

satellite wagering shall conduct wagering on all racing offered to the satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association. Any association that operates a satellite wagering facility may accept an audiovisual signal, but is not required to do so.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses which would be incurred regardless of the acceptance of night wagers shall be considered.

(b) Notwithstanding subdivision (a), the live audiovisual signal of night harness or quarter horse races in the central or southern zone may be offered to satellite wagering facilities in the northern zone, provided, however, (1) that racing associations may accept that audiovisual signal, but are not required to do so and (2) that satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4.0 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and 0.4 of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3.0 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization

described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition to the distributions in paragraph (1) or (2), on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent of the total amount handled by the satellite wagering facility shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, 0.33 of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) On thoroughbred meetings only, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(e) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses at the association conducting the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid

at the racing meeting.

(f) Except as provided in subdivisions (g) and (h), all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at fairs.

(4) For support purposes of fairs generally.

(g) Seven and one-half percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in the General Fund.

(h) Up to 10 percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of subdivision (i). The department shall annually determine the

percentage of revenues payable to the special account under this subdivision based on the amount necessary to achieve the purposes of subdivision (i).

(i) It is the intent of the Legislature that funds allocated pursuant to subdivision (h) be used primarily at fair racing meetings in the northern zone with a daily average handle of more than three hundred thousand dollars ($300,000). The Legislature further finds that its intent is that these allocations be used to bring the purses at these fairs, exclusive of purses for stakes races and special events, to a level of at least 80 percent of purses for similar classes of horses at private racing associations in the northern zone. The funds shall be used among all breeds. For fair racing meetings in the northern zone with a daily average handle of three hundred thousand dollars ($300,000) or less, it is the intent of the Legislature to bring the purses to a level of at least 25 percent of purses for similar classes of horses at private racing associations in the northern zone.

(j) This section shall become operative on January 1, 1992.

SEC. 4. Section 19596.6 of the Business and Professions Code, as amended by Chapter 210 of the Statutes of 1989, is amended to read:

19596 6 (a) Notwithstanding any other provision of law, subject to the conditions and limitations set forth in this section and Section 19596.7, the following entities in the central or southern zone are eligible to be licensed to operate a satellite wagering facility for wagering on races conducted in the central or southern zone:

(1) Any county fair, district agricultural association fair, or citrus fruit fair which conducted general fair activities in 1986 within the central or southern zone, and which is eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting, may locate a satellite wagering facility at its fairgrounds.

(2) Any association licensed to conduct a racing meeting in the central or southern zone.

(b) The board may authorize an eligible association or, with the approval of the Department of Food and Agriculture, an eligible fair, to operate a satellite wagering facility under all of the following conditions:

(1) A racing association licensed to conduct a racing meeting shall conduct satellite wagering only within its racing inclosure.

(2) An organization described in subdivision (c) of Section 19596.4 has executed an agreement approved by the board with the association conducting a racing meeting and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility are included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering have been approved by the board.

(5) Any fair that operates a satellite wagering facility shall conduct wagering on all racing conducted that is offered to that satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or a night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or a night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association. Any association that operates a satellite wagering facility may accept an audiovisual signal, but is not required to do so.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses of the satellite wagering facility which would be incurred regardless of the acceptance of night wagers shall be considered.

(6) Notwithstanding subdivision (a), the live audiovisual signal of night harness or quarter horse races in the northern zone may be offered to satellite wagering facilities in the central and southern zones, except that racing associations may accept that audiovisual signal, but are not required to do so, and satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) Notwithstanding subdivision (a) or (b), a satellite wagering facility may not be located within the County of Los Angeles or within the County of Orange, except as follows:

(1) If all other conditions in subdivision (b) are met, the Fiftieth District Agricultural Association may be authorized to operate a satellite wagering facility upon its fairgrounds in the City of Lancaster and to accept wagers on races conducted in the southern and central zones

(2) If all other conditions are met, any fair or association licensed to conduct racing meetings in the County of Los Angeles and any racing association other than a fair which is licensed to conduct racing in the County of Orange may be authorized to operate a satellite wagering facility for the limited purpose of conducting satellite wagering on races conducted at the Twenty-Second District Agricultural Association fairgrounds at Del Mar in the County of San Diego, except that, when a fair in Orange County is licensed for a racing meeting, a satellite wagering facility located within the racing inclosure where the racing meeting is conducted may not operate on the days that racing is conducted.

(d) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section

shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, and 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition, on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year

shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(e) On thoroughbred meetings only, the funds remaining after distribution of the amounts in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting. All of the funds distributed for purses from satellite wagering facilities shall go to the purse program of the association conducting the racing meeting, except that all sums for distribution as purses at satellite wagering facilities which are racing fairs in the County of Los Angeles shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings in Los Angeles and Orange Counties. The department shall distribute these funds on an equal basis to each racing fair in these counties for distribution in all nonstakes races and among all breeds.

(f) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses participating in the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(g) Notwithstanding subdivision (e), when satellite wagering is conducted on thoroughbred races at associations or fairs, an amount, not to exceed 1.25 percent of the total amount handled by all satellite wagering facilities, shall be deducted from the funds otherwise allocated for distribution as commissions, purses, and owners' premiums and instead distributed to an organization formed and operated by thoroughbred racing associations, fairs conducting thoroughbred racing, and the organization representing thoroughbred horsemen, with each party having meaningful representation on the board of the organization, to administer, pursuant to supervision of the board, a fund to provide reimbursement for offsite stabling at board-approved auxiliary training facilities of licensed racing associations for additional stalls beyond the number of usable stalls the association is required to make available and maintain pursuant to Section 19535, and for the

vanning of starters from these additional stalls on race days for thoroughbred horses.

(h) The funds distributed to the organization formed pursuant to subdivision (g) shall be used to reimburse racing associations who are operating offsite stabling providing additional stalls for the incremental increase in operating costs directly resulting from providing the stabling. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity operating the offsite stabling facility where the injury occurred, shall be liable for any injury to any jockey, exercise person, owner, trainer, or any employee or agent thereof, or any horse occurring at any offsite stabling facility.

The funds shall also reimburse horsemen for the cost of vanning starting horses from a board-approved auxiliary training facility operated by a licensed racing association to the track conducting the racing meeting. Horsemen may use carriers of their own choice, except that the amount of reimbursement to horsemen is limited to the amount that the organization determines is generally charged by carriers for vanning from the auxiliary training facility to the track conducting the racing meeting. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity actually engaged in vanning horses, shall be liable for any injury occurring to any individual or horse during vanning from an offsite stabling facility.

The training facilities and amenities provided for offsite stabling and training purposes shall be equivalent in character to those provided during racing meetings of the association.

Upon the request of any party within the organization, the board shall adjudicate any dispute regarding costs, or other matters relating to the furnishing of offsite stabling or vanning. The board may, if necessary, appoint an independent auditor to assist in the resolution of disputes. The auditor shall be reimbursed from the funds of the organization.

The organization may maintain a reserve fund of up to 10 percent of the total estimated annual vanning and stabling costs. In addition to the reserve fund, if the funds generated for offsite stabling and vanning are insufficient to fully reimburse racing associations for expenses incurred during the offsite vanning and stabling program, the organization is entitled to accumulate sufficient funds to fully reimburse these expenses.

The amount initially deducted and distributed to the organization shall be 1.25 percent of the total amount handled by satellite wagering facilities authorized under this section on thoroughbred racing, but that allocation may be adjusted by the board, in its discretion, but the adjusted amount may not exceed 1.25 percent of the total amount handled by satellite wagering facilities, to pay expenses and maintain the reserve fund for the continuing support

of the program.

(i) Forty-two percent of the revenue payable to the state from license fees from satellite wagering facilities located at fairs under the authority of this section shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at the fair.

(4) For support purposes of the fair generally.

(j) The remaining 58 percent of the revenues payable to the state from satellite wagering facilities at fairs and all revenues payable to the state from satellite wagering facilities located under the authority of this section at sites other than fairs shall be deposited in the General Fund.

(k) Notwithstanding subdivision (b) of Section 19641, the state shall receive as additional license fees 50 percent of any redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility, subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, and

the funds shall be deposited in the General Fund. The remaining 50 percent of redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility shall be paid to a welfare fund established by the horsemen's organization contracting with the association conducting the racing meeting for the benefit of horsemen, and that organization shall make an accounting to the board within one calendar year of the receipt of the payment.

(*l*) Of the total breakage arising in a parimutuel pool which includes wagers at satellite wagering facilities, that percentage of breakage equal to the percentage that wagers placed at satellite wagering facilities constitute of the total parimutuel pool shall be distributed equally among the state as an additional license fee deposited in the General Fund, the track conducting the racing meeting as a commission, and the horsemen participating in the racing meeting in the form of purses. The remainder of the breakage shall be distributed in the same manner as breakage arising from wagers at the track conducting the racing meeting.

(m) Notwithstanding subdivision (f) of Section 19596.5 and subdivision (i) of this section, if the revenues deposited in the separate account pursuant to those subdivisions (f) and (i) are in excess of the eleven million dollars ($11,000,000) in any fiscal year, one-half of the amount in excess of eleven million dollars ($11,000,000) shall be transferred to the General Fund.

SEC. 5. Section 19596.6 of the Business and Professions Code, as amended by Chapter 210 of the Statutes of 1989, is amended to read:

19596.6. (a) Notwithstanding any other provision of law, subject to the conditions and limitations set forth in this section and Section 19596.7, the following entities in the central or southern zone are eligible to be licensed to operate a satellite wagering facility for wagering on races conducted in the central or southern zone:

(1) Any county fair, district agricultural association fair, or citrus fruit fair which conducted general fair activities in 1986 within the central or southern zone, and which is eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting, may locate a satellite wagering facility at its fairgrounds.

(2) Any association licensed to conduct a racing meeting in the central or southern zone.

(b) The board may authorize an eligible association or, with the approval of the Department of Food and Agriculture, an eligible fair, to operate a satellite wagering facility under all of the following conditions:

(1) A racing association licensed to conduct a racing meeting shall conduct satellite wagering only within its racing inclosure.

(2) An organization described in subdivision (c) of Section 19596.4 has executed an agreement approved by the board with the association conducting a racing meeting and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at

the satellite wagering facility are included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering have been approved by the board.

(5) Any fair that operates a satellite wagering facility shall conduct wagering on all racing conducted that is offered to that satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or a night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or a night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association. Any association that operates a satellite wagering facility may accept an audiovisual signal, but is not required to do so.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses of the satellite wagering facility which would be incurred regardless of the acceptance of night wagers shall be considered.

(6) Notwithstanding subdivision (a), the live audiovisual signal of night harness or quarter horse races in the northern zone may be offered to satellite wagering facilities in the central and southern zones, except that racing associations may accept that audiovisual signal, but are not required to do so, and satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) Notwithstanding subdivision (a) or (b), a satellite wagering facility may not be located within the County of Los Angeles or within the County of Orange, except as follows:

(1) If all other conditions in subdivision (b) are met, the Fiftieth District Agricultural Association may be authorized to operate a satellite wagering facility upon its fairgrounds in the City of Lancaster and to accept wagers on races conducted in the southern and central zones.

(2) If all other conditions are met, any fair or association licensed to conduct racing meetings in the County of Los Angeles and any racing association other than a fair which is licensed to conduct racing in the County of Orange may be authorized to operate a satellite wagering facility for the limited purpose of conducting satellite wagering on races conducted at the Twenty-Second District Agricultural Association fairgrounds at Del Mar in the County of San Diego, except that, when a fair in Orange County is licensed for a racing meeting, a satellite wagering facility located within the racing inclosure where the racing meeting is conducted may not operate on

the days that racing is conducted.

(d) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, and the amount of actual operating expenses, as determined by the board, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition, on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in subdivision (c) of Section

19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(e) On thoroughbred meetings only, the funds remaining after distribution of the amounts in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting. All of the funds distributed for purses from satellite wagering facilities shall go to the purse program of the association conducting the racing meeting, except that all sums for distribution as purses at satellite wagering facilities which are racing fairs in the County of Los Angeles shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings in Los Angeles and Orange Counties. The department shall distribute these funds on an equal basis to each racing fair in these counties for distribution in all nonstakes races and among all breeds.

(f) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses participating in the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(g) Notwithstanding subdivision (e), when satellite wagering is conducted on thoroughbred races at associations or fairs, an amount, not to exceed 1.25 percent of the total amount handled by all satellite wagering facilities, shall be deducted from the funds otherwise allocated for distribution as commissions, purses, and owners' premiums and instead distributed to an organization formed and operated by thoroughbred racing associations, fairs conducting thoroughbred racing, and the organization representing thoroughbred horsemen, with each party having meaningful representation on the board of the organization, to administer,

pursuant to supervision of the board, a fund to provide reimbursement for offsite stabling at board-approved auxiliary training facilities of licensed racing associations for additional stalls beyond the number of usable stalls the association is required to make available and maintain pursuant to Section 19535, and for the vanning of starters from these additional stalls on race days for thoroughbred horses.

(h) The funds distributed to the organization formed pursuant to subdivision (g) shall be used to reimburse racing associations who are operating offsite stabling providing additional stalls for the incremental increase in operating costs directly resulting from providing the stabling. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity operating the offsite stabling facility where the injury occurred, shall be liable for any injury to any jockey, exercise person, owner, trainer, or any employee or agent thereof, or any horse occurring at any offsite stabling facility.

The funds shall also reimburse horsemen for the cost of vanning starting horses from a board-approved auxiliary training facility operated by a licensed racing association to the track conducting the racing meeting. Horsemen may use carriers of their own choice, except that the amount of reimbursement to horsemen is limited to the amount that the organization determines is generally charged by carriers for vanning from the auxiliary training facility to the track conducting the racing meeting. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity actually engaged in vanning horses, shall be liable for any injury occurring to any individual or horse during vanning from an offsite stabling facility

The training facilities and amenities provided for offsite stabling and training purposes shall be equivalent in character to those provided during racing meetings of the association.

Upon the request of any party within the organization, the board shall adjudicate any dispute regarding costs, or other matters relating to the furnishing of offsite stabling or vanning. The board may, if necessary, appoint an independent auditor to assist in the resolution of disputes. The auditor shall be reimbursed from the funds of the organization

The organization may maintain a reserve fund of up to 10 percent of the total estimated annual vanning and stabling costs. In addition to the reserve fund, if the funds generated for offsite stabling and vanning are insufficient to fully reimburse racing associations for expenses incurred during the offsite vanning and stabling program, the organization is entitled to accumulate sufficient funds to fully reimburse these expenses.

The amount initially deducted and distributed to the organization shall be 1.25 percent of the total amount handled by satellite

wagering facilities authorized under this section on thoroughbred racing, but that allocation may be adjusted by the board, in its discretion, but the adjusted amount may not exceed 1.25 percent of the total amount handled by satellite wagering facilities, to pay expenses and maintain the reserve fund for the continuing support of the program.

(i) Forty-two percent of the revenue payable to the state from license fees from satellite wagering facilities located at fairs under the authority of this section shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at the fair.

(4) For support purposes of the fair generally.

(j) The remaining 58 percent of the revenues payable to the state from satellite wagering facilities at fairs and all revenues payable to the state from satellite wagering facilities located under the authority of this section at sites other than fairs shall be deposited in the General Fund.

(k) Notwithstanding subdivision (b) of Section 19641, the state shall receive as additional license fees 50 percent of any redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility, subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, and the funds shall be deposited in the General Fund. The remaining 50 percent of redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility shall be paid to a welfare fund established by the horsemen's organization contracting with the association conducting the racing meeting for the benefit of horsemen, and that organization shall make an accounting to the board within one calendar year of the receipt of the payment.

(*l*) Of the total breakage arising in a parimutuel pool which includes wagers at satellite wagering facilities, that percentage of breakage equal to the percentage that wagers placed at satellite wagering facilities constitute of the total parimutuel pool shall be distributed equally among the state as an additional license fee deposited in the General Fund, the track conducting the racing meeting as a commission, and the horsemen participating in the racing meeting in the form of purses. The remainder of the breakage shall be distributed in the same manner as breakage arising from wagers at the track conducting the racing meeting.

(m) Notwithstanding subdivision (f) of Section 19596.5 and subdivision (i) of this section, if the revenues deposited in the separate account pursuant to those subdivisions (f) and (i) are in excess of the eleven million dollars ($11,000,000) in any fiscal year, one-half of the amount in excess of eleven million dollars ($11,000,000) shall be transferred to the General Fund.

(n) 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. 6. Section 19596.6 of the Business and Professions Code, as amended by Chapter 210 of the Statutes of 1989, is amended to read:

19596.6. (a) Notwithstanding any other provision of law, subject to the conditions and limitations set forth in this section and Section 19596.7, the following entities in the central or southern zone are eligible to be licensed to operate a satellite wagering facility for wagering on races conducted in the central or southern zone:

(1) Any county fair, district agricultural association fair, or citrus fruit fair which conducted general fair activities in 1986 within the central or southern zone, and which is eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting, may locate a satellite wagering facility at its fairgrounds.

(2) Any association licensed to conduct a racing meeting in the central or southern zone.

(b) The board may authorize an eligible association or, with the approval of the Department of Food and Agriculture, an eligible fair, to operate a satellite wagering facility under all of the following

conditions:

(1) A racing association licensed to conduct a racing meeting shall conduct satellite wagering only within its racing inclosure.

(2) An organization described in subdivision (c) of Section 19596.4 has executed an agreement approved by the board with the association conducting a racing meeting and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility are included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering have been approved by the board.

(5) Any fair that operates a satellite wagering facility shall conduct wagering on all racing conducted that is offered to that satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or a night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or a night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association. Any association that operates a satellite wagering facility may accept an audiovisual signal, but is not required to do so

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses of the satellite wagering facility which would be incurred regardless of the acceptance of night wagers shall be considered.

(6) Notwithstanding subdivision (a), the live audiovisual signal of night harness or quarter horse races in the northern zone may be offered to satellite wagering facilities in the central and southern zones, except that racing associations may accept that audiovisual signal, but are not required to do so, and satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) Notwithstanding subdivision (a) or (b), a satellite wagering facility may not be located within the County of Los Angeles or within the County of Orange, except as follows:

(1) If all other conditions in subdivision (b) are met, the Fiftieth District Agricultural Association may be authorized to operate a satellite wagering facility upon its fairgrounds in the City of Lancaster and to accept wagers on races conducted in the southern and central zones

(2) If all other conditions are met, any fair or association licensed to conduct racing meetings in the County of Los Angeles and any

racing association other than a fair which is licensed to conduct racing in the County of Orange may be authorized to operate a satellite wagering facility for the limited purpose of conducting satellite wagering on races conducted at the Twenty-Second District Agricultural Association fairgrounds at Del Mar in the County of San Diego, except that, when a fair in Orange County is licensed for a racing meeting, a satellite wagering facility located within the racing inclosure where the racing meeting is conducted may not operate on the days that racing is conducted.

(d) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, and 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of

the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition, on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(e) On thoroughbred meetings only, the funds remaining after distribution of the amounts in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting. All of the funds distributed for purses from satellite wagering facilities shall go to the purse program of the association conducting the racing meeting, except that all sums for distribution as purses at satellite wagering facilities which are racing fairs in the County of Los Angeles shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings in Los Angeles and Orange Counties. The department shall distribute these funds on an equal basis to each racing fair in these counties for distribution in all nonstakes races and among all breeds.

(f) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses participating in the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(g) Notwithstanding subdivision (e), when satellite wagering is

conducted on thoroughbred races at associations or fairs, an amount, not to exceed 1.25 percent of the total amount handled by all satellite wagering facilities, shall be deducted from the funds otherwise allocated for distribution as commissions, purses, and owners' premiums and instead distributed to an organization formed and operated by thoroughbred racing associations, fairs conducting thoroughbred racing, and the organization representing thoroughbred horsemen, with each party having meaningful representation on the board of the organization, to administer, pursuant to supervision of the board, a fund to provide reimbursement for offsite stabling at board-approved auxiliary training facilities of licensed racing associations for additional stalls beyond the number of usable stalls the association is required to make available and maintain pursuant to Section 19535, and for the vanning of starters from these additional stalls on race days for thoroughbred horses.

(h) The funds distributed to the organization formed pursuant to subdivision (g) shall be used to reimburse racing associations who are operating offsite stabling providing additional stalls for the incremental increase in operating costs directly resulting from providing the stabling. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity operating the offsite stabling facility where the injury occurred, shall be liable for any injury to any jockey, exercise person, owner, trainer, or any employee or agent thereof, or any horse occurring at any offsite stabling facility.

The funds shall also reimburse horsemen for the cost of vanning starting horses from a board-approved auxiliary training facility operated by a licensed racing association to the track conducting the racing meeting. Horsemen may use carriers of their own choice, except that the amount of reimbursement to horsemen is limited to the amount that the organization determines is generally charged by carriers for vanning from the auxiliary training facility to the track conducting the racing meeting. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity actually engaged in vanning horses, shall be liable for any injury occurring to any individual or horse during vanning from an offsite stabling facility.

The training facilities and amenities provided for offsite stabling and training purposes shall be equivalent in character to those provided during racing meetings of the association.

Upon the request of any party within the organization, the board shall adjudicate any dispute regarding costs, or other matters relating to the furnishing of offsite stabling or vanning. The board may, if necessary, appoint an independent auditor to assist in the resolution of disputes. The auditor shall be reimbursed from the funds of the organization.

The organization may maintain a reserve fund of up to 10 percent of the total estimated annual vanning and stabling costs. In addition to the reserve fund, if the funds generated for offsite stabling and vanning are insufficient to fully reimburse racing associations for expenses incurred during the offsite vanning and stabling program, the organization is entitled to accumulate sufficient funds to fully reimburse these expenses.

The amount initially deducted and distributed to the organization shall be 1.25 percent of the total amount handled by satellite wagering facilities authorized under this section on thoroughbred racing, but that allocation may be adjusted by the board, in its discretion, but the adjusted amount may not exceed 1.25 percent of the total amount handled by satellite wagering facilities, to pay expenses and maintain the reserve fund for the continuing support of the program.

(i) Forty-two percent of the revenue payable to the state from license fees from satellite wagering facilities located at fairs under the authority of this section shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at the fair.

(4) For support purposes of the fair generally.

(j) The remaining 58 percent of the revenues payable to the state from satellite wagering facilities at fairs and all revenues payable to the state from satellite wagering facilities located under the authority of this section at sites other than fairs shall be deposited in the General Fund.

(k) Notwithstanding subdivision (b) of Section 19641, the state shall receive as additional license fees 50 percent of any redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility, subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, and the funds shall be deposited in the General Fund. The remaining 50 percent of redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility shall be paid to a welfare fund established by the horsemen's organization contracting with the association conducting the racing meeting for the benefit of horsemen, and that organization shall make an accounting to the board within one calendar year of the receipt of the payment.

(*l*) Of the total breakage arising in a parimutuel pool which includes wagers at satellite wagering facilities, that percentage of breakage equal to the percentage that wagers placed at satellite wagering facilities constitute of the total parimutuel pool shall be distributed equally among the state as an additional license fee deposited in the General Fund, the track conducting the racing meeting as a commission, and the horsemen participating in the racing meeting in the form of purses. The remainder of the breakage shall be distributed in the same manner as breakage arising from wagers at the track conducting the racing meeting.

(m) Notwithstanding subdivision (f) of Section 19596 5 and subdivision (i) of this section, if the revenues deposited in the separate account pursuant to those subdivisions (f) and (i) are in excess of the eleven million dollars ($11,000,000) in any fiscal year, one-half of the amount in excess of eleven million dollars ($11,000,000) shall be transferred to the General Fund.

(n) This section shall become operative on January 1, 1992.

SEC. 7. Section 2 of this bill incorporates amendments to Section 19596.5 of the Business and Professions Code proposed by both this bill and AB 992. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 19596.5 of the Business and Professions Code, and (3) this bill is enacted after AB 992, in which case Section 19596.5 of the Business and Professions Code, as amended by AB 992, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, Section 1 of this bill shall not become operative, and Section 3 shall become operative on January 1, 1992.

SEC. 8. Section 5 of this bill incorporates amendments to Section 19596.6 of the Business and Professions Code proposed by both this bill and AB 992. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 19596.6 of the Business and Professions Code, and (3) this bill is enacted after AB 992, in which case Section 19596.6 of the Business and Professions Code, as amended by AB 992, shall remain operative only until the operative date of this bill, at which time Section 5 of this bill shall become operative, Section 4 of this bill shall not become operative, and Section 6 shall become operative on January 1, 1992.

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 for night racing to remain viable through greater participation in the satellite system, commencing in 1989, it is necessary that this act take effect immediately.

CHAPTER 940

An act to amend Section 44011.6 of the Health and Safety Code, and to add Section 25617 to, and to repeal Section 25368 of, the Public Resources Code, relating to energy resources, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. The Legislature declares all of the following:

(a) It reaffirms the declaration in Resolution Chapter 122 of the Statutes of 1988 that maximum feasible reduction in public exposure to smoke and emissions from diesel engines accomplished in the most cost-effective manner through an appropriate combination of measures is in the public interest.

(b) The implementation of technology-forcing standards by the State Air Resources Board is an appropriate strategy for achieving reductions in smoke and emissions from diesel engines.

(c) A necessary counterpart to the implementation of technology-forcing standards is the creation of research, development, and demonstration projects to test new diesel engine and fuel technologies developed in response to those standards.

(d) The State Energy Resources Conservation and Development Commission has significant experience in the management of energy research, development, and demonstration projects.

SEC. 2. Section 44011.6 of the Health and Safety Code is amended

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 subdivision 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 penalties levied pursuant to subdivisions (d) and (h) 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.

(h) In addition to the corrective action required by subdivision (b), and in addition to the civil penalty imposed by subdivision (d), the owner of a motor vehicle cited by the state board pursuant to subdivision (b) shall pay a penalty of three hundred dollars ($300) per citation; except that this penalty shall not apply to the first citation for any schoolbus. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in the Diesel Emission Reduction Fund shall, when

appropriated by the Legislature, be available to the State Energy Resources Conservation and Development Commission for research, development, and demonstration programs undertaken pursuant to Section 24617 of the Public Resources Code.

SEC. 3. Section 25368 of the Public Resources Code is repealed.

SEC. 4. Section 25617 is added to the Public Resources Code, to read:

25617. (a) It is the intent of the Legislature to preserve diversity of energy resources, including diversity of resources used in electric generation facilities, industrial and commercial applications, and transportation.

(b) The commission shall, within the limits of available funds, provide technical assistance and support for the development of petroleum diesel fuels which are as clean or cleaner than alternative clean fuels and clean diesel engines. That technical assistance and support may include the creation of research, development, and demonstration programs.

SEC. 5. On July 1, 1990, of the funds available for appropriation in the Diesel Emission Reduction Fund, up to one hundred fifty thousand dollars ($150,000) is hereby appropriated to the State Energy Resources Conservation and Development Commission for expenditure pursuant to Section 25617 of the Public Resources Code.

CHAPTER 941

An act relating to the Department of Motor Vehicles.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. It is the intent of the Legislature to establish more flexible office hours for state offices which provide direct services to the general public. Greater flexibility in office hours can benefit both the employee and the general public. Employees must be involved in any decisions affecting working hours.

SEC. 2. (a) The Department of Motor Vehicles shall study what operational changes would be needed to facilitate the operation of its offices on a flexible hours basis, including full or partial operation on Saturdays.

(b) The department, to the extent possible, shall manage the flexible hours program so as to minimize mandatory overtime required of its employees, by using voluntary, permanent full-time staff and permanent intermittent employees.

(c) The department shall select and recommend as many as 16 sites statewide to use in a pilot project to demonstrate the impact of flexible office hours, including Saturdays. The project sites shall

comprise a representative sample of the department's field offices throughout the state and shall represent the widest possible geographic diversity. Any site that is the subject of a current department project concerning flexible office hours may be included among the 16 sites. The department shall assess the results of the pilot project, including reactions by both employees and the general public, as well as any costs and savings attributable to the program, in considering the results of the pilot project. The results of the pilot project shall be measured in terms of both customer satisfaction and greater cost effectiveness in the operation of the field offices of the department. The pilot project shall begin on July 1, 1990, and shall terminate on or before January 1, 1992.

(d) The department shall submit a report of the study to the Legislature by June 30, 1990, including the locations of the project sites and hours of operation, an indication of its collaboration with affected collective bargaining groups, and the criteria that will be used to determine the results.

(e) The department shall submit a final report to the Legislature not later than January 1, 1992, describing the results of the pilot project. In addition to the results specified in the preliminary report due June 30, 1990, the final report shall include a comparison of the cost of operating the flexible hours program compared to constructing and staffing a new field office in the same geographical area as at least two of the 16 pilot project sites.

CHAPTER 942

An act to add Article 7.7 (commencing with Section 16419) to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, relating to state funds, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Article 7.7 (commencing with Section 16419) is added to Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, to read:

Article 7.7. Contingency Reserves for Economic Uncertainties

16419 (a) Notwithstanding any other provision of law, each special fund shall include a contingency reserve for economic uncertainties. These reserves shall constitute reserve funds within the meaning of Section 5 of Article XIII B of the California Constitution.

(b) On the first day of each fiscal year, or on the day that the Budget Act for that fiscal year is chaptered, whichever occurs later, an amount sufficient for any appropriation made by that Budget Act or by any other statute from the fund in which the reserve account is established, shall be appropriated from each reserve account in each special fund.

(c) On the last day of each fiscal year, the unappropriated balance in each special fund shall be appropriated to the reserve account in that special fund.

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:

So that this act may be coordinated with the Budget Act of 1989 and be effective throughout the 1989–90 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 943

An act to amend Sections 51207, 51243, 51245, 51246, and 51284 of, to add Section 51287 to, and to repeal Section 51283.5 of, the Government Code, relating to agricultural land.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 51207 of the Government Code is amended to read:

51207. (a) On or before March 1 of each year, the Department of Conservation shall report to the Legislature regarding the implementation of this chapter by cities and counties.

(b) The report shall contain, but not be limited to, the number of acres of land under contract in each category and the number of acres of land which were removed from contract through cancellation, eminent domain, annexation, or nonrenewal.

(c) The report shall also contain the following specific information relating to not less than one-third of all cities and counties participating in the Williamson Act program:

(1) The number of contract cancellation requests for which notices of hearings were mailed to the Director of Conservation pursuant to Section 51284 which were approved by boards or councils during the prior year or for which approval is still pending by boards or councils.

(2) The amount of cancellation fees payable to the county treasurer as deferred taxes and which are required to be transmitted to the Controller pursuant to subdivision (d) of Section 51283 which

have not been collected or which remain unpaid.

(3) The total number of acres covered by certificates of cancellation of contracts during the previous year.

(4) The number of nonrenewal and withdrawal of renewal notices received pursuant to Section 51245 and the number of expiration notices received pursuant to Section 51246 during the previous year.

(5) The number of acres covered by nonrenewal notices that were not withdrawn and expiration notices during the previous year.

(d) The department may recommend changes to this chapter which would further promote its purposes.

(e) The Legislature may, upon request of the department, appropriate funds from the deferred taxes deposited in the General Fund pursuant to subdivision (d) of Section 51283 in an amount sufficient to prepare the report required by this section.

SEC. 2. Section 51243 of the Government Code is amended to read:

51243. Every contract shall:

(a) Provide for the exclusion of uses other than agricultural, and other than those compatible with agricultural uses, for the duration of the contract.

(b) Shall be binding upon, and inure to the benefit of, all successors in interest of the owner. Whenever land under a contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner in the original contract, including the right to give notice of nonrenewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of the divided land. On the annexation by a city of any land under contract with a county, the city shall succeed to all rights, duties and powers of the county under the contract, unless the land being annexed was within one mile of the city at the time that the contract was initially executed, the city has filed and the local agency formation commission has approved a protest to the contract pursuant to Section 51243.5, and the city states its intent not to succeed in its resolution of intention to annex. If the city does not exercise its option to succeed, the contract becomes null and void as to the land actually being annexed on the date of annexation. In the event that only part of the land under contract was within one mile of the city the option of the city shall extend only to that part. Within 30 days of the city stating its intent not to succeed, the city shall deliver a notice of its action to the Director of Conservation.

SEC. 3. Section 51245 of the Government Code is amended to read:

51245. If either the landowner or the city or county desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract upon the other party in advance of the

annual renewal date of the contract. Unless such written notice is served by the landowner at least 90 days prior to the renewal date or by the city or county at least 60 days prior to the renewal date, the contract shall be considered renewed as provided in Section 51244 or Section 51244.5.

Upon receipt by the owner of a notice from the county or city of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The county or city may, at any time prior to the renewal date, withdraw the notice of nonrenewal. Upon request by the owner, the board or council may authorize the owner to serve a notice of nonrenewal on a portion of the land under a contract.

Within 30 days of the receipt of a notice of nonrenewal from a landowner, the service of a notice of nonrenewal upon a landowner, or the withdrawal of a notice of nonrenewal, the city or county shall deliver a copy of the notice or a notice of withdrawal of nonrenewal to the Director of Conservation.

SEC. 4. Section 51246 of the Government Code is amended to read:

51246. (a) If the county or city or the landowner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be. Within 30 days of the expiration of the contract, the county or city shall deliver a notice of expiration to the Director of Conservation.

(b) No city or county shall enter into a new contract or shall renew an existing contract on or after February 28, 1977, with respect to timberland zoned as timberland production. The city or county shall serve notice of its intent not to renew the contract as provided in this section.

(c) In order to meet the minimum acreage requirement of an agricultural preserve pursuant to Section 51230, land formerly within the agricultural preserve which is zoned as timberland production pursuant to Chapter 6.7 (commencing with Section 51100) may be taken into account.

(d) Notwithstanding any other provision of law, commencing with the lien date for the 1977–78 fiscal year all timberland within an existing contract which has been nonrenewed as mandated by this section shall be valued according to Section 423.5 of the Revenue and Taxation Code, succeeding to and including the lien date for the 1981–82 fiscal year. Commencing with the lien date for the 1982–83 fiscal year and on each lien date thereafter, such timberland shall be valued according to Section 434.5 of the Revenue and Taxation Code.

SEC. 5. Section 51283.5 of the Government Code is repealed.

SEC. 6. Section 51284 of the Government Code is amended to read:

51284. No contract may be canceled until after the city or county has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be published pursuant to Section 6061 and

shall be mailed to the Director of Conservation and every owner of land under contract, any portion of which is situated within one mile of the exterior boundary of the land upon which the contract is proposed to be canceled. Within 30 days of the cancellation of the contract, the city or county shall publish a notice of its decision, including the date, time, and place of the public hearing, a general explanation of the decision, the findings made pursuant to Section 51282, and a general description, in text or by diagram, of the land under contract, as a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city or county. The publication shall be for informational purposes only, and shall create no right, standing, or duty that would otherwise not exist with regard to the cancellation proceedings. Within 30 days of the cancellation of the contract the city or county shall deliver a notice of cancellation to the Director of Conservation.

SEC. 7. Section 51287 is added to the Government Code, to read:

51287. The city or county may impose a fee pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 for recovery of costs under this article. The fee shall not exceed an amount necessary to recover the reasonable cost of services provided by the city or county under this article.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 944

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

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. The Legislature finds and declares that freeway traffic congestion in major metropolitan areas is a long-term problem that must be met, in part, by the cooperative efforts of motor carriers, shippers, and receivers of goods transported on the freeways.

SEC. 2. (a) The Department of Transportation shall study ways to encourage high volume motor carriers, shippers, and receivers operating in the Los Angeles area to switch to night deliveries and pickups.

(b) The department shall appoint a committee representing businesses and industries engaging in high volume shipments, motor carriers engaged in high volume transportation for those businesses and industries, and local, regional, and state government, including, but not limited to, the Department of the California Highway Patrol.

(c) The committee shall study the operations of one or more businesses or industries engaged in high volume shipping or receiving, and one or more motor carriers engaging in that transportation, to determine what tax, regulatory, or operational changes would make night shipping and receiving and night transportation economically attractive to those businesses, industries, and carriers. The committee shall provide a forum for both technical work and program development.

(d) The committee shall cooperate with and monitor the efforts of local agencies which are currently investigating night deliveries and pickups so as to avoid unnecessary duplication of effort.

(e) The committee shall report its findings, conclusions, and recommendations to the department on a date specified by the department. The department shall monitor the progress of the committee.

SEC. 3. Based on the findings, conclusions, and recommendations of the committee, the department shall prepare and transmit its recommendations to the Legislature on or before January 1, 1991.

SEC. 4. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the State Highway Account in the State Transportation Fund to the Department of Transportation for purposes of this act.

CHAPTER 945

An act to add Section 243 to the Labor Code, relating to wages.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 243 is added to the Labor Code, to read:

243. (a) If, within 10 years of either a conviction for a violation of this article or of failing to satisfy a judgment for nonpayment of wages, or both, it is alleged that an employer on a second occasion has been convicted of again violating this article or is failing to satisfy a judgment for nonpayment of wages, an employee or the employee's legal representative, an attorney licensed to practice law in this state, may, on behalf of himself or herself and others, bring an action in a court of competent jurisdiction for a temporary restraining order prohibiting the employer from doing business in

this state unless the employer deposits with the court a bond to secure compliance by the employer with this article or to satisfy the judgment for nonpayment of wages.

(b) Upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof that an employer, for the second time within 10 years, has been convicted of violating this article or has failed to satisfy a judgment for the nonpayment of wages, or both, the court, pursuant to Section 527 of the Code of Civil Procedure, may grant a temporary restraining order which prohibits the employer within 30 days from conducting any business within the state, unless the employer deposits a bond payable to the Labor Commissioner which is conditioned on the employer making wage payments in accordance with this article, or upon satisfaction by the employer of any judgment for nonpayment of wages, or both. The court shall order that the bond be deposited with the court by the employer at any point in time that, within a five-year period from the date of the order, the employer employs more than 10 employees. The court shall order that the bond be in an amount equal to twenty-five thousand dollars ($25,000) or 25 percent of the weekly gross payroll of the employer at the time of the posting of the bond, whichever is greater, and that the term of the bond be for the duration of the service of the employee who brought the action, until past due wages have been paid, or until satisfaction of a judgment for nonpayment of wages.

(c) For purposes of subdivision (b), an employer shall be deemed to have been convicted of having violated this article or to have failed to satisfy a judgment for the second time within 10 years if, to secure labor or personal services in connection with his or her business, the employer uses the services of an agent, contractor, or subcontractor who is convicted of a violation of this article or fails to satisfy a judgment for wages respecting those employees, or both, but only if the employer had actual knowledge of the person's failure to pay wages In issuing a temporary restraining order pursuant to this section, the court, in determining the amount and term of the bond, shall count the agent's, contractor's, or subcontractor's employees as part of the employer's total work force. This subdivision shall not apply where a temporary restraining order against the agent, contractor, or subcontractor has been issued, as an employer, pursuant to subdivision (b).

(d) An employer who, for the third time within 10 years of the first occurrence, is alleged to have violated this article or to have failed to satisfy a judgment for nonpayment of wages, or both, shall be deemed by the court to have commenced a new five-year period for which the posting of a bond may be ordered in accordance with subdivision (b), except that the court may, in its discretion, require the posting of a bond in a greater amount as it determines appropriate under the circumstances.

(e) A former employee who was a party to an earlier action against an employer in which a judgment for the payment of wages

was obtained, and who alleges that the employer has failed to satisfy the judgment for the payment of wages, in addition to any other available remedy, may petition the court pursuant to subdivision (b) for a temporary restraining order against the employer to cease doing business in this state unless the employer posts a bond with the court.

(f) Actions brought pursuant to this section shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(g) Nothing in this section shall be construed to impose any mandatory duties on the Labor Commissioner.

CHAPTER 946

An act to add and repeal Sections 25196.1, 25196.2, 25196.3, 25196.4, 25196.5, and 25196.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 25196.1 is added to the Health and Safety Code, to read:

25196.1. (a) The interest of any registered owner of any vehicle, truck, trailer, semitrailer, vacuum tank, cargo vehicle, or other motor vehicle, which has been used as an instrument to facilitate the transportation or disposal of hazardous waste in violation of this chapter, vests with the state upon the commission of the act giving rise to forfeiture under subdivision (b).

(b) The interest of a vehicle specified in subdivision (a) shall vest with the state and is subject to forfeiture under this article only if both of the following conditions are met:

(1) The registered owner of the vehicle specified in subdivision (a) has been previously convicted of a violation of Section 25189.5.

(2) There currently exists a court order prohibiting the registered owner of the vehicle from transporting or disposing of hazardous waste, or the owner of the vehicle is not registered as a hazardous waste hauler in accordance with Section 25163.

(c) This section shall not defeat the claim of any person, including a bona fide purchaser or encumbrancer, who claims an interest in the vehicle seized, if the interest arose prior to the seizure or the filing of the petition for forfeiture pursuant to this article, whichever occurs first, even if the interest in the vehicle being claimed was acquired from a person whose interest in the vehicle would otherwise have been subject to forfeiture pursuant to this section.

(d) Any costs of storing, transferring, disposing of, or otherwise handling hazardous waste, as required by this chapter, incurred by a state or local agency as a result of the interest or title in a vehicle vesting with the state pursuant to subdivision (a), shall be paid by the person transporting or disposing of, or causing the transportation or disposal of, the hazardous waste in violation of this chapter.

(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. Section 25196.2 is added to the Health and Safety Code, to read:

25196.2. (a) Any peace officer of this state, as provided in Section 25180, incident or subsequent to making or attempting to make an arrest for a violation of Section 25189.5, may seize any vehicle subject to forfeiture under Section 25196.1.

(b) Receipts for vehicles seized pursuant to this section shall be delivered to any person out of whose possession the vehicle was seized, in accordance with Section 1412 of the Penal Code. If the vehicle seized was not seized out of anyone's possession, receipt for the vehicle shall be delivered to the individual in possession of the premises at which the vehicle was seized or, if the individual is not present on the premises, the receipt shall be left in a prominent place at the premises.

(c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for a vehicle was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 25196.5.

(d) Within 15 days after making a seizure pursuant to this section, if the peace officer does not hold the vehicle seized pursuant to Section 25196.1 for evidence, or if a forfeiture proceeding pursuant to Section 25196.3 is not initiated, the officer shall return the vehicle to the registered owner.

(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. 3. Section 25196.3 is added to the Health and Safety Code, to read:

25196.3. (a) (1) Except as provided in subdivision (j), if the Attorney General or the district attorney determines that the factual circumstances do warrant that the vehicle subject to forfeiture meets the requirements of Section 25196.1, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the vehicle subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located.

(2) A petition of forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture.

(b) Physical seizure of a vehicle shall not be necessary in order to

have that particular vehicle alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any vehicle.

(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 vehicle 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 vehicle was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the vehicle 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 vehicle or property subject to forfeiture other than persons designated in a receipt issued for the vehicle seized.

(d) The Attorney General, district attorney, or public 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. If the investigation discloses that any person, other than the registered owner, is the legal owner thereof, and this ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, the Attorney General or district attorney shall 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, 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 vehicle subject to forfeiture is located.

(f) All notices shall set forth the time within which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

(g) Not sooner than 10 days after a petition is filed pursuant to this section, a claimant, who alleges standing based on an interest in the vehicle 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 vehicle named in the claim on the grounds that there is not probable cause to believe that the vehicle is subject to forfeiture pursuant to Section 25196.1. 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 vehicle is subject to forfeiture, it shall order the vehicle returned to the registered owner thereof unless the vehicle is otherwise lawfully held

(h) Within 30 days after a motion for return of the vehicle is granted pursuant to subdivision (g), the people may file a petition for writ of mandate or prohibition seeking appelate review of the

order.

(i) (1) Except as provided in subdivision (j), the prosecution shall have the burden of proving by a preponderance of the evidence that the vehicle is subject to forfeiture as described in Section 25196.1.

(2) Except as provided in paragraph (1) of subdivision (b) of Section 25196.1, judgment of forfeiture does not require as a condition precedent thereto, that any defendant be convicted of an offense which made the vehicle subject to forfeiture.

(j) (1) The Attorney General or the district attorney of the county in which the vehicle is subject to forfeiture under Section 25196.1 may, pursuant to this subdivision, order forfeiture of the vehicle 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 subdivision (c), excluding the provision relating to service of process regarding the petition, and subdivisions (d), (e), and (f), including all of the following:

(A) A description of the vehicle.

(B) The appraised value of the vehicle.

(C) The date and place of seizure or location of any vehicle not seized but subject to forfeiture.

(D) The violation of law alleged with respect to forfeiture of the vehicle.

(E) The instructions for filing a claim with the superior court 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 vehicle to the state and dispose of the vehicle. 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 vehicle.

(2) 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.

(3) 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.

(k) 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 of extends that date.

SEC. 4. Section 25196.4 is added to the Health and Safety Code, to read:

25196.4. (a) (1) Any person claiming an interest in the vehicle seized pursuant to Section 25196.2 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 vehicle was seized or, if there was no seizure, in which the vehicle is located, a verified claim stating his or her interest in the vehicle. 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.

(2) Any person who claims that the vehicle was assigned to him or to her prior to the seizure or notification of pending forfeiture of the vehicle under this chapter, whichever occurs first, shall file a claim with the court and prosecuting agency pursuant to this section declaring an interest in that vehicle and the interest shall be adjudicated at the forfeiture hearing. The vehicle shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing.

(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 vehicle seized or subject to forfeiture pursuant to Section 25196.1 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 vehicle in question is subject to forfeiture pursuant to Section 25196.1, in accordance with the burden of proof set forth in subdivision (i) of Section 25196.3.

(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 vehicle is subject to forfeiture pursuant to Section 25196.1, the court shall order the seized vehicle released to the person it determines is entitled thereto.

(f) If the court or jury finds that the seized vehicle was subject to forfeiture, and finds that a person claiming an interest therein knew or should have known of facts which made the vehicle subject to forfeiture pursuant to Section 25196.1, the court shall order that the person's interest in the seized vehicle be forfeited. If the court or jury does not make these findings, the court shall order that the person's interest in the vehicle 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 25196.3, that a person claiming an interest knew or should have known of facts which made the vehicle subject to forfeiture pursuant to Section 25196.1.

(g) A seized vehicle 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. The clerk of the court shall dispose of the forfeited vehicle as set forth in Section 25196.7.

(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.

SEC. 5. Section 25196.5 is added to the Health and Safety Code, to read:

25196.5. (a) If the court or jury at the forfeiture hearing finds that the vehicle is forfeitable pursuant to Section 25196.2, and further finds that the state or local governmental entity has not met its burden of proving that a person holding a valid lien, security interest, or interest under a conditional sales contract knew or should have known of facts which would or did make the vehicle subject to forfeiture pursuant to Section 25196.1 when the interest was acquired, and the amount due that person is less than the appraised value of the vehicle, 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, security interest, or interest under a conditional sales contract. Upon this payment, the state or local governmental entity shall relinquish all claims to the vehicle. If the holder of the interest elects not to make this payment to the state or local governmental entity, the vehicle 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 assessor for the county in which the action is brought. A person holding a valid lien, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(b) If the amount due to a person holding a valid lien, security interest, or interest under a conditional sales contract is less than the value of the vehicle and the person elects not to make payment to the governmental entity, the vehicle, which a public 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 the sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(c) 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. 6. Section 25196.6 is added to the Health and Safety Code, to read:

25196.6. Notwithstanding Section 25192, in all cases where the vehicle is seized pursuant to this article and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, 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 vehicle, if any, up to the amount of his or her interest in the vehicle, 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 vehicle, including expenditures for any necessary repairs, storage, or transportation of any vehicle seized under this article.

(2) 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.

(3) Ten percent of the balance after payment of the costs specified in paragraph (1), for deposit in the Asset Forfeiture Distribution Fund, established pursuant to Section 11489, which shall be available upon appropriation by the Legislature.

(c) All the funds distributed pursuant to 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.

(d) The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

(e) All proceeds from forfeiture proceedings made pursuant to this article shall be distributed in accordance with this section.

(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.

CHAPTER 947

An act to amend Section 17508 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 17508 of the Business and Professions Code is amended to read:

17508. (a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, that (2) compare the product's effectiveness or safety to that of other brands or products, or that (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, any city attorney, or any district attorney any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, that (2) compare the product's effectiveness or safety to that of other brands or products, or that (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which such advertising claims are based. Any such request shall be made within one year of the last day on which such advertising claims were made.

Any city attorney or district attorney who makes a request pursuant to this subdivision shall give prior notice of such request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, any city attorney, or any district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time, or if such Director of Consumer Affairs, Attorney General, city attorney, or district attorney shall have reason to believe that any such advertising claim is false or misleading, do either or both of the following: (1) seek an immediate termination or modification of the claim by the person in accordance with Section 17535, (2) disseminate information, taking due care to protect legitimate trade secrets, concerning the veracity of such claims, or why such claims are misleading, to the consumers of this state.

(d) The relief provided for in subdivision (c) is in addition to any other relief which may be sought for a violation of this chapter. Section 17534 shall not apply to violations of this section.

(e) Nothing in this section shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertising claims referred to in

subdivision (a), unless such publisher or broadcaster is the person making such claims.

(f) The plaintiff shall have the burden of proof in establishing any violation of this section.

(g) If an advertisement is in violation of subdivision (a) and Section 17500, the court shall not impose a separate civil penalty pursuant to Section 17536 for the violation of subdivision (a) and the violation of Section 17500 but shall impose a civil penalty for the violation of either subdivision (a) or Section 17500.

SEC. 2. In enacting this act, it is the intent of the Legislature to not create any new cause of action or to alter any provision of existing law proscribing untrue or misleading statements.

CHAPTER 948

An act to amend Sections 25915, 25916, 25917, 25920, and 25924 of, and to add Sections 25915.1, 25915.2, 25916.5, and 25923.1 to, the Health and Safety Code, relating to asbestos notifications, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 25915 of the Health and Safety Code is amended to read:

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 known to the owner 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 known to the owner, or identified in a survey 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) A summary of the 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.

The notice requirements specified in this subdivision shall not apply to an owner who elects to prepare an asbestos management plan pursuant to Section 25915.1 In those cases, the notice requirements specified in Section 25915.1 shall apply.

(b) 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.

SEC. 2. Section 25915.1 is added to the Health and Safety Code, to read:

25915.1. (a) An owner may elect to prepare an asbestos management plan for any building subject to this chapter, and in that case may, upon implementation of that plan, comply with the notification requirements of this chapter by providing notice to other owners and all employees of that owner working within the building of the following:

(1) The specific locations within the building where asbestos-containing construction materials are present in any quantity.

(2) Potential health risks or impacts that may result from exposure to the asbestos.

(3) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an employee who is not qualified to handle asbestos-containing construction material.

(4) The existence and availability of the management plan and a description of its contents.

(b) For purposes of this chapter, an asbestos management plan shall be designed to minimize the potential for release of asbestos fibers and to outline a schedule of actions to be undertaken with respect to the asbestos. The plan shall be prepared by a person accredited to prepare management plans for schools pursuant to Section 2646 of Title 15 of the United States Code and shall contain all of the following:

(1) The information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915.

(2) A description of an ongoing operations and maintenance program which shall include, but not be limited to, periodic reinspection and surveillance, suggested fiber release episode procedures, measures to minimize potential fiber releases, and information and training programs for building engineering and maintenance staff.

(3) Recordkeeping procedures to demonstrate implementation of the plan which shall be maintained for the life of the building to which they apply.

SEC. 3. Section 25915.2 is added to the Health and Safety Code, to read:

25915.2. (a) 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 first 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. In addition, if new information regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915 has been obtained during the previous 90 days, then a supplemental notice shall be provided within 15 days of the close of that previous 90-day period. 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.

(b) 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.

(c) 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) of Section 25915 or 25915.1 may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(d) If the asbestos-containing construction material in the building is limited to an area or areas within the building that:

(1) Are accessed only by building maintenance employees or contractors and are not accessed by tenants or employees in the building, other than on an incidental basis; and

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated in areas of the building which are accessed by tenants and employees; and

(3) The owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from the material;

then, as to that asbestos-containing construction material, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may provide that notice only to its building maintenance employees and contractors who have access to that area or those areas of the building meeting the conditions above.

(e) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers which are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the reasonable possibility 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) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(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 may 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.

SEC. 4. Section 25916 of the Health and Safety Code is amended to read:

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 specified in either subdivision (a) or (b).

(a) "CAUTION. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

(b) "DANGER. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. AUTHORIZED PERSONNEL ONLY. RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA."

SEC 5. Section 25916.5 is added to the Health and Safety Code, to read:

25916.5. (a) When there is more than one owner of a building or part of a building subject to this chapter, the owners may agree in writing to designate one particular owner to prepare any notice required pursuant to this chapter.

(b) Any owner, other than the owner preparing the notice, may use a notice prepared by another owner to satisfy the requirements of this chapter if all of the following are satisfied:

(1) The notice fully complies with that owner's obligations under this chapter.

(2) That owner does not know that the notice contains false or misleading information.

(3) That owner does not know that the owner who prepared the notice has failed to comply with this chapter.

SEC. 6. Section 25917 of the Health and Safety Code is amended to read:

25917. An owner shall make available, for review and photocopying, to other owners and all of his or her employees or those employees' representatives at an accessible place and time, all existing asbestos survey and monitoring data and any asbestos management plan which has been prepared, specific to the building. This place shall be within the building, or another building which is leased or also owned by the owner, located on the same property as the building, and accessible and convenient to employees, 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, data, and asbestos management plan 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, data, and asbestos management plan is available

to employees within one building pursuant to this section.

SEC. 7. Section 25920 of the Health and Safety Code, as added by Chapter 1502 of the Statutes of 1988, is amended to read:

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 that "building" shall not mean residential dwellings.

SEC. 8. Section 25923.1 is added to the Health and Safety Code, to read:

25923.1. "Agent," as used in this chapter, means a person acting in accordance with Title 9 (commencing with Section 2295) of Part 4 of Division 3 of the Civil Code for purposes of managing, operating, leasing, or performing a similar function with respect to a building subject to this chapter.

SEC. 9. Section 25924 of the Health and Safety Code is amended to read:

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 or any other owner, 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. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 11. 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 timely and orderly implementation of the provisions regarding asbestos notifications contained in Chapter 10.4 (commencing with Section 25915) of Division 20 of the Health and Safety Code, it is necessary for this act to take effect immediately.

CHAPTER 949

An act to add Chapter 1.4 (commencing with Section 140) to Part 1 of Division 1 of, and to repeal Sections 1632.5 and 1634 of, the Health and Safety Code, relating to AIDS.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

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

(a) While the number of cases of acquired immune deficiency syndrome (AIDS) continues to mount, researchers have yet to discover a vaccine to prevent infection with the human immunodeficiency virus (HIV), the etiologic agent for AIDS.

(b) Prevention efforts aimed at providing education and counseling to people at highest risk have demonstrated remarkable effects.

(c) Prevention efforts specifically targeted to people infected with HIV have resulted in dramatic decreases in at risk behaviors, especially among gay men. For example, education and counseling have resulted in a 95 percent reduction in annual transmission rates among gay men in San Francisco.

(d) The use of antiviral drugs, such as AZT, and antiopportunistic infection drugs clearly have prolonged the lives of people with advanced conditions related to HIV infections.

(e) Preliminary research suggests that early treatment of infected persons will prevent, minimize, or delay the onset of subsequent severe diseases.

(f) Early clinical intervention can obviate or minimize the need for hospitalization and other expensive care modalities for persons with HIV infection.

(g) For these reasons, early voluntary testing is strongly recommended for all persons at risk for HIV infection, in order to facilitate clinical intervention and early treatment of infected persons.

(h) All public and private providers of services to people with HIV should urge the general public, especially those who have engaged in high-risk behaviors, to seek testing for HIV infection.

(i) As is true with other catastrophic diseases, care and treatment for the spectrum of HIV-related illness is often more costly than necessary. Case management for people infected with HIV can ensure that an HIV-infected person will receive necessary and cost-effective medical services.

(j) Case management can also assist an HIV-infected person to gain access to appropriate private and public health coverage and to support services necessary to prolong life and enhance the quality of

life.

(k) Early intervention is effective in terms of both human costs and economic costs.

(l) The costs of delivering early intervention services should be reasonably shared by the state and federal governments, private health insurers, and, to the extent possible, by the person with an HIV-related condition.

SEC. 2. Chapter 1.4 (commencing with Section 140) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.4. AIDS EARLY INTERVENTION PROJECTS

140. (a) The State Director of Health Services shall award contracts to early intervention projects to provide long-term services to persons infected with HIV. The purposes of the early intervention projects shall be to provide appropriate medical treatment to prevent or delay the progression of disease that results from HIV infection, to coordinate services available to HIV infected persons, and to provide information and education, including behavior change support, to HIV infected persons to prevent the spread of HIV infection to others. The director shall award contracts to early intervention projects from a variety of geographical areas. In selecting projects, the director shall ensure that each early intervention project will respond to the needs of its projected service area, will be sensitive to linguistic, ethnic, and cultural differences, and will accommodate the special needs of clients by taking into account the circumstances that placed them at risk for becoming infected with HIV. The director shall award contracts for early intervention services at a pace that reflects the availability of private, state, and federal reimbursement pursuant to Section 144. Prior to awarding contracts to new programs, the director shall consider utilizing existing services and programs with which it currently contracts, or which are currently in operation, and which provide HIV-related services.

(b) Early intervention projects that are awarded contracts pursuant to this section shall provide all of the following services:

(1) Health assessment of HIV infected persons, including, but not limited to, a physical examination and immunologic and clinical monitoring.

(2) Health education and behavior change support related to reducing the risk of spreading HIV infection to others and to maximize the healthy and productive lives of HIV infected persons.

(3) Psychosocial counseling services.

(4) Information and referrals for social services.

(5) Information and referrals on available research for the treatment of HIV infection.

(6) Covered outpatient preventative or therapeutic health care services related to HIV infection, as determined by the director.

(7) Case management.

(c) An early intervention project shall establish a core case management team for each client to assess the needs of the client and to develop, implement, and evaluate the client's written individual service plan. As needed by the client, the individual service plan shall include services specified in subdivision (b), other support services, legal services, public assistance, insurance, and inpatient and outpatient health care services needs of the client. A core case management team shall include, but not be limited to, a physician and surgeon, a physician assistant or nurse practitioner, a health educator, a case manager, and the client. Case management in an early intervention project shall incorporate an interdisciplinary approach. Other professionals, paraprofessionals, and other interested persons deemed appropriate by the members of the core case management team also may be included. The case manager shall coordinate the objectives specified in the client's individual service plan. The case manager also shall monitor and assist the client through all services provided by the project and shall provide information, guidance, and assistance to the client regarding support services, legal services, public assistance, insurance, and inpatient and outpatient health care services. The project shall designate a sufficient number of case managers to reflect case manager-to-client ratios established by the department.

141. (a) The director shall commence awarding contracts to projects on or before July 1, 1990. In awarding contracts to early intervention projects, the director may select projects from each of the following models:

(1) A privately operated profit or nonprofit clinic which is not licensed as part of a health facility and which provides all of the services specified in subdivision (b) of Section 140.

(2) A publicly operated clinic which is not licensed as part of a health facility and which provides all of the services specified in subdivision (b) of Section 140.

(3) A combination of independent privately operated clinics, publicly operated clinics, and other health care providers which in total provide all of the services specified in subdivision (b) of Section 140.

(4) Any other model which the director considers worthy of receiving funds.

(b) An applicant for a contract to operate an early intervention project that is not a part of a county health department shall submit its application to the county health department for review and comment. The county health department shall provide comment on the application to the state department within a time period to be specified by the state department. The failure by a county health department to comment on an application submitted to it within the time period specified by the state department shall not jeopardize the application, and the state department in a case of this nature may process and award a contract in the absence of comment by the county health department.

(c) An applicant for a contract to operate an early intervention project shall indicate in its application how it intends to coordinate with county health department programs, community-based organizations that provide HIV-related services, and other public and private entities which may provide services to a person who is infected with HIV.

142. (a) The state department shall collect data from the early intervention projects, assess the effectiveness of the different models of early intervention projects, and report its findings to the Legislature on or before January 1, 1992, and on or before January 1 of each subsequent year.

(b) The state department shall continuously collect data from each early intervention project. The data collected may include, but not be limited to, the following:

(1) The total number of clients served.

(2) The number of clients utilizing each service provided by the project.

(3) Demographics on clients in the aggregate.

(4) The source of funding for each type of service provided.

(5) The cost of each type of service provided.

(6) Medical treatment modalities utilized in the aggregate.

(7) Changes in the clinical status of clients in the aggregate.

(8) Changes in behaviors that present risks of transmitting HIV infection of the clients in the aggregate.

(9) The psychosocial changes of clients in the aggregate.

(10) Referrals made by the project.

(11) Perceived unmet needs of the clients served by the project.

(c) The state department shall develop and distribute to each early intervention project forms for data collection that are designed to elicit information necessary for the state department to comply with the requirements of subdivision (b). The data may be used by the state department to comply with the requirements of subdivision (a).

143. (a) The state department shall establish a reimbursement schedule for all of the services detailed in subdivision (b) of Section 140. The amounts to be reimbursed for these services shall be commensurate with the costs of providing these services.

(b) The state department shall develop and disseminate guidelines to assist early intervention projects in identifying appropriate public and private payers of early intervention services. The guidelines shall take into account each client's access to, and eligibility for, private health insurance and public medical assistance. The guidelines shall include, but not be limited to, the reimbursement schedule established pursuant to subdivision (a) and the elements identified in subdivisions (c) to (h), inclusive.

(c) Reimbursement under this chapter shall not be made for any services which are available to the client under a private health insurance program. Early intervention projects shall inquire of each client as to the client's coverage by a private health insurance policy.

Where a client has a private health insurance policy, the early intervention project shall bill the insurer for those services in subdivision (b) of Section 140 that are covered by the client's policy.

(d) The state department shall develop and implement, or cause to be implemented by an early intervention project, a uniform sliding fee schedule for services provided to individuals under this chapter. The schedule shall be based on the client's ability to pay.

(e) The state department may apply for any funds available from the federal government for the reimbursement of those services to be provided by early intervention projects, including, but not limited to, funds available pursuant to Section 2318 of the Public Health Service Act, as added by Public Law 100-607, which provides for the development of model protocols for the clinical care of individuals who are infected with HIV.

(f) To the extent permitted under existing law, the Medi-Cal program shall provide reimbursement to early intervention projects for services provided under this chapter that are covered under the Medi-Cal program. This subdivision shall not be construed to confer Medi-Cal eligibility on any person who does not meet existing Medi-Cal eligibility requirements.

(g) The state department shall use federal and state general funds which are appropriated for the purpose of purchasing HIV-related drug treatments and related services, to reimburse for covered outpatient preventative or therapeutic health care services, as defined by the director, provided that the client is eligible for a federal or state program that subsidizes the cost of HIV-related drugs and related services. If Assembly Bill 2251 of the 1989–90 Regular Session is enacted, the state department shall use the provisions in Chapter 1.85 (commencing with Section 188) of Part 1 of Division 1 to implement this subdivision.

(h) The state department shall use moneys from the General Fund to cover expenses for early intervention services that are not otherwise reimbursed, to the extent that moneys from the General Fund are expressly appropriated to the state department for early intervention services.

144. The Legislature hereby finds and declares that people with HIV infection may not avail themselves of early intervention services unless they are aware of the availability of the services and the efficacy of early intervention in prolonging life. This awareness by HIV-infected persons is critical to maximizing the benefits of early intervention. Therefore, it is the intent of the Legislature that the department includes early intervention education as a component of information and education grants in the first grant cycle following enactment of this chapter.

SEC. 3. Section 1632.5 of the Health and Safety Code is repealed.

SEC. 4. Section 1634 of the Health and Safety Code is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district

because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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

CHAPTER 950

An act to amend Sections 830.1, 830.31, and 13507 of the Penal Code, relating to peace officers, and making an appropriation therefor.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

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

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

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

(2) Where he has the prior consent of the chief of police, or person authorized by him to give such consent, if the place is within a city or of the sheriff, or person authorized by him to give such consent, if the place is within a county; or

(3) As to any public offense committed or which there is probable cause to believe has been committed in his presence, and with

respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense.

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and such investigators who are designated by the Attorney General are peace officers. The authority of any such peace officer extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

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

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

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

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

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

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and those investigators who are designated by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

SEC. 1.2. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid in that capacity, of a county, any police officer of a city, any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid in that capacity, of a judicial district, any port warden or special officer of the Harbor Department of the

City of Los Angeles, or any inspector or investigator regularly employed and paid in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

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

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

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

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and those investigators who are designated by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state

SEC. 1.3. Section 830.1 of the Penal Code is amended to read:

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

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

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

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

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and those investigators who are designated by the Attorney

General are peace officers. The authority of these peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

SEC. 2. Section 830.31 of the Penal Code is amended to read:

830.31. 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 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. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) (1) Members of an arson-investigating unit, regularly paid and employed in that position of a fire protection agency of the state, of a county, city, or district, if the primary duty of the arson investigators is the detection and apprehension of persons who have violated any fire law or committed insurance fraud.

(2) Members of a fire department or fire protection agency of the state, or a county, city, or district regularly paid and employed in that position if the primary duty of fire department or fire protection agency members other than arson investigators when acting as peace officers is the enforcement of laws relating to fire prevention and fire suppression.

(b) Persons designated by a local agency as park rangers, and regularly employed and paid as such, if the primary duty of the peace officer is the protection of park and other property of the agency and the preservation of the peace therein.

(c) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(d) A welfare fraud investigator or inspector, regularly employed and paid as such by a county, if the primary duty of the peace officer is the enforcement of the provisions of the Welfare and Institutions Code.

(e) A child support investigator or inspector, regularly employed and paid as such by a district attorney's office, if the primary duty of the peace officer is the enforcement of the provisions of the Welfare and Institutions Code and Section 270.

(f) The coroner and deputy coroners, regularly employed and paid as such, of a county, if the primary duty of the peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

(g) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties

with respect to patrons, employees, and properties of the district.

(h) Harbor or port police regularly employed and paid as such by a county, city, or district other than peace officers authorized under Section 830.1, if the primary duty of the peace officer is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(i) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, if the primary duty of the officer is the protection of the properties of the utility district and the protection of the persons thereon.

(j) Persons designated as a security officer by a county water district pursuant to Section 30547 of the Water Code, if the primary duty of the officer is the protection of the properties of the county water district and the protection of the persons thereon.

(k) The security director of the public utilities commission of a city and county, if the primary duty of the security director is the protection of the properties of the commission and the protection of persons thereon.

SEC. 3. Section 13507 of the Penal Code is amended to read:

13507. As used in this chapter, "district" means any of the following:

(a) A regional park district.

(b) A district authorized by statute to maintain a police department.

(c) The University of California.

(d) The California State University and Colleges.

(e) A community college district.

(f) A school district.

(g) A transit district.

(h) A harbor district.

SEC. 4. (a) Section 1.1 of this bill incorporates amendments to Section 830.1 of the Penal Code proposed by both this bill and SB 353. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 830.1 of the Penal Code, and (3) SB 655 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 353, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative

(b) Section 1.2 of this bill incorporates amendments to Section 830.1 of the Penal Code proposed by both this bill and SB 655. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 830.1 of the Penal Code, (3) SB 353 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 655 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 830.1 of the Penal Code proposed by this bill, SB 353, and SB 655. It

shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 830.1 of the Penal Code, (3) this bill is enacted after SB 353 and SB 655, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 951

An act to add Article 8 (commencing with Section 19210) to Chapter 2 of Part 3 of Division 13 of the Health and Safety Code, relating to earthquake protection.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Article 8 (commencing with Section 19210) is added to Chapter 2 of Part 3 of Division 13 of the Health and Safety Code, to read:

Article 8. Water Heater Strapping and Installation

19210. The Legislature finds and declares that there exists a serious threat of fire, explosion, or electrocution to the people of California from water heaters that overturn or experience damage to the plumbing or electrical wiring during an earthquake, and that a large number of structures will suffer damage from water heaters due to the lack of adequate strapping or bracing. The Legislature further finds and declares that it is the goal of the State of California to reduce earthquake hazards in this state. Therefore, it is the goal of the Legislature to ensure that all water heaters are strapped or properly anchored by the year 2000.

19211. Notwithstanding Section 19100, all new and replacement water heaters sold in California on or after July 1, 1991 shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion.

19212. All water heaters manufactured for sale in California on or after July 1, 1991, shall include a statement in the installation instructions that water heater units must be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. The instructions provided by the manufacturer may include a reproduction of the generic installation instructions and standard details as prepared by the Office of the State Architect in accordance with Section 19215.

19213. Manufacturers shall add language to their instruction label on the front of the water heater which discloses the danger of falling or horizontal displacement due to an earthquake. The label shall

contain the following language:

WARNING: THIS WATER HEATER MUST BE BRACED, ANCHORED, OR STRAPPED TO AVOID FALLING OR MOVING DURING AN EARTHQUAKE. SEE INSTRUCTIONS FOR CORRECT INSTALLATION PROCEDURES.

19214. Any person who violates Section 19212 or 19213 shall be deemed to have violated a provision of Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

19215. The Office of the State Architect shall prepare generic installation instructions with standard details illustrating the strapping, bracing, and anchoring of water heaters for typical installations in single-family homes that comply with the requirements of the model codes. These details shall be made available for reproduction to manufacturers and appliance retailers at a cost to cover the state's cost to prepare the details, and respond to requests.

19216. At the point of sale, the retailer may provide the consumer with generic installation instructions with standard details approved by the Office of the State Architect. If provided, these generic instructions are intended to be provided to the consumer as a guide, and are not intended to supersede local codes. The retailer and manufacturer are deemed not to be liable for the generic instructions provided to consumers as long as these have been approved by the Office of the State Architect, as complying with the requirements of the model code in force on the date of approval.

19217. The Public Utilities Commission shall direct the investor owned gas and electrical utilities, not later than January 1, 1991, to develop an educational program for bracing, anchoring, and strapping water heaters to resist falling or horizontal displacement due to earthquakes.

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

CHAPTER 952

An act to amend Sections 18909, 18916, 18929, 18938, 18941.5, and 18942 of the Health and Safety Code, relating to building standards.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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 that 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 the discharge of waste to land or the treatment, transfer, storage, resource recovery, disposal, or recycling of the hazardous waste.

SEC. 2. Section 18916 of the Health and Safety Code is amended to read:

18916. "Model code" means any building code drafted by private organizations or otherwise, and shall include, but not be limited to, the latest edition of the following:

(a) The Uniform Building Code of the International Conference of Building Officials.

(b) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(c) The Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.

(d) The National Electrical Code of the National Fire Protection Association.

(e) The Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc.

SEC. 3. Section 18929 of the Health and Safety Code is amended to read:

18929. (a) Except as otherwise provided in subdivision (b), administrative regulations adopted by state agencies that apply directly to the implementation or enforcement of building standards shall be forwarded to the Building Standards Commission for approval. Each regulation shall be adopted in compliance with procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, and Section 18930 of the Health and Safety Code. These administrative regulations shall be published in the administrative chapters of the California Building Standards Code.

(b) Any administrative regulations adopted by the Department of Housing and Community Development are exempt from the

requirements of this section.

SEC. 4. Section 18938 of the Health and Safety Code is amended to read:

18938. (a) Building standards or administrative regulations that apply directly to the implementation or enforcement of building standards shall be filed with the Secretary of State and codified only after they have been approved by the commission and shall not be published in any other title of the California Code of Regulations. Emergency standards or administrative regulations that apply directly to the implementation or enforcement of building standards shall be filed with the Secretary of State and shall take effect only after they have been approved by the commission as required by Section 18937. The filing of building standards or administrative regulations that apply directly to the implementation or enforcement of building standards adopted or approved pursuant to this part, or any certification with respect thereto, with the Secretary of State, or elsewhere as required by law, shall be done solely by the commission

(b) An adoption, amendment, or repeal of a building standard shall become effective 180 days after its publication in the triennial edition of the California Building Standards Code or one of its supplements, or at any later date as approved by the Building Standards Commission. This subdivision shall not apply to emergency standards, and standards approved pursuant to subdivision (b) of Section 142.3 of the Labor Code and published pursuant to subdivision (b) of Section 18943.

(c) This section shall not be applicable to the time limits set forth in Sections 17922 and 17958 for approval of uniform codes and for changes by local agencies in the California Building Standards Code.

SEC. 5. Section 18941.5 of the Health and Safety Code is amended to read:

18941 5. (a) The building standards contained in the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., 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 or at a later date after publication established by the 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 the State Building Standards Code by the State Building Standards Commission or at a later date after publication established by the 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 shall apply to any project which has been submitted for a building permit prior to the effective date of that model code.

SEC. 6. Section 18942 of the Health and Safety Code is amended to read:

18942. (a) The commission shall publish, or cause to be published, editions of the code in its entirety once in every three years. In each intervening year the commission shall publish, or cause to be published, supplements as necessary. For emergency standards defined in subdivision (a) of Section 18913, an emergency standards supplement shall be published whenever the commission determines it is necessary. The commission shall also publish, for emergency standards defined in subdivision (b) of Section 18913 and for building standards or administrative regulations that apply directly to the implementation or enforcement of building standards approved pursuant to subdivision (b) of Section 142.3 of the Labor Code, a semiannual supplement, or a more frequent supplement if required by federal law.

(b) Emergency standards defined in subdivision (a) of Section 18913 shall become effective when approved by the commission, and filed with the Secretary of State, or upon any later date specified therein, and remain in effect as provided by Section 11346.1 of the Government Code and Section 18937 of this code. Emergency standards shall be distributed as soon as practicable after publication to all interested and affected parties. Notice of repeal pursuant to Section 11346.1 of the Government Code of emergency standards defined in subdivision (a) of Section 18913 within the period specified by that section shall also be given to the parties by the affected agencies promptly after the termination of the statutory period pursuant to Section 11346.1 of the Government Code.

(c) The commission may publish, stockpile, and sell at a reasonable price the code and any materials incorporated therein by reference if it deems the latter is insufficiently available to the public, or unavailable at a reasonable price. Each state department concerned and each city, county, or city and county shall have an up-to-date copy of the code available for public inspection.

(d) Each city, county, and city and county, including charter cities, shall obtain and maintain with all revisions on a current basis,

at least one copy of the building standards and other state regulations relating to buildings published in Title 8, 19, 20, 24, and 25 of the California Code of Regulations. These codes shall be maintained in the office of the building official responsible for the administration and enforcement of the provisions of this part.

This subdivision shall not apply to any city or county which contracts for the administration and enforcement of the provisions of this part with another local government agency which complies with this section.

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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 953

An act to add Section 17705.1 to the Education Code, to add Section 53097.5 to the Government Code, and to add Chapter 3 (commencing with Section 16500) to Division 12.5 of the Health and Safety Code, relating to school buildings.

[Approved by Governor September 26, 1989 Filed with Secretary of State September 27, 1989]

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

SECTION 1. Section 53097.5 is added to the Government Code, to read:

53097.5. A county or city may inspect school buildings, as defined in Section 39141 of the Education Code, pursuant to guidelines adopted pursuant to Section 16500 of the Health and Safety Code or pursuant to any local ordinance regulating substandard conditions in buildings used for human habitation. The results of the inspections shall be forwarded to the office of the State Architect.

SEC. 2. Chapter 3 (commencing with Section 16500) is added to Division 12.5 of the Health and Safety Code, to read:

CHAPTER 3. SCHOOL BUILDINGS

16500. The office of the State Architect shall adopt guidelines applicable to substandard conditions of school buildings, as defined in Section 39141 of the Education Code, which guidelines shall take into consideration the unique design, use, safety needs, and construction of the school buildings.

CHAPTER 954

An act to amend Sections 18504, 18513, 18525, 18534, and 18545 of, and to add Sections 18507.4, 18515.3, 18535.4, and 18546.10 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature finds and declares the following:

(a) Existing law provides for deductions against taxes for designations on tax returns for contributions to various "check-off" programs.

(b) The Governor, in 1987, provided the following veto message with respect to a bill which would have created a new check-off program:

"While I am sympathetic to the charity this bill seeks to serve, there are theoretically no limits on the number of other worthy charities that might similarly benefit from a designation on the state tax form. Yet, there are clearly limits to the number of designations that can be reasonably accommodated. Data compiled by the Franchise Tax Board indicate the existence of a saturation point beyond which the addition of more charitable designations diminishes the effectiveness of the existing designations. I believe that in signing the checkoffs for Alzheimer's disease and the Vietnam Veterans Memorial Fund, we have reached that point and should resist further attempts to add checkoffs to the California tax return."

(c) It is the intent of the Legislature to ensure the effectiveness of existing and future check-off programs by providing appropriate parameters for those programs.

SEC. 2. Section 18504 of the Revenue and Taxation Code is amended to read:

18504. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board

estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 2.5. Section 18507.4 is added to the Revenue and Taxation Code, to read:

18507.4. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 3. Section 18513 of the Revenue and Taxation Code is amended to read:

18513. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each

year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 4. Section 18515.3 is added to the Revenue and Taxation Code, to read:

18515.3. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 5. Section 18525 of the Revenue and Taxation Code is amended to read:

18525. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 6. Section 18534 of the Revenue and Taxation Code is

amended to read:

18534. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 6.5. Section 18535.4 is added to the Revenue and Taxation Code, to read:

18535.4. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 7. Section 18545 of the Revenue and Taxation Code is amended to read:

18545. (a) This article 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 that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board

estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 7.5. Section 18546.10 is added to the Revenue and Taxation Code, to read:

18546.10 (a) This article shall remain in effect only until three years after the operative date of this article, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 8. If Article 6 (commencing with Section 18500), 6.5 (commencing with Section 18510), 6.7 (commencing with Section 18515), 7 (commencing with Section 18520), 7.5 (commencing with Section 18530), or 8 (commencing with Section 18540) of Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code is repealed because the total contributions made pursuant to any article are less than two hundred fifty thousand dollars ($250,000), the Franchise Tax Board shall provide written notification of that fact and repeal to the Secretary of State. The Franchise Tax Board shall also provide a copy of that notification to the Secretary of the Senate, for publication in the Senate Journal, and to the Chief Clerk of the Assembly, for publication in the Assembly Journal.

SEC. 9. It is the intent of the Legislature that costs for processing the voluntary contributions are as low as possible so that the funds receive the maximum benefit from the taxpayers' contributions.

SEC. 10. In any fiscal year in which the Franchise Tax Board's administrative costs for any fund exceeds 3 percent of the total amount contributed to the fund for the first year of the fund or 2 percent of the total amount contributed to the fund for any year thereafter, the Franchise Tax Board shall report to the Legislature both of the following:

(a) The reason the administrative costs exceeded the target amount.

(b) A plan for reducing the administrative costs for subsequent years.

SEC. 11. In any fiscal year in which the Controller's administrative costs for any fund exceeds 2 percent of the total amount contributed to the fund for the first year of the fund or 1 percent of the total amount contributed to the fund for any year thereafter, the Controller shall report to the Legislature both of the following:

(a) The reason the administrative costs exceeded the target amount.

(b) A plan for reducing the administrative costs for subsequent years.

SEC. 12. Section 2.5 of this act shall become operative only if Senate Bill 1353 of the 1989–90 Regular Session is chaptered.

SEC. 13. Section 6.5 of this act shall become operative only if Senate Bill 1009 of the 1989–90 Regular Session is chaptered.

SEC. 14. Section 7.5 of this act shall become operative only if Senate Bill 1474 of the 1989–90 Regular Session is chaptered.

CHAPTER 955

An act to add Section 27491.41 to the Government Code, relating to sudden infant death syndrome.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 27491.41 is added to the Government Code, to read:

27491.41. (a) For purposes of this section, "sudden infant death syndrome" means the sudden death of any infant which is unexpected by the history of the infant and where a thorough postmortem examination fails to demonstrate an adequate cause of death.

(b) The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death for children under age one, striking one out of every 500 children. The Legislature finds and declares that sudden infant death syndrome is a serious problem

within the State of California, and that public interest is served by research and study of sudden infant death syndrome, and its potential causes and indications.

(c) To facilitate these purposes, the coroner shall, within 24 hours, or as soon thereafter as feasible, perform an autopsy in any case where an infant has died suddenly and unexpectedly.

(d) The autopsy shall be conducted pursuant to a standardized protocol developed by the State Department of Health Services. The State Department of Health Services shall convene a sudden infant death syndrome autopsy protocol committee to develop and establish the protocol. The committee shall include, at a minimum, State Department of Health Services staff with expertise in sudden infant death syndrome, an epidemiologist, a forensic pathologist, a pediatric pathologist, a medical examiner, a county coroner, and a pediatrician with expertise in sudden infant death syndrome and child abuse. The protocol is exempt from the procedural requirements pertaining to the adoption of administrative rules and regulations pursuant to Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The committee may amend or modify the protocol as appropriate. The protocol shall be developed and approved by July 1, 1990.

(e) The protocol, as developed by the committee, shall be followed by all coroners throughout the state when conducting the autopsies required by this section. The coroner shall state on the certificate of death that sudden infant death syndrome was the cause of death when the coroner's findings are consistent with the definition of sudden infant death syndrome specified in the standardized autopsy protocol. The protocol may include requirements and standards for scene investigations, requirements for specific data, criteria for ascertaining cause of death based on the autopsy, and criteria for any specific tissue sampling, and any other requirements. The protocol may also require that specific tissue samples must be provided to a central tissue repository designated by the State Department of Health Services.

(f) The State Department of Health Services shall establish procedures and protocols for access by researchers to any tissues, or other materials or data authorized by this section. Research may be conducted by any individual with a valid scientific interest and prior approval from the State Committee for the Protection of Human Subjects. The tissue samples, the materials, and all data shall be subject to the confidentiality requirements of Section 10805 of the Health and Safety Code.

(g) The coroner may take tissue samples for research purposes from infants who have died suddenly and unexpectedly without consent of the responsible adult if the tissue removal is not likely to result in any visible disfigurement.

(h) A coroner shall not be liable for damages in a civil action for any act or omission done in compliance with this section.

(i) No consent of any person is required prior to undertaking the autopsy required by this section. However, if the physician of record certifies the cause of death is sudden infant death syndrome and the parents object to an autopsy on religious or ethical grounds, no autopsy shall be required.

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

CHAPTER 956

An act to amend Sections 4049.50 and 4049.51 of, and to add Sections 4049.52 and 4049.53 to, the Health and Safety Code, relating to water supply.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 4049.50 of the Health and Safety Code is amended to read:

4049.50. Local health officers may maintain programs for the control of cross-connections by water users, within the users' premises, where public exposure to drinking water contaminated by backflow may occur. The programs may include inspections within water users premises for the purpose of identifying cross-connection hazards and determining appropriate backflow protection. Water users shall comply with all orders, instructions, regulations, and notices from the local health officer with respect to the installation, testing, and maintenance of backflow prevention devices. The local health officer may collect fees from those water users subject to inspection to offset the costs of implementing cross-connection control programs.

SEC. 2. Section 4049.51 of the Health and Safety Code is amended to read:

4049.51. (a) Local health officers may maintain programs, in cooperation with water suppliers, to protect against backflow through service connections into the public water supply, and, with

the consent of the water supplier, may collect fees from the water supplier to offset the costs of implementing these programs.

(b) The fees authorized under this section and under Section 4049.50 shall be limited to the costs of administering these programs. At the discretion of the water supplier, the fees collected from the water supplier by the local health officer may be passed through to water users.

(c) Programs authorized under this section and Section 4049.50 shall be conducted in accordance with backflow protection regulations adopted by the State Department of Health Services.

(d) Nothing in this chapter shall prevent a water supplier from directly charging those water users required to install backflow prevention devices for the costs of the programs authorized in this section and Section 4049.50.

SEC. 3. Section 4049.52 is added to the Health and Safety Code, to read:

4049.52. To assure that testing and maintenance of backflow prevention devices are performed by persons qualified to do testing and maintenance, local health officers may maintain programs for certification of backflow prevention device testers. The local health officer may suspend, revoke, or refuse to renew the certificate of a tester, if, after a hearing before the local health officer or his or her designee, the local health officer or his or her designee finds that the tester has practiced fraud or deception or has displayed gross negligence or misconduct in the performance of his or her duties as a certified backflow prevention device tester. The local health officer may collect fees from certified testers to offset the cost of the certification program provided pursuant to this section. The certification standards shall be consistent with the backflow protection regulations adopted by the State Department of Health Services.

SEC. 4. Pursuant to Section 14012 of the Water Code, the Department of Water Resources is hereby authorized to make grants from the California Safe Drinking Water Bond Fund in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code), to the following agencies for purposes of financing proposed projects and investigations to identify alternatives for system improvements therefor:

(a) Amador County Water Agency (Ridge System).
(b) Amador County Water Agency (Previtali System).
(c) Amador County Water Agency (Bosse Road).
(d) Amador County Water Agency (Simmon System).
(e) Colusa County Service Area (Lurline Road).
(f) Elmira Community Services District.
(g) Georgetown Divide Public Utility District (Kelsey South).
(h) Georgetown Divide Public Utility District (Pilot Hill South).
(i) Mariposa County Service Area (Bear Valley).
(j) Mariposa County Service Area (Hornitos Water).

(k) Mariposa County Service Area (Mt. Bullion Water).
(*l*) Mono County Service Area #5 (Twin Lakes).
(m) Nevada Irrigation District (Deer Creek Park).
(n) Nevada Irrigation District (Highland Park).
(o) Nevada Irrigation District (Rohr-Shanley).
(p) Nevada Irrigation District (Sidnam and Hile Pipes).
(q) Nevada Irrigation District (Starbright Acres #1).
(r) Nevada Irrigation District (Starbright Acres #2).
(s) Placer County Water Agency (525 and 32 Boardman Canal).
(t) Placer County Water Agency (Dutch Flat).
(u) Placer County Water Agency (Eastside Pipe).
(v) Placer County Water Agency (Westside Pipe).
(w) San Luis Obispo County Waterworks District #6 (Santa Margarita).
(x) San Luis Obispo County Waterworks District #1 (San Miguel).
(y) Sutter Community Services District.
(z) Truckee-Donner Public Utility District (Hirschdale).
(aa) Tuolumne County (Shaws Flat).
(bb) Tuolumne County (Soulsbyville).

SEC. 5. Pursuant to Section 13896.2 of the Water Code, the Department of Water Resources is hereby authorized to make a grant from the California Safe Drinking Water Bond Fund, in accordance with the California Safe Drinking Water Bond Law of 1986 (Chapter 10.7 (commencing with Section 13895) of Division 7 of the Water Code), to the following agencies for purposes of financing a proposed project and investigation to identify alternatives for system improvements therefor:

(a) Briceland Community Service District.
(b) Lake County Service Area #3 (Twin Lakes).
(c) Lake County Service Area #7 (Bonanza Springs).
(d) Tuolumne Regional Water District (Irrigation District #16-Meadowbrook).

SEC. 6. The Department of Water Resources shall determine eligibility for and the amount of any grant authorized in this act, in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code) and may make those grants in accordance with the bond law.

SEC. 7. Notwithstanding any other provision of law, the Department of Water Resources may, at its discretion, prepare the information on each grant application required to be submitted to the Legislature under Section 14012 of the Water Code in the form of one annual report to the Legislature. The report shall be filed on or before January 31 of each year for grant commitments made of grant contracts entered into by the department during the previous calendar year. The report shall be filed with the Legislature, if it is in session, or, if it is not in session, with the Joint Rules Committee.

SEC. 8. (a) The Legislature hereby finds and declares that, in

order to meet the minimum safe drinking water standards, there are critical needs within the entities identified in this act, to immediately undertake certain improvements necessary to enable residents of those communities to have a dependable and potable water supply.

(b) The Legislature further finds and declares that the water systems of the entities identified in this act have critical deficiencies in the areas of treatment, storage, and distribution which pose a serious threat to the public health and welfare of all consumers within those communities and that each entity is only barely meeting the demand for water within the community.

SEC. 9. Section 4049.53 is added to the Health and Safety Code, to read:

4049.53. Any person who violates any provision of this chapter, violates any order of the local health officer pursuant to this chapter, or knowingly files a false statement or report required by the local health officer pursuant to this chapter is guilty of a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment not exceeding 30 days in the county jail or by both such fine and imprisonment. Each day of a violation of any provision of this chapter or of any order of the local health officer beyond the time stated for compliance of the order shall be a separate offense.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 957

An act to add Section 50190.1 to the Health and Safety Code, relating to mortgage credit certificates, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 50190.1 is added to the Health and Safety Code, to read:

50190.1. The agency is authorized to establish a mortgage credit certificate program pursuant to Section 50190.

SEC. 2. The Legislature hereby finds and declares as follows:

(a) Since the mid-1970's, declining housing affordability has been a major constraint on the housing market, particularly in states with high housing costs, such as California.

(b) Although the housing affordability picture improved slightly following the 1981–82 recession as a result of income growth and generally lower interest rates, recent increases in home prices and interest rates have made it difficult for buyers to save enough for large downpayments and to afford the high monthly carrying costs.

(c) Every month the American dream of owning a home slips further and further away from low- and moderate-income families in California. Based on the Housing Affordability Index for January 1989, only 21 percent of households in this state could qualify to purchase a median priced single-family home. By June of this year, that percentage had decreased to only 16 percent as the statewide average purchase price grew to over two hundred thousand four hundred forty-five dollars ($200,445).

(d) Two programs that have significantly enhanced housing affordability in California have been the tax-exempt mortgage revenue bond program (MRBs) and the mortgage credit certificate program (MCCs).

(e) In a state where fewer than one-fourth of all families can afford to purchase the median priced home, these programs have made it possible for thousands of Californians to buy their first home. Without MRBs and MCCs, these families would not have been able to afford the large downpayment and high monthly carrying costs of a conventional mortgage.

(f) Since 1976, the MRB programs administered by the California Housing Finance Agency (CHFA) have provided low downpayment loans to more than 27,000 first-time homebuyers. Similarly, MRB and MCC programs operated by local housing agencies have provided homeownership opportunities for thousands more families In fact, over the past eight years, California has issued 16 percent of the total volume of single-family mortgage bonds and 19 percent of the total volume of multifamily rental bonds.

(g) There is a real and positive economic impact from the production and sale of housing. Economic models developed by the building industry, realtors, and CHFA estimate that one hundred fifty million dollars ($150,000,000) of additional economic activity is generated from each one hundred million dollars ($100,000,000) of housing construction.

(h) Every reliable economic study indicates that housing affordability is declining. Prices are increasing faster than interest rates are declining. There is a clear, ongoing need for affordable housing and the loss of MRBs and MCCs would deal a crippling blow to every state in the union.

If California is to continue its efforts to keep pace with the rising housing market, the state must do everything possible to ensure continuation of the MRB and MCC programs by the federal government.

SEC. 3. Upon passage of this measure, the Secretary of State shall transmit a copy of this legislation 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. It is therefore declared that the Legislature of the State of California urges the Congress of the United States to enact S355 and HR1200 to ensure that the states can continue to provide housing assistance using the MRB and MCC programs.

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 fact constituting the necessity is that the federal authorization of the MRB and MCC programs is due to sunset on January 1, 1990, therefore, California must act immediately to encourage Congress to continue these programs prior to recessing the 1989 session.

CHAPTER 958

An act to amend Section 12026 of the Penal Code, relating to firearms.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 12026 of the Penal Code is amended to read:

12026. (a) Notwithstanding Section 12025, any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021, shall not be prohibited from owning, possessing, keeping, or carrying, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident any pistol, revolver, or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess, keep, or carry, either openly or concealed, any such firearm within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, shall be required of the citizen or legal resident.

(b) Nothing in this section shall be construed as affecting the application of Section 12031.

SEC. 2. The purpose of enacting this measure is to abrogate the holding in People v. Melton, 206 Cal. App. 3d 580, insofar as that decision purports to require the issuance of a concealed weapons permit in order to carry a pistol, revolver, or other firearm capable

of being concealed upon the person, whether openly or concealed, within the places mentioned in Section 12026 of the Penal Code, by an individual who has a proprietary, possessory, or substantial ownership interest in the place.

CHAPTER 959

An act to amend Section 12280 of the Penal Code, relating to firearms.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 12280 of the Penal Code, as added by Chapter 19 of the Statutes of 1989, is amended to read:

12280. (a) (1) Any person who within this state manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in the county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to a declaration issued pursuant to Section 12276.5 declaring that firearm to be an assault weapon, and has since either registered the firearm and any other lawfully obtained firearm subject to this chapter pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars ($500), but not less than three hundred fifty dollars ($350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the firearm shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(c) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for

violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(d) Subdivisions (a) and (b) do not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, the Department of Corrections, the California Highway Patrol, the California State Police, district attorneys' offices, or the military or naval forces of this state or of the United States for use in the discharge of their official duties; nor shall anything in this chapter prohibit the possession or use of assault weapons by sworn members of these agencies when on duty and the use is within the scope of their duties.

CHAPTER 960

An act to amend Section 3 of Chapter 1364 of the Statutes of 1988, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 3 of Chapter 1364 of the Statutes of 1988 is amended to read:

SEC. 3. Notwithstanding any other provision of law, no state or federal funds shall be used for the construction, maintenance, or operation of State Highway Route 231 or Route 241 until an irrevocable offer to the County of Orange is recorded to dedicate permanently, for public recreational 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.

As used in this section, the term "construction" does not include oversight activities for environmental review processes and design.

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 urgently needed toll road construction in Orange County to proceed at the earliest possible time, it is

necessary that this act take effect immediately.

CHAPTER 961

An act to amend Sections 8150 and 8152 of, and to add Section 8156 to, the Education Code, relating to apprenticeship education, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature finds that both school districts maintaining classes in kindergarten or in any of grades 1 to 12, inclusive, and community college districts, receive state apportionments for related and supplemental instruction for apprentices pursuant to Section 3074 of the Labor Code, and that both Section A and Section B of the State School Fund have a special fund for apprenticeship programs. The Legislature also finds that no statutory mechanism exists to transfer funds for apprenticeship training from one part of the State School Fund to the other as needed.

It is the intent of the Legislature to correct this condition and to further clarify and codify the funding provisions for related and supplemental instruction for apprentices.

SEC. 2. Section 8150 of the Education Code is amended to read:

8150. Attendance of apprentices enrolled in any class maintained by a high school, unified school district, regional occupation center or program, community college, or adult school, pursuant to Section 3074 of the Labor Code, shall be reimbursed pursuant to Section 8152 only if reported separately to the Superintendent of Public Instruction or Chancellor of the California Community Colleges, as appropriate. Attendance reported pursuant to this section shall be used only for purposes of calculating allowances pursuant to Section 8152.

SEC. 3. Section 8152 of the Education Code is amended to read.

8152. (a) Each 60-minute hour of teaching time devoted to each indentured apprentice enrolled in and attending classes of related and supplemental instruction, as provided under Section 3074 of the Labor Code, shall be reimbursed at the rate of three dollars and seventy-six cents ($3.76) per hour for the 1986–87 fiscal year. For the 1987–88 fiscal year and each fiscal year thereafter, the reimbursement rate shall be established in the annual Budget Act and the rate shall be commonly applied to all providers of instruction specified in subdivision (d).

(b) For the purposes of this section, each hour of teaching time may include up to 10 minutes of passing time and breaks.

(c) This section also shall apply to isolated apprentices, as defined in Section 3074 of the Labor Code, for which alternative methods of instruction are provided.

(d) The Superintendent of Public Instruction or the Chancellor of the California Community Colleges, whichever is appropriate, shall make the reimbursements specified in this section for teaching time provided by high schools, unified school districts, regional occupational centers or programs, community colleges, or adult schools.

SEC. 4. Section 8156 is added to the Education Code, to read:

8156. (a) For any apprenticeship program established pursuant to Section 3074 of the Labor Code for which there is a reimbursement entitlement under Section 8152 and that is transferred from a county office of education or a school district maintaining classes in kindergarten and any of grades 1 to 12, inclusive, to a community college district, the Controller, upon certification by the Superintendent of Public Instruction, shall transfer, prior to the first or second principal apportionment, as appropriate, from Section A of the State School Fund to Section B of the State School Fund an amount equal to the numbers of hours for which the apprenticeship program received funding in the previous fiscal year multiplied by the appropriate reimbursement rate set forth in Section 8152.

(b) For any apprenticeship program for which there is a reimbursement entitlement under Section 8152 and that is transferred from a community college district to a school district maintaining classes in kindergarten and any of grades 1 to 12, inclusive, the Controller, upon certification by the Chancellor of the California Community Colleges, shall transfer, prior to certification of the first or second principal apportionments, as appropriate, from Section B of the State School Fund to Section A of the State School Fund an amount equal to the number of hours for which the apprenticeship program received funding in the previous fiscal year multiplied by the appropriate reimbursement rate set forth in Section 8152.

(c) In the event that a deficit occurs in either Section A or Section B of the State School Fund for apprenticeship programs established pursuant to Section 3074 of the Labor Code for which there is a reimbursement entitlement under Section 8152, the Director of the Department of Finance may transfer any unspent funds from one section of the State School Fund to fund a deficit in another section of the State School Fund.

(d) Any transfer authorized by this section shall be subject to the approval of the Director of the Department of Finance, provided that the transfer may not be authorized sooner than 30 days after written notification of the necessity therefor is provided to the chairpersons of the appropriate budget committees of the Legislature and to the Chairperson of the Joint Legislative Budget Committee, or sooner than any lesser period of time designated in each instance by the Director of the Department of Finance, or his

or her designee.

CHAPTER 962

An act to add Sections 20017.82, 20803.96, and 22013.76 to the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 20017.82 is added to the Government Code, to read:

20017.82. "State safety member" also includes officers and employees with the State Department of Mental Health or the Department of Forestry and Fire Protection in the following classifications:

Classification Code	Classification Title
8049	Registered Nurse (forensic facility)
2861	Audio Visual Specialist (correctional facility)
2860	Audio Visual Assistant (correctional facility)

"State safety member" also includes an officer or employee of the State Department of Mental Health at Patton State Hospital or Atascadero State Hospital, who either is excluded from the definition of state employee in subdivision (c) of Section 3513, is a supervisory employee as defined by Section 3522.1, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service. An officer or employee may be a state safety member under this paragraph only if the person has responsibility for the supervision of state safety personnel specified in the classifications listed in this section and if the State Personnel Board determines that these officers and employees meet the state safety membership criteria established pursuant to Section 18717. The Department of Personnel Administration shall determine which classes meet the above conditions and report its findings to the Public Employees' Retirement System, whereupon the change in membership categories shall take effect.

Any person so designated pursuant to this section may elect, within 90 days of notification by the board, to remain subject to the miscellaneous service retirement benefit and contribution rate by

filing an irrevocable notice of election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21251.13 only for service also included in the federal system.

SEC. 2. Section 20803.96 is added to the Government Code, to read:

20803.96. "State safety service" does not include service in classes specified in Section 20017.82 prior to the operative date of that section.

SEC. 3. Section 22013.76 is added to the Government Code, to read:

22013.76. "Policeman," as used in this part, also includes persons employed in positions identified in Section 20017.82, provided that designation is not contrary to any definition, ruling, or regulation relating to the term "policeman" issued by the federal agency for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

CHAPTER 963

An act to amend Sections 15102 and 15106 of the Education Code, and to amend Section 98.9 of the Revenue and Taxation Code, relating to general obligation bonds.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 15102 of the Education Code is amended to read:

15102. The total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

SEC. 2. Section 15106 of the Education Code is amended to read:

15106. Any unified school district may issue bonds not to exceed 2.5 percent of the taxable property of the district as shown by the last

equalized assessment of the county or counties in which the district is located.

In computing the outstanding bonded indebtedness of any unified school district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, and high school purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district to each of those purposes respectively.

(a) For the purposes of the State School Building Aid Law of 1952 with respect to applications for apportionments and apportionments filed or made prior to September 15, 1961, and to the repayment thereof, Chapter 6 (commencing with Section 15700) of this part, inclusive, only, any unified school district shall be considered to have a bonding capacity in the amount permitted by law for an elementary school district and a bonding capacity in the amount permitted by law for a high school district.

(b) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987–88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15102.

SEC. 3. Section 98.9 of the Revenue and Taxation Code is amended to read:

98.9. Notwithstanding any other provision of law, commencing with the 1988–89 fiscal year, property tax assessed value attributable to unitary and operating nonunitary property, as defined in Section 723, and Section 723.1, which is assessed by the State Board of Equalization shall be allocated by county as provided in Section 756 and the assessed value and revenues attributable to that allocation shall be allocated within each county as follows:

(a) Each county shall establish one countywide tax rate area. The assessed value of all unitary and operating nonunitary property shall be assigned to this tax rate area. No other property shall be assigned to this tax rate area.

(b) Property assigned to the tax rate area created by subdivision (a) shall be taxed at a rate equal to the sum of the following two rates:

(1) A rate determined by dividing the county's total ad valorem tax levies for the secured roll, including levies made pursuant to Section 100, for the prior year, exclusive of levies for debt service, by the county's total ad valorem secured roll assessed value for the prior year.

(2) A rate determined as follows:

(A) By dividing the county's total ad valorem tax levies for unitary and operating nonunitary property for the prior year debt service only by the county's total unitary and operating nonunitary assessed value for the prior year.

(B) Beginning with the 1989–90 fiscal year, adjusting the rate determined pursuant to subparagraph (A) by the percentage change between the two preceding fiscal years in the county's ad valorem debt service levy for the secured roll, not including unitary and operating nonunitary debt service.

(c) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (1) of subdivision (b) shall be allocated as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, each taxing jurisdiction shall be allocated an amount of property tax revenue equal to 102 percent of the amount of the aggregate property tax revenue it received from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(2) If the amount of property tax revenue available for allocation in the current fiscal year is insufficient to make the allocations required by paragraph (1), the amount of revenue to be allocated to each taxing jurisdiction shall be prorated based on a factor determined by dividing the total amount of property tax revenue available to all taxing jurisdictions from unitary and operating nonunitary property in the current year, exclusive of revenue attributable to levies for debt service, by the total amount of property tax revenue received by all taxing jurisdictions from unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(3) If the amount of property tax revenue available for allocation to all taxing jurisdictions in the current fiscal year from unitary and operating nonunitary property, exclusive of revenue attributable to levies for debt service, exceeds 102 percent of the property tax revenue received by all taxing jurisdictions from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service, the amount of revenue in excess of 102 percent shall be allocated to all taxing jurisdictions in the county by a ratio determined by dividing each taxing jurisdiction's share of the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service, by the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service.

(d) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (2) of subdivision (b) shall be allocated as follows:

(1) An amount shall be computed for each taxing jurisdiction which shall be determined by multiplying the amounts required in the current year pursuant to subdivisions (a) and (c) of Section 93 by that percentage which shall be determined by dividing the amount of property tax revenue the jurisdiction received in the prior year from unitary property and operating nonunitary property by the total amount of property tax revenue the jurisdiction received in the prior year from all property.

(2) The amount of property tax revenue available for allocation pursuant to this subdivision shall be allocated among taxing jurisdictions in the proportion that the amount computed for each taxing jurisdiction pursuant to paragraph (1) bears to the total amount computed pursuant to paragraph (1) for all taxing jurisdictions

(3) If a taxing jurisdiction is levying a tax rate for debt service for the first time in the current fiscal year, for purposes of determining the percentage specified in paragraph (1), that percentage shall be the percentage determined by dividing the amount of property tax revenue received by that taxing jurisdiction in the prior year pursuant to subdivision (c) from unitary and operating nonunitary property by the total amount of property tax revenue received by that taxing jurisdiction in the prior year from all property within the taxing jurisdiction.

(e) For purposes of this section:

(1) "The county's total ad valorem tax levies for the secured roll" means all ad valorem tax levies for the county's secured roll, including the general tax levy, levies for debt service (including land only and land and improvement rates), and levies for redevelopment agencies.

(2) "The county's total ad valorem secured roll" means the county's local roll, after all exemptions except the homeowner's exemption, and the county's utility roll.

(3) "Taxing jurisdiction" includes a redevelopment agency, and a Special District Augmentation Fund created pursuant to Section 98.6.

(f) The assessed value of the unitary and operating nonunitary property shall be kept separate for each state assessee throughout the allocation process.

(g) Each state assessee shall be issued only one tax bill for all unitary and operating nonunitary property within the county.

(h) This section does not apply to unitary property of regulated railway companies.

(i) This section does not apply to property which on July 1, 1987, was undeveloped and owned by a utility and which is located within a city, county, or city and county which adopts a resolution stating

that the property is subject to a development agreement and that this section shall not apply to that property, and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the State Board of Equalization and the county's auditor-controller prior to January 1, 1988.

CHAPTER 964

An act to amend Section 593d of the Penal Code, relating to cable television.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 593d of the Penal Code is amended to read:

593d. (a) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, or inductively, or purchases, possesses, attaches or maintains the attachment of any unauthorized device or devices to any cable, wire or other component of a franchised or otherwise duly licensed cable television system or to a television cable or set, or makes or maintains any modification or alteration to any device installed with the authorization of a franchised or otherwise duly licensed cable television system, for the purpose of intercepting or receiving any program or other service carried by a franchised or otherwise duly licensed cable television system which such person is not authorized by that cable television system to receive, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding 90 days, or both. For the purposes of this section, each such purchase, possession, connection or attachment shall constitute a separate violation of this section.

(b) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections with, whether physically, electrically or inductively, or attaches or maintains any attachment to, any cable, wire, or other component of a franchised or otherwise duly licensed cable television system, for the purpose of interfering with, altering or degrading any cable television service being transmitted to others, or for the purpose of transmitting or broadcasting any program or other service not intended to be transmitted or broadcast by the franchised or otherwise duly licensed cable television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail or both. For the purposes of this section, each such transmission or broadcast shall constitute a separate violation of this section.

(c) Every person who, without the express authorization of a franchised or other duly licensed cable television system, knowingly and willfully manufactures, imports into this state, distributes, sells, offers to sell, possesses for sale, or advertises for sale any device, or any plan or kit for a device or for a printed circuit, designed in whole or in part to decode, descramble or otherwise make intelligible any encoded, scrambled or other nonstandard signal carried by that cable television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment in the county jail, or both. For the purpose of this subdivision, "encoded, scrambled or other nonstandard signal" shall include, without limitation, any type of signal or transmission that is not intended to produce an intelligible program or service without the aid of a decoder, descrambler, filter, trap or some similar device. A second or subsequent conviction is punishable by a fine not exceeding twenty thousand dollars ($20,000) or by imprisonment in the county jail for up to one year, or both.

(d) Any person who violates this section shall be liable to the franchised or otherwise duly licensed cable television system for the greater of the following amounts:

(1) Five thousand dollars ($5,000)

(2) Three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney's fees.

(e) Any franchised or otherwise duly licensed cable television system may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (d).

(f) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

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

CHAPTER 965

An act to amend Section 19799 of, and to add Section 8310.5 to, the Government Code, relating to ethnic classification.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The Asian and Pacific Islander communities are rapidly growing in California and will comprise nearly 10 percent of the state's total population by 1990 and 14 percent of the population by the year 2020.

(b) The over 60 broad ethnic and racial designations which make up our Asian and Pacific Islander communities represent a tremendous cultural diversity.

(c) Accurate perception of these communities and their needs is often masked by stereotyping and confusion.

SEC. 2. The purpose of this act is to require all state agencies and state-funded programs to use uniform collection categories for the major Asian and Pacific Islander groups, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian.

SEC 3. Section 8310.5 is added to the Government Code, to read:

8310.5. Any state agency, board, or commission which directly or by contract collects demographic data as to the ancestry or ethnic origin of Californians shall use separate collection categories and tabulations for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian.

SEC. 4 Section 19799 of the Government Code is amended to read·

19799. When any state agency conducts any survey as to the ancestry or ethnic origin of state civil service employees, or maintains any statistical tabulation of minority group employees, it shall use separate collection categories for each major Asian and Pacific Islander group, including, but not limited to, Chinese, Japanese, Filipino, Korean, Vietnamese, Asian Indian, Hawaiian, Guamanian, Samoan, Laotian, and Cambodian in the survey or tabulation.

CHAPTER 966

An act relating to property taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Notwithstanding any other provision of law, the allocation of property tax revenue resulting from calculations specified in Sections 96 and 97 of the Revenue and Taxation Code with respect to amounts identified in paragraph (1) of subdivision (h) of Section 95, Section 97.7, and subdivision (a) of Section 97.8 of the Revenue and Taxation Code and in Section 16713 of the Welfare and Institutions Code in the 1979–80 fiscal year to the 1988–89 fiscal year, inclusive, in Marin and Fresno Counties, as distributed as of July 1, 1989, shall be deemed correct, and no reductions or increases in apportionments shall be made from the 1979–80 fiscal year to the 1988–89 fiscal year, inclusive. With respect to validation of allocations of property tax revenues to cities or special districts, the provisions of this section shall become operative only upon the passage, by the legislative body of the affected taxing entity and by the county, of a resolution affirming those allocations.

SEC. 2. It is the intent of the Legislature not to validate in the future any other mistake in the allocation of property tax revenue unless the mistake is the result of written advice from the Department of Finance with respect to the particular allocation.

SEC. 3. With respect to the provisions of Section 1 of this act, 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 unique circumstances applicable only to Marin and Fresno Counties. Marin and Fresno Counties failed to comply with the new revenue distribution system in good faith reliance on a prior limited audit conducted pursuant to Section 38 of Chapter 100 of the Statutes of 1981 by the Department of Finance in 1982 which indicated Marin and Fresno Counties were in substantial compliance with the new method of computation.

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 local taxing agencies in Marin and Fresno Counties to be immediately relieved of the possibility of litigation and to assure that the county auditors of Marin and Fresno Counties are free to implement the newly adopted apportionment procedures without duress, it is necessary that this act take effect immediately.

CHAPTER 967

An act to amend Section 1156 of, and to amend and repeal Section 1242 of, the Government Code, relating to state employees, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1156 of the Government Code, is amended to read:

1156. (a) Any eligible employee who is participating in a flexible benefits program may elect to receive one or more benefits that qualify to be excluded from gross income in lieu of a portion of his or her salary.

(b) For purposes of this section, an "eligible employee" means any of the following:

(1) An employee excluded from the definition of "state employee ' in subdivision (c) of Section 3513.

(2) A "managerial employee" as defined in subdivision (e) of Section 3513.

(3) A "confidential employee" as defined in subdivision (f) of Section 3513 and subdivision (e) of Section 3562.

(4) A "supervisory employee" as defined in Sections 3522.1 and 3580.3.

(5) An officer or employee of the State of California in the executive or judicial branch of government who is not a state civil service employee pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2.

(6) A "state employee," as defined by subdivision (c) of Section 3513 or employed by the state as provided for in Article VI of the Constitution.

(c) Any eligible employee participating in the flexible benefits program shall be subject to federal laws and implementing regulations of the Department of Personnel Administration which affects the flexible benefit program throughout the period of the employee's enrollment.

(d) Unless the trustee or the administrator of the state's flexible benefit program is the Controller or another state officer, that program shall be administered in compliance with the federal Employee Retirement Income Security Act of 1974 (ERISA: 29 U.S.C.A. Sec. 1001 et seq.).

(e) As a condition of participating in a flexible benefits program, each eligible employee shall provide evidence in a manner satisfactory to the Department of Personnel Administration that the employee is covered by a basic health benefits plan, and his or her agreement to remain covered for the period of participation in the

flexible benefits plan.

(f) There is in the State Treasury the Flexelect Benefit Fund which, notwithstanding Section 13340, is continuously appropriated without regard to fiscal years to the Department of Personnel Administration for expenditure to implement the flexible benefits program and to pay the related administrative costs. The fund shall consist of the amounts received from state employee compensation excluded from gross income and transmitted to the Flexelect Benefit Fund, income of whatever nature earned on the money in the Flexelect Benefit Fund during any fiscal year and credited to the fund, and amounts appropriated therefor in the annual Budget Act and other statutes.

(g) On or after July 1, 1990, any funds remaining in the State Employees' Dependent Care Assistance and Health Care Assistance Fund shall be transmitted into the account in the Flexelect Benefit Fund for the administrative expenses of the Controller's office to pay the related administrative costs.

SEC. 2. Section 1242 of the Government Code is amended to read:

1242. (a) A state employee, as defined by Section 3513 or employed by the state as provided for in Article VI of the Constitution, may elect to participate in a State Employees' Dependent Care Assistance Program, a Health Care Reimbursement Account, or both, administered by the Department of Personnel Administration, under which program the value thereof, to the extent permissible by Sections 105(b), 129, and 213(d) of the Internal Revenue Code, shall be excluded from gross income, in lieu of his or her compensation and shall be transmitted to the State Employees' Dependent Care Assistance and Health Care Assistance Fund. A participant in the program shall, during enrollment, be subject to the applicable federal statutes and related administrative regulations adopted by the Department of Personnel Administration.

(b) There is in the State Treasury the State Employees' Dependent Care Assistance and Health Care Assistance Fund which is, notwithstanding Section 13340, continuously appropriated without regard to fiscal years to the Department of Personnel Administration for expenditure to implement the State Employees' Dependent Care Assistance Program and the Health Care Reimbursement Account and to pay the related administrative costs. The fund shall consist of the amounts received pursuant to subdivision (a) and amounts appropriated therefor in the annual Budget Act and other statutes.

(c) This section shall remain in effect only until July 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1990, deletes or extends that date.

CHAPTER 968

An act to amend Section 1371 of, and to add Section 1371.1 to, the Health and Safety Code, and to amend Sections 10123.13 and 11512.180 of, and to add Sections 10123.145 and 11512.181 to, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1371 of the Health and Safety Code is amended to read:

1371. A health care service plan which covers hospital, medical, or surgical expenses shall reimburse claims or any portion of any claim, whether in state or out of state, for those expenses, as soon as practical, but no later than 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan, unless the claim or portion thereof is contested by the plan in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within the respective 30 or 45 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 or 45 working day period.

For the purposes of this section, a claim, or portion thereof, is reasonably contested where the plan has not received the completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services Information necessary to determine payer liability for the claim includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the plan to determine the medical necessity for the health care services provided.

SEC. 1.5. Section 1371.1 is added to the Health and Safety Code, to read:

1371.1. Whenever a health care service plan which covers hospital, medical, or surgical expenses determines that in reimbursing a claim for provider services an institutional or

professional provider has been overpaid, and then notifies the provider in writing through a separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the health care service plan within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the health care service plan shall be notified, in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

SEC. 2. Section 10123.13 of the Insurance Code is amended to read:

10123.13. Every insurer issuing group or individual policies of disability insurance which covers hospital, medical, or surgical expenses shall reimburse claims or any portion of any claim, whether in state or out of state, for such expenses, as soon as practical, but no later than 30 working days after receipt of the claim by the insurer unless the claim or portion thereof is contested by the insurer in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the insurer. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

For purposes of this section, a claim, or portion thereof, is reasonably contested where the insurer has not received a completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability for the claims includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the insurer to determine the medical necessity for the health care services provided to the claimant.

SEC. 2.5. Section 10123.145 is added to the Insurance Code, to read:

10123.145. Whenever an insurer issuing group or individual policies of disability insurance which covers hospital, medical, or surgical expenses determines that in reimbursing a claim for provider services an institutional or professional provider has been overpaid, and then notifies the provider in writing through a

separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the insurer within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the insurer shall be notified, in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

SEC. 3. Section 11512.180 of the Insurance Code is amended to read:

11512.180. Every nonprofit hospital service plan that covers hospital, medical, or surgical expenses on a group or individual basis shall reimburse claims or any portion of any claim, whether in state or out of state, for such expenses, as soon as practical, but not later than 30 working days after receipt of the claim by the hospital service plan, or if the plan is a health maintenance organization, 45 working days after receipt of the claim by the hospital service plan, unless the claim or portion thereof is contested by the plan in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the nonprofit hospital service plan, or if the plan is a health maintenance organization, 45 working days after receipt of the claim by the nonprofit hospital service plan. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within the respective 30 or 45 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 or 45 working day period.

For purposes of this section, a claim, or portion thereof, is reasonably contested where the plan has not received the completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the insurer to determine the medical necessity for the health care services provided to the claimant.

SEC. 3.5. Section 11512.181 is added to the Insurance Code, to read:

11512.181. Whenever a nonprofit hospital service plan which covers hospital, medical, or surgical expenses determines that in reimbursing a claim for provider services an institutional or

professional provider has been overpaid, and then notifies the provider in writing through a separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the nonprofit hospital service plan within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the nonprofit hospital service plan shall be notified, in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

CHAPTER 969

An act to add Section 10084.1 to the Business and Professions Code, to add Section 2079.7 to the Civil Code, and to add Section 25417 to the Health and Safety Code, relating to hazardous materials, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 10084.1 is added to the Business and Professions Code, to read:

10084.1. (a) Notwithstanding Section 10450.6, on or before January 1, 1991, the department, using funds appropriated from the Education and Research Account in the Real Estate Fund, shall develop a booklet to educate and inform consumers on all of the following:

(1) Common environmental hazards that are located on, and affect, real property. The types of common environmental hazards shall include, but not be limited to, asbestos, radon gas, lead-based paint, formaldehyde, fuel and chemical storage tanks, and water and soil contamination.

(2) The significance of common environmental hazards and what can be done to mitigate these hazards.

(3) What sources can provide more information on common environmental hazards for the consumer.

(b) The department shall seek the advice of the State Department of Health Services to assist it in determining the contents of the booklet prepared pursuant to this section, and shall seek the assistance of the State Department of Health Services in the writing of the booklet.

SEC. 2. Section 2079.7 is added to the Civil Code, to read:

2079.7. (a) If a consumer information booklet described in Section 10084.1 of the Business and Professions Code is delivered to a transferee in connection with the transfer of real property, including property specified in Section 1102 of the Civil Code, or manufactured housing, as defined in Section 18007 of the Health and Safety Code, a seller or broker is not required to provide additional information concerning, and the information shall be deemed to be adequate to inform the transferee regarding, common environmental hazards, as described in the booklet, that can affect real property.

(b) Notwithstanding subdivision (a), nothing in this section either increases or decreases the duties, if any, of sellers or brokers, including but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or Section 25359.7 of the Health and Safety Code, or alters the duty of a seller or broker to disclose the existence of known environmental hazards on or affecting the real property.

SEC. 3. Section 25417 is added to the Health and Safety Code, to read:

25417. The department shall publish the consumer information booklet described in Section 10084.1 of the Business and Professions Code and distribute the booklet to the public, upon request. The department may charge a fee for the booklet to defray the publication, mailing, distribution, and administrative costs necessary to implement this section and its ongoing administrative costs resulting from inquiries by the public about the contents of the booklet.

SEC. 4. The sum of sixty-five thousand dollars ($65,000) is hereby appropriated from the Education and Research Account in the Real Estate Fund to the Department of Real Estate for reimbursement of the costs of carrying out Section 10084.1 of the Business and Professions Code.

CHAPTER 970

An act to amend, repeal, and add Sections 19535, 19596.5, and 19596.6 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 19535 of the Business and Professions Code is amended to read:

19535. (a) Notwithstanding any other provision of law, at the time the board allocates racing weeks, it shall determine the number of usable stalls that each association or fair shall make available and maintain in order to conduct the racing meeting. The minimum number of stalls may be at the site of the racing meeting or, with the approval of the board, at an offsite location.

(b) With respect to racing meetings conducted in the northern zone, the association or fair conducting the meeting shall provide all stabling required by the board pursuant to subdivision (a) without cost to participating horsemen. Offsite stabling shall be at a board approved facility or facilities selected by the association or fair, with the concurrence of the organization representing horsemen participating at the meeting. If there is a disagreement between the association or fair and the organization representing the majority of horsemen participating at the meeting with respect to the selection of offsite stabling facilities, the board, at the request of the association or fair or the organization representing the majority of horsemen participating at the meeting, shall promptly determine the board-approved facility or facilities at which offsite stabling shall be made available. The organization representing horsemen participating at the meeting and the association or fair shall mutually agree on the criteria and selection of horses that may use stalls required pursuant to this section. With respect to northern zone thoroughbred meetings only, the association shall also provide, at the option of the horse owner, vanning of participating racehorses from any board-approved offsite stabling facility in the northern zone.

(c) With respect to racing meetings conducted in the central or southern zones, all costs associated with the maintenance of the usable stalls for the racing meeting shall be borne by the association or fair conducting the meeting, and, with respect to usable stalls at an offsite location, the association or fair may be required, by order of the board, to bear the costs of vanning from the offsite location to the racing meeting, except that with respect to any racing association in the central or southern zone that conducted a racing meeting in 1986, if the number of usable stalls made available onsite by a racing association during a racing meeting is less than 95 percent of the number of usable stalls made available onsite by that racing association during its 1986 racing meeting, the racing association shall reimburse the facility providing offsite stabling for the difference in cost between the actual number of usable stalls made available and 95 percent of the usable stalls made available in 1986.

The racing association shall, in addition, reimburse the owner for vanning to the onsite location with respect to those horses stabled at an offsite location necessitated by the failure of a racing association to maintain 95 percent of the usable stalls made available by that racing association during its 1986 racing meeting.

(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 19535 is added to the Business and Professions Code, to read:

19535. (a) Notwithstanding any other provision of law, at the time the board allocates racing weeks, it shall determine the number of usable stalls that each association or fair shall make available and maintain in order to conduct the racing meeting. The minimum number of stalls may be at the site of the racing meeting or, with the approval of the board, at an offsite location. All costs associated with the maintenance of the usable stalls for the racing meeting shall be borne by the association or fair conducting the meeting, and, with respect to usable stalls at an offsite location, the association or fair may be required, by order of the board, to bear the costs of vanning from the offsite location to the racing meeting, except that with respect to any racing association in the central or southern zone that conducted a racing meeting in 1986, if the number of usable stalls made available onsite by a racing association during a racing meeting is less than 95 percent of the number of usable stalls made available onsite by that racing association during its 1986 racing meeting, the racing association shall reimburse the facility providing offsite stabling for the difference in cost between the actual number of usable stalls made available and 95 percent of the usable stalls made available in 1986.

(b) A racing association shall, in addition, reimburse the owner for vanning to the onsite location with respect to those horses stabled at an offsite location necessitated by the failure of a racing association to maintain 95 percent of the usable stalls made available by that racing association during its 1986 racing meeting.

(c) This section shall become operative on January 1, 1992.

SEC. 3. Section 19596.5 of the Business and Professions Code, as amended by Section 2 of Chapter 74 of the Statutes of 1989, is amended to read:

19596.5. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure, except during the part of the day racing is being conducted at its racetrack, and may, with the approval of the Department of Food and Agriculture, authorize any county fair, district agricultural association fair, or citrus fruit fair in the northern zone eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting or authorized pursuant to Section 19596.7, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the northern zone, if all of the following conditions are met:

(1) An organization described in subdivision (c) of Section 19596.4 has executed agreements, which are approved by the board, with the association conducting a racing meeting in the northern zone and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the

wagers made at the satellite wagering facility will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted. Notwithstanding any other provision of law or any agreement under this subdivision, for purposes of determining license fees and breakage at the racetrack where the racing meeting is conducted, wagers at a satellite wagering facility shall not be included in the conventional or exotic pools of the association conducting the racing meeting.

(2) The horsemen's organization which represents the horsemen at the association which conducts the racing meeting on which wagers are accepted consents to the acceptance of wagers at the satellite wagering facility, except that the association or fair operating the satellite wagering facility may appeal the withholding of consent to the board which may determine that consent is not required.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering has been approved by the board.

(5) Except as provided in Section 19596.9, any association or fair which conducts satellite wagering shall conduct wagering on all racing offered to the satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses which would be incurred regardless of the acceptance of night wagers shall be considered.

(b) Notwithstanding subdivision (a), during periods of the day when there is no night racing in the northern zone, the live audiovisual signal of night harness or quarter horse races in the central or southern zone may be offered to satellite wagering facilities in the northern zone, provided, however, (1) that racing associations may accept that audiovisual signal, but are not required to do so and (2) that satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, the amount of actual operating expenses, as determined by the board, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition to the distributions in paragraph (1) or (2), on thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility shall be allocated to the facility for promotion of that meeting's program. For harness, quarter horse, and mixed breed meetings, 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities.

(4) In addition to the distributions in paragraphs (1), (2), and (3), on thoroughbred meetings only, four-tenths of 1 percent of the total

amount handled at each satellite wagering facility shall be allocated to the association providing the racing program to reimburse it for any costs of offsite stabling and vanning which are required pursuant to Section 19535. The amount of the reimbursement payable to an association for offsite stabling shall not exceed the actual cost to the association of maintaining stalls at its racetrack plus the actual costs incurred by the association to provide vanning and transportation of racehorses from offsite stabling facilities to its racetrack.

(5) In addition to the distributions in paragraphs (1), (2), and (3), on fair meetings only, four-tenths of 1 percent of the total amount handled at each satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this paragraph, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this paragraph, "actual cost" does not include fixed overhead or administrative expenses which would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(6) Any of the promotional funds distributed pursuant to paragraph (3) that are not expended in the year in which they are collected may be expended in the following year and, if promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(7) Any of the stabling and vanning reimbursement funds distributed pursuant to paragraph (4) or (5) that are not expended within 90 days of the end of the meeting at which they are collected shall be reallocated for promotion of the program at satellite wagering facilities, as provided in paragraph (3).

(8) Additionally, on thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) On thoroughbred meetings only, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the

horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(e) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses at the association conducting the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(f) Except as provided in subdivisions (g) and (h), all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at fairs.

(4) For support purposes of fairs generally.

(g) Seven and one-half percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in the General Fund.

(h) Up to 10 percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of subdivision (i). The department shall annually determine the percentage of revenues payable to the special account under this subdivision based on the amount necessary to achieve the purposes of subdivision (i).

(i) It is the intent of the Legislature that funds allocated pursuant to subdivision (h) be used primarily at fair racing meetings in the northern zone with a daily average handle of more than three hundred thousand dollars ($300,000). The Legislature further finds that its intent is that these allocations be used to bring the purses at these fairs, exclusive of purses for stakes races and special events, to a level of at least 80 percent of purses for similar classes of horses at private racing associations in the northern zone. The funds shall be used among all breeds. For fair racing meetings in the northern zone with a daily average handle of three hundred thousand dollars ($300,000) or less, it is the intent of the Legislature to bring the purses to a level of at least 25 percent of purses for similar classes of horses at private racing associations in the northern zone.

(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. 4. Section 19596.5 is added to the Business and Professions Code, to read:

19596.5. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure, except during the part of the day racing is being conducted at its racetrack, and may, with the approval of the Department of Food and Agriculture, authorize any county fair, district agricultural association fair, or citrus fruit fair in the northern zone eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting or authorized pursuant to Section 19596.7, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the northern zone, if all of the following conditions are met:

(1) An organization described in subdivision (c) of Section 19596.4

has executed agreements, which are approved by the board, with the association conducting a racing meeting in the northern zone and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted. Notwithstanding any other provision of law or any agreement under this subdivision, for purposes of determining license fees and breakage at the racetrack where the racing meeting is conducted, wagers at a satellite wagering facility shall not be included in the conventional or exotic pools of the association conducting the racing meeting.

(2) The horsemen's organization which represents the horsemen at the association which conducts the racing meeting on which wagers are accepted consents to the acceptance of wagers at the satellite wagering facility, except that the association or fair operating the satellite wagering facility may appeal the withholding of consent to the board which may determine that consent is not required.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering has been approved by the board.

(5) Except as provided in Section 19596.9, any association or fair which conducts satellite wagering shall conduct wagering on all racing offered to the satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or night meeting, as long as that loss is reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses which would be incurred regardless of the acceptance of night wagers shall be considered.

(b) Notwithstanding subdivision (a), during periods of the day when there is no night racing in the northern zone, the live audiovisual signal of night harness or quarter horse races in the central or southern zone may be offered to satellite wagering facilities in the northern zone, provided, however, (1) that racing associations may accept that audiovisual signal, but are not required to do so and (2) that satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

(c) The total percentage deducted from wagers at satellite

wagering facilities shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4.0 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and 0.4 of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3.0 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, 0.4 of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, 0.4 of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, 0.4 of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in the case of thoroughbreds, 0.4 of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition to the distributions in paragraph (1) or (2), on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent of the total amount handled by the satellite wagering facility shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the

promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, 0.33 of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) On thoroughbred meetings only, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(e) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (c) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses at the association conducting the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(f) Except as provided in subdivisions (g) and (h), all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph,

"coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at fairs.

(4) For support purposes of fairs generally.

(g) Seven and one-half percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in the General Fund.

(h) Up to 10 percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of subdivision (i). The department shall annually determine the percentage of revenues payable to the special account under this subdivision based on the amount necessary to achieve the purposes of subdivision (i).

(i) It is the intent of the Legislature that funds allocated pursuant to subdivision (h) be used primarily at fair racing meetings in the northern zone with a daily average handle of more than three hundred thousand dollars ($300,000). The Legislature further finds that its intent is that these allocations be used to bring the purses at these fairs, exclusive of purses for stakes races and special events, to a level of at least 80 percent of purses for similar classes of horses at private racing associations in the northern zone. The funds shall be used among all breeds. For fair racing meetings in the northern zone with a daily average handle of three hundred thousand dollars ($300,000) or less, it is the intent of the Legislature to bring the purses to a level of at least 25 percent of purses for similar classes of horses at private racing associations in the northern zone.

(j) This section shall become operative on January 1, 1992.

SEC. 5. Section 19596.6 of the Business and Professions Code, as amended by Chapter 210 of the Statutes of 1989, is amended to read:

19596.6. (a) Notwithstanding any other provision of law, subject to the conditions and limitations set forth in this section and Section 19596.7, the following entities in the central or southern zone are eligible to be licensed to operate a satellite wagering facility for

wagering on races conducted in the central or southern zone:

(1) Any county fair, district agricultural association fair, or citrus fruit fair which conducted general fair activities in 1986 within the central or southern zone, and which is eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting, may locate a satellite wagering facility at its fairgrounds.

(2) Any association licensed to conduct a racing meeting in the central or southern zone.

(b) The board may authorize an eligible association or, with the approval of the Department of Food and Agriculture, an eligible fair, to operate a satellite wagering facility under all of the following conditions:

(1) A racing association licensed to conduct a racing meeting shall conduct satellite wagering only within its racing inclosure.

(2) An organization described in subdivision (c) of Section 19596.4 has executed an agreement approved by the board with the association conducting a racing meeting and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility are included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering have been approved by the board.

(5) Any association or fair that operates a satellite wagering facility shall conduct wagering on all racing conducted in the central or southern zone that is offered to that satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or a night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or a night meeting, as long as that loss is not reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses of the satellite wagering facility which would be incurred regardless of the acceptance of night wagers shall be considered.

(c) Notwithstanding subdivision (a), a satellite wagering facility may not be located within the County of Los Angeles or within the County of Orange, except as follows:

(1) If all other conditions in subdivision (b) are met, the Fiftieth District Agricultural Association may be authorized to operate a satellite wagering facility upon its fairgrounds in the City of

Lancaster and to accept wagers on races conducted in the southern and central zones.

(2) If all other conditions are met, any fair or association licensed to conduct racing meetings in the County of Los Angeles and any racing association other than a fair which is licensed to conduct racing in the County of Orange may be authorized to operate a satellite wagering facility for the limited purpose of conducting satellite wagering on races conducted at the Twenty-Second District Agricultural Association fairgrounds at Del Mar in the County of San Diego, except that, when a fair in Orange County is licensed for a racing meeting, a satellite wagering facility located within the racing inclosure where the racing meeting is conducted may not operate on the days that racing is conducted.

(d) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, and the amount of actual operating expenses, as determined by the board, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619 and, in

the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition, on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(e) On thoroughbred meetings only, the funds remaining after distribution of the amounts in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting. All of the funds distributed for purses from satellite wagering facilities shall go to the purse program of the association conducting the racing meeting, except that all sums for distribution as purses at satellite wagering facilities which are racing fairs in the County of Los Angeles shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings in Los Angeles and Orange Counties. The department shall distribute these funds on an equal basis to each racing fair in these counties for distribution in all nonstakes races and among all breeds.

(f) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses participating in the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature, owners' premiums shall be paid from the amount distributed for

purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(g) Notwithstanding subdivision (e), when satellite wagering is conducted on thoroughbred races at associations or fairs, an amount, not to exceed 1.25 percent of the total amount handled by all satellite wagering facilities, shall be deducted from the funds otherwise allocated for distribution as commissions, purses, and owners' premiums and instead distributed to an organization formed and operated by thoroughbred racing associations, fairs conducting thoroughbred racing, and the organization representing thoroughbred horsemen, with each party having meaningful representation on the board of the organization, to administer, pursuant to supervision of the board, a fund to provide reimbursement for offsite stabling at board-approved auxiliary training facilities of licensed racing associations for additional stalls beyond the number of usable stalls the association is required to make available and maintain pursuant to Section 19535, and for the vanning of starters from these additional stalls on race days for thoroughbred horses.

(h) The funds distributed to the organization formed pursuant to subdivision (g) shall be used to reimburse racing associations who are operating offsite stabling providing additional stalls for the incremental increase in operating costs directly resulting from providing the stabling. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity operating the offsite stabling facility where the injury occurred, shall be liable for any injury to any jockey, exercise person, owner, trainer, or any employee or agent thereof, or any horse occurring at any offsite stabling facility.

The funds shall also reimburse horsemen for the cost of vanning starting horses from a board-approved auxiliary training facility operated by a licensed racing association to the track conducting the racing meeting. Horsemen may use carriers of their own choice, except that the amount of reimbursement to horsemen is limited to the amount that the organization determines is generally charged by carriers for vanning from the auxiliary training facility to the track conducting the racing meeting. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity actually engaged in vanning horses, shall be liable for any injury occurring to any individual or horse during vanning from an offsite stabling facility.

The training facilities and amenities provided for offsite stabling and training purposes shall be equivalent in character to those provided during racing meetings of the association.

Upon the request of any party within the organization, the board shall adjudicate any dispute regarding costs, or other matters relating to the furnishing of offsite stabling or vanning. The board may, if

necessary, appoint an independent auditor to assist in the resolution of disputes. The auditor shall be reimbursed from the funds of the organization.

The organization may maintain a reserve fund of up to 10 percent of the total estimated annual vanning and stabling costs. In addition to the reserve fund, if the funds generated for offsite stabling and vanning are insufficient to fully reimburse racing associations for expenses incurred during the offsite vanning and stabling program, the organization is entitled to accumulate sufficient funds to fully reimburse these expenses.

The amount initially deducted and distributed to the organization shall be 1.25 percent of the total amount handled by satellite wagering facilities authorized under this section on thoroughbred racing, but that allocation may be adjusted by the board, in its discretion, but the adjusted amount may not exceed 1.25 percent of the total amount handled by satellite wagering facilities, to pay expenses and maintain the reserve fund for the continuing support of the program.

(i) Forty-two percent of the revenue payable to the state from license fees from satellite wagering facilities located at fairs under the authority of this section shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding any other law, the department may also commit any funds available

for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at the fair.

(4) For support purposes of the fair generally.

(j) The remaining 58 percent of the revenues payable to the state from satellite wagering facilities at fairs and all revenues payable to the state from satellite wagering facilities located under the authority of this section at sites other than fairs shall be deposited in the General Fund.

(k) Notwithstanding subdivision (b) of Section 19641, the state shall receive as additional license fees 50 percent of any redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility, subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, and the funds shall be deposited in the General Fund. The remaining 50 percent of redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility shall be paid to a welfare fund established by the horsemen's organization contracting with the association conducting the racing meeting for the benefit of horsemen, and that organization shall make an accounting to the board within one calendar year of the receipt of the payment.

(*l*) Of the total breakage arising in a parimutuel pool which includes wagers at satellite wagering facilities, that percentage of breakage equal to the percentage that wagers placed at satellite wagering facilities constitute of the total parimutuel pool shall be distributed equally among the state as an additional license fee deposited in the General Fund, the track conducting the racing meeting as a commission, and the horsemen participating in the racing meeting in the form of purses. The remainder of the breakage shall be distributed in the same manner as breakage arising from wagers at the track conducting the racing meeting.

(m) Notwithstanding subdivision (f) of Section 19596.5 and subdivision (i) of this section, if the revenues deposited in the separate account pursuant to those subdivisions (f) and (i) are in excess of the eleven million dollars ($11,000,000) in any fiscal year, one-half of the amount in excess of eleven million dollars ($11,000,000) shall be transferred to the General Fund.

(n) 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. 6. Section 19596.6 is added to the Business and Professions Code, to read:

19596.6. (a) Notwithstanding any other provision of law, subject to the conditions and limitations set forth in this section and Section 19596.7, the following entities in the central or southern zone are eligible to be licensed to operate a satellite wagering facility for

wagering on races conducted in the central or southern zone:

(1) Any county fair, district agricultural association fair, or citrus fruit fair which conducted general fair activities in 1986 within the central or southern zone, and which is eligible for an allocation of racing days pursuant to Section 19549, but which is not licensed to conduct a racing meeting, may locate a satellite wagering facility at its fairgrounds.

(2) Any association licensed to conduct a racing meeting in the central or southern zone.

(b) The board may authorize an eligible association or, with the approval of the Department of Food and Agriculture, an eligible fair, to operate a satellite wagering facility under all of the following conditions:

(1) A racing association licensed to conduct a racing meeting shall conduct satellite wagering only within its racing inclosure.

(2) An organization described in subdivision (c) of Section 19596.4 has executed an agreement approved by the board with the association conducting a racing meeting and the satellite wagering facility. The agreement shall provide, among other things, the conditions for transmission of the signal and that the wagers made at the satellite wagering facility are included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(3) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(4) The method used by the satellite wagering facility to transmit wagers, odds, results, and other data related to wagering have been approved by the board.

(5) Any association or fair that operates a satellite wagering facility shall conduct wagering on all racing conducted in the central or southern zone that is offered to that satellite wagering facility, as long as the satellite wagering facility is not sustaining a loss on either a day meeting or a night meeting, as determined by the board, and, if sustaining a loss on either a day meeting or a night meeting, as long as that loss is not reimbursed by either an organization described in subdivision (c) of Section 19596.4 or an association.

In calculating the loss, if any, for operating a satellite wagering facility for a night meeting, only the expenses incurred by the satellite wagering facility because of acceptance of night wagers shall be considered, and no overhead expenses or expenses of the satellite wagering facility which would be incurred regardless of the acceptance of night wagers shall be considered.

(c) Notwithstanding subdivision (a), a satellite wagering facility may not be located within the County of Los Angeles or within the County of Orange, except as follows:

(1) If all other conditions in subdivision (b) are met, the Fiftieth District Agricultural Association may be authorized to operate a satellite wagering facility upon its fairgrounds in the City of

Lancaster and to accept wagers on races conducted in the southern and central zones.

(2) If all other conditions are met, any fair or association licensed to conduct racing meetings in the County of Los Angeles and any racing association other than a fair which is licensed to conduct racing in the County of Orange may be authorized to operate a satellite wagering facility for the limited purpose of conducting satellite wagering on races conducted at the Twenty-Second District Agricultural Association fairgrounds at Del Mar in the County of San Diego, except that, when a fair in Orange County is licensed for a racing meeting, a satellite wagering facility located within the racing inclosure where the racing meeting is conducted may not operate on the days that racing is conducted.

(d) The total percentage deducted from wagers at satellite wagering facilities shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(1) On thoroughbred meetings only, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(2) On harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent shall be retained by the satellite wagering facility as a commission, and 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, shall be distributed to an organization described in subdivision (c) of Section 19596.4, and, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6, and, in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas and, in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program

pursuant to Section 19619 and, in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent of the amount wagered at the satellite wagering facility shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine. University of California at Davis. It is the intent of the Legislature that these one-tenth of 1 percent funds to the Equine Research Laboratory shall supplement and not supplant other funding sources.

(3) In addition, on thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in subdivision (c) of Section 19596.4 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year, and if promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(e) On thoroughbred meetings only, the funds remaining after distribution of the amounts in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting, except that owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting. All of the funds distributed for purses from satellite wagering facilities shall go to the purse program of the association conducting the racing meeting, except that all sums for distribution as purses at satellite wagering facilities which are racing fairs in the County of Los Angeles shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings in Los Angeles and Orange Counties. The department shall distribute these funds on an equal basis to each racing fair in these counties for distribution in all nonstakes races and among all breeds.

(f) On harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after distribution of the amounts set forth in subdivision (d) shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent to the horsemen in the form of purses participating in the racing meeting, except that, for meetings commencing on or after the effective date of the amendments to this subdivision enacted at the 1987–88 Regular Session of the Legislature,

owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

(g) Notwithstanding subdivision (e), when satellite wagering is conducted on thoroughbred races at associations or fairs, an amount, not to exceed 1.25 percent of the total amount handled by all satellite wagering facilities, shall be deducted from the funds otherwise allocated for distribution as commissions, purses, and owners' premiums and instead distributed to an organization formed and operated by thoroughbred racing associations, fairs conducting thoroughbred racing, and the organization representing thoroughbred horsemen, with each party having meaningful representation on the board of the organization, to administer, pursuant to supervision of the board, a fund to provide reimbursement for offsite stabling at board-approved auxiliary training facilities of licensed racing associations for additional stalls beyond the number of usable stalls the association is required to make available and maintain pursuant to Section 19535, and for the vanning of starters from these additional stalls on race days for thoroughbred horses.

(h) The funds distributed to the organization formed pursuant to subdivision (g) shall be used to reimburse racing associations who are operating offsite stabling providing additional stalls for the incremental increase in operating costs directly resulting from providing the stabling. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity operating the offsite stabling facility where the injury occurred, shall be liable for any injury to any jockey, exercise person, owner, trainer, or any employee or agent thereof, or any horse occurring at any offsite stabling facility.

The funds shall also reimburse horsemen for the cost of vanning starting horses from a board-approved auxiliary training facility operated by a licensed racing association to the track conducting the racing meeting. Horsemen may use carriers of their own choice, except that the amount of reimbursement to horsemen is limited to the amount that the organization determines is generally charged by carriers for vanning from the auxiliary training facility to the track conducting the racing meeting. Neither the organization administering the offsite stabling and vanning program nor any of the entities forming and operating the organization, except the entity actually engaged in vanning horses, shall be liable for any injury occurring to any individual or horse during vanning from an offsite stabling facility.

The training facilities and amenities provided for offsite stabling and training purposes shall be equivalent in character to those provided during racing meetings of the association.

Upon the request of any party within the organization, the board shall adjudicate any dispute regarding costs, or other matters relating

to the furnishing of offsite stabling or vanning. The board may, if necessary, appoint an independent auditor to assist in the resolution of disputes. The auditor shall be reimbursed from the funds of the organization.

The organization may maintain a reserve fund of up to 10 percent of the total estimated annual vanning and stabling costs. In addition to the reserve fund, if the funds generated for offsite stabling and vanning are insufficient to fully reimburse racing associations for expenses incurred during the offsite vanning and stabling program, the organization is entitled to accumulate sufficient funds to fully reimburse these expenses.

The amount initially deducted and distributed to the organization shall be 1.25 percent of the total amount handled by satellite wagering facilities authorized under this section on thoroughbred racing, but that allocation may be adjusted by the board, in its discretion, but the adjusted amount may not exceed 1.25 percent of the total amount handled by satellite wagering facilities, to pay expenses and maintain the reserve fund for the continuing support of the program.

(i) Forty-two percent of the revenue payable to the state from license fees from satellite wagering facilities located at fairs under the authority of this section shall be deposited in a separate account in the fund and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated from that account to the Department of Food and Agriculture, for allocation by the Director of Food and Agriculture, in his or her discretion, for the following purposes, except that the concurrence of the Director of Finance shall be obtained for allocations for the purposes of paragraphs (1) and (2):

(1) For repayment of the principal of, interest on, and costs of issuance of, and as security, including any coverage factor, pledged to the payment of, bonds issued or to be issued by a joint powers agency or other debt service or expense, including repayment of any advances made or security required by any provider of credit enhancement or liquidity for those bonds or other indebtedness or expenses of maintaining that credit enhancement or liquidity, incurred for the purpose of constructing or acquiring improvements at a fair's racetrack inclosure, satellite wagering facilities at fairs, health and safety repair projects, or handicapped access compliance projects at fairs or for the purpose of refunding bonds or other indebtedness incurred for those purposes. As used in this paragraph, "coverage factor" means revenues in excess of the amount necessary to pay debt service on the bonds or other indebtedness, up to an amount equal to 100 percent more than the amount of that debt service, which a joint powers authority, pursuant to the resolution or indenture under which the bonds or other indebtedness are or will be issued, pledges as additional security for the payment of that debt service or is required to have or maintain as a condition to the issuance of additional bonds or other indebtedness. Notwithstanding

any other law, the department may also commit any funds available for allocation under Article 10 (commencing with Section 19620) to complete projects funded under this paragraph in the priority described in this paragraph.

(2) For repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at the fair.

(4) For support purposes of the fair generally.

(j) The remaining 58 percent of the revenues payable to the state from satellite wagering facilities at fairs and all revenues payable to the state from satellite wagering facilities located under the authority of this section at sites other than fairs shall be deposited in the General Fund.

(k) Notwithstanding subdivision (b) of Section 19641, the state shall receive as additional license fees 50 percent of any redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility, subject to payment to a claimant pursuant to Section 19598, but not successfully claimed within that period, and the funds shall be deposited in the General Fund. The remaining 50 percent of redistributable money in a parimutuel pool arising from wagers at a satellite wagering facility shall be paid to a welfare fund established by the horsemen's organization contracting with the association conducting the racing meeting for the benefit of horsemen, and that organization shall make an accounting to the board within one calendar year of the receipt of the payment.

(*l*) Of the total breakage arising in a parimutuel pool which includes wagers at satellite wagering facilities, that percentage of breakage equal to the percentage that wagers placed at satellite wagering facilities constitute of the total parimutuel pool shall be distributed equally among the state as an additional license fee deposited in the General Fund, the track conducting the racing meeting as a commission, and the horsemen participating in the racing meeting in the form of purses. The remainder of the breakage shall be distributed in the same manner as breakage arising from wagers at the track conducting the racing meeting.

(m) Notwithstanding subdivision (f) of Section 19596.5 and subdivision (i) of this section, if the revenues deposited in the separate account pursuant to those subdivisions (f) and (i) are in excess of the eleven million dollars ($11,000,000) in any fiscal year, one-half of the amount in excess of eleven million dollars ($11,000,000) shall be transferred to the General Fund.

(n) This section shall become operative on January 1, 1992.

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 maintain the availability of sufficient offsite stabling facilities for thoroughbred racehorses participating in northern California meetings, to provide for more cost-effective use of

promotional funds at satellite wagering facilities for the current racing season, and to ensure payment of actual operating expenses of the organization operating the audiovisual signal for those facilities, it is necessary that this act take effect immediately.

CHAPTER 971

An act to add Section 382.5 to the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 382.5 is added to the Insurance Code, to read:

382.5. A binder which is issued in accordance with this section shall be deemed an insurance policy for the purpose of proving that the insured has the insurance coverage specified in the binder.

(a) As used in this section, "binder" means a writing (1) which includes the name and address of the insured and any additional named insureds, mortgagees, or lienholders, a description of the property insured, if applicable, a description of the nature and amount of coverage and any special exclusions not contained in a standard policy, the identity of the insurer and the agent executing the binder, the effective date of coverage, the binder number or the policy number where applicable to a policy extension, and (2) which temporarily obligates the insurer to provide that insurance coverage pending issuance of the insurance policy. For purposes of this section, "binder" does not include, and this section does not apply to, any writing that conditionally or unconditionally obligates an insurer to provide (1) life or disability insurance or (2) insurance in the amount of one million dollars ($1,000,000) or more.

(b) Except as superseded by the clear and express terms of the binder, a binder shall be deemed to include all of the usual terms of the policy as to which the binder was given, together with applicable endorsements as are designated in the binder.

(c) Except as otherwise provided in this subdivision, a binder shall be valid for the period specified therein not exceeding 90 days from the date of execution of the binder or, if not specified, for that period of 90 days. No binder shall remain valid on or after the date the insurance policy is issued with respect to which the binder was given. Expiration of coverage under a binder shall not be considered a cancellation or nonrenewal of a policy of insurance within the meaning of any statute limiting the right to cancel or nonrenew a policy of insurance.

(d) If any party to a contract or other agreement refuses without

reasonable cause to accept a binder as proof of insurance when that proof is required by the contract or agreement, that party shall be deemed to have breached the contract and the other party thereto, shall be entitled to appropriate injunctive relief and may recover damages for the breach and reasonable attorney's fees and costs. As used in this subdivision, "reasonable cause" includes, but shall not be limited to, any of the following:

(1) Inadequate coverage or inappropriate terms of coverage with respect to the interest of the vendor, lender, lessor, or other person providing a service to the insured.

(2) Failure of the insurer to meet the financial standards "lawfully" established by the lender for all insurers for the type of loan for which the insurance is obtained.

(3) Inability of the lender to determine if the insurer is licensed as an admitted insurer by the commissioner to transact the line of insurance for which the binder is issued.

(4) Failure of the insurance agent to provide the lender with written evidence of the agent's authority to bind insurance coverage on behalf of the insurer under the binder.

(5) Failure of the binder to comply with this section.

(e) For purposes of all insurance policies providing collateral insurance coverage, binders issued in accordance with this section shall be deemed an insurance policy.

(f) The commissioner may suspend or revoke the license of any agent issuing or purporting to issue any binder of a type for which the agent lacks authority from the insurer named in the binder.

CHAPTER 972

An act to amend Sections 1339.66 and 1339.67 of the Health and Safety Code, relating to respite care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 1339.66 of the Health and Safety Code is amended to read:

1339.66. (a) It is the intent of the Legislature to collect data and information on a variety of types of services that can meet the needs for and upon which to consider the development of regulations governing provision of respite care in licensed health facilities if determined by this program to be necessary.

(b) On or before July 1, 1990, the department shall submit a report to the Legislature on the implementation of this article, which shall address the following:

(1) The number of persons served by the program, and the types of services provided to them.

(2) As assessment of the need for respite care services and to identification of services that may be necessary but not currently available.

(3) Identification of any factors which significantly enhance or inhibit the successful provision of respite care.

(4) Recommendations for amended regulations necessary to govern respite care services in licensed health facilities.

SEC. 2. Section 1339.67 of the Health and Safety Code is amended to read:

1339.67. This article shall remain in effect until July 1, 1991, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before July 1, 1991, deletes or extends that date.

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 needed respite care for frail elderly, functionally impaired, developmentally disabled, and mentally disordered persons, it is necessary for this act to take effect immediately.

CHAPTER 973

An act to amend Section 4690.1 of, and to add Section 4416.5 to, the Welfare and Institutions Code, relating to developmental services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 4690.1 of the Welfare and Institutions Code is amended to read:

4690.1. (a) By March 1, 1986, the department, in consultation with representatives of regional centers and providers of transportation services to regional center clients, shall develop a cost statement to be used in setting rates for providers of transportation services.

(b) Notwithstanding subdivision (a), the department may develop alternative procedures for establishing rates for providers of transportation services, including, but not limited to, a noncompetitive process and a competitive process for use by regional centers in which rates of reimbursement are established

based on contract bids or proposals.

SEC. 2. Section 4416.5 is added to the Welfare and Institutions Code, to read:

4416.5. The State Department of Developmental Services may contract with one or more qualified organizations to provide the services required by Section 1919 of the Social Security Act (P.L. 100-203) to persons eligible for those services who are not otherwise within the scope of Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Chapter 3 (commencing with Section 7500) of Division 7. Contracts entered into pursuant to this section may be awarded on either a competitive bidding basis or on a noncompetitive bidding basis.

SEC. 5. The funds required by the State Department of Developmental Services to implement the provisions of Section 2 of this act shall be provided from moneys appropriated by Items 4260-001-890 and 4300-101-001 of Section 2.00 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989.

Upon request of the Department of Developmental Services, and under order of the Director of Finance, the Controller shall transfer up to one hundred seventy-five thousand dollars ($175,000) from Item 4300-101-001 to Item 4300-001-001 of Section 2.00 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989, to implement Section 2 of this act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that California has the statutory authority needed to comply with the assessment and treatment requirements of Public Law 100-203 within the timelines established by that legislation, it is necessary that this act take effect immediately.

CHAPTER 974

An act to add Chapter 5 (commencing with Section 66799.60) and Chapter 6 (commencing with Section 66799.100) to Title 7.3 of, and to repeal Section 66799.140 of, the Government Code, and to amend Section 374.3 of the Penal Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Chapter 5 (commencing with Section 66799.60) is added to Title 7.3 of the Government Code, to read:

CHAPTER 5. WASTE TIRES

Article 1. Definitions

66799.60. The following definitions govern the construction of this chapter.

66799.61. "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures on an agricultural site.

66799.62. "Fund" means the California Tire Recycling Management Fund created by subdivision (a) of Section 66799.140.

66799.63. "Local agency" means a county, city, special district, or other local governmental agency which provides or regulates solid waste handling services.

66799.64. "Operator" means the person responsible for the overall operation of a waste tire facility.

66799.65. "Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which a waste tire facility is located.

66799.66. "Tire" means a pneumatic tire or solid tire manufactured for use on any type of motor vehicle.

66799.67. "Waste tire" means a tire that has been removed from the wheel of a vehicle and is no longer suitable for its original intended purpose due to wear, damage, or defect.

66799.68. "Waste tire facility" means a location, other than a solid waste facility permitted pursuant to this title that receives for transfer or disposal less than 150 tires per day averaged on an annual basis, where, at any time, waste tires are stored, stockpiled, accumulated, or discarded. "Waste tire facility" includes all of the following:

(a) "Existing waste tire facility," means a waste tire facility which is receiving, storing, or accumulating waste tires, or upon which waste tires are discarded, on January 1, 1990.

(b) "Major waste tire facility," means a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

(c) "Minor waste tire facility," means a waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded.

Article 2. Registration and General Provisions

66799.70. (a) Except as provided in subdivision (b), every person who, at any time in a calendar year, stores or stockpiles more than 500 waste tires at a specific location, and every owner and operator of an existing waste tire facility with a stockpile of 500 or more waste tires shall file with the board a waste tire registration statement.

(b) Subdivision (a) does not apply to a tire dealer or to an auto

dismantler, as defined in Section 220 of the Vehicle Code, who stores tires on the dealer's business premises for less than 90 days if not more than 1,500 waste tires are ever accumulated on that dealer's business premises.

66799.71. The registration statement shall include all of the following:

(a) The name and address of the person or firm owning the property on which the waste tires are stored, stockpiled, or disposed.

(b) The name and address of the person who operates the waste tire facility.

(c) The name and 24-hour phone number of the person to contact in the event of an emergency involving waste tires on the waste tire facility.

(d) An estimate of the number of waste tires that are stored, stockpiled, or present in a waste tire facility at the time the registration statement is completed and filed with the board.

(e) An estimate of the number of waste tires that are generally stored, stockpiled, and disposed of each month.

(f) A physical description of the waste tire facility.

(g) A description of any methods used to shred, reprocess, recycle, reclaim, incinerate, or reuse waste tires.

66799.72. Waste tire registration statements shall be filed on forms provided by the board. Forms provided by the board shall include, but not be limited to, all of the information in Section 66799.71.

66799.73. (a) Any person who fails to submit the waste tire registration statement on or before April 1, 1990, or within 10 days of the establishment of a new waste tire facility, shall be liable civilly to the board in an amount of not less than one hundred dollars ($100) per day nor more than one thousand dollars ($1,000) per day for each day the statement has not been received.

(b) Any person who knowingly submits false information to the board shall be liable civilly to the board in an amount of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) per day for each day the false information is not corrected.

66799.74. The board shall compile the waste tire registration statements by each city and county within which the tire facility is located. These compilations shall be transmitted to the appropriate cities and counties on or before July 1, 1991.

66799.75. Nothing in this chapter limits the authority of a local agency to regulate persons or businesses that store, stockpile, process, or dispose of waste tires.

66799.76. The board may delegate specific powers and authority in this chapter to local enforcement agencies, as defined in Section 66714.3, including any of the following:

(a) Review of operation plans submitted pursuant to regulations adopted under subdivision (a) of Section 66799.81.

(b) Inspection of permitted facilities under Section 66799.94.

(c) Enforcement of waste tire facility permits.

66799.77. Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the issuance of a permit for the operation of an existing waste tire facility pursuant to this chapter, except as to any substantial change in the design or operation of the waste tire facility made between the time this chapter becomes effective and the permit is initially issued by the board and as to any subsequent substantial changes made in the design or operation of the waste tire facility.

Article 3. Major Waste Tire Facility Permits

66799.80. (a) On or before July 1, 1991, the board, in consultation with the State Fire Marshal and the State Department of Health Services, shall adopt emergency regulations setting forth the procedures and requirements necessary to obtain a major waste tire facility permit.

(b) Regulations adopted pursuant to subdivision (a) shall not require the issuance of a separate permit to a solid waste disposal facility which is permitted in accordance with Section 66796.30.

66799.81. The regulations for major waste tire facility permits shall include, but not be limited to, all of the following:

(a) Requirements for submission of a detailed operations plan which contains the following components:

(1) Fire prevention measures.

(2) Fencing and other security measures.

(3) Vector control measures.

(4) Limits on the size and height of tire piles.

(5) A closure plan.

(b) Requirements for submission of a detailed plan and implementation schedule for the elimination or substantial reduction of existing tire piles using any of the following methods or techniques:

(1) Polymer treatment.

(2) Rubber reclaiming and crumb rubber production.

(3) Pyrolysis.

(4) Production of supplemental fuels for cement kilns, lumber operations, or other industrial processes.

(5) Tire shredding and transportation to an authorized solid waste landfill.

(6) Energy recovery through incineration of whole or shredded tires in accordance with the terms and conditions of a permit issued by an air pollution control district or air quality management district.

(7) Other applications deemed appropriate by the board.

(c) Requirements for the submission of evidence of financial assurances secured by the operator of the facility that are adequate to cover damage claims arising out of the operation of the facility and that are adequate to cover the cost of closure if that becomes necessary. The financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or other equivalent financial arrangement

acceptable to the board.

66799.82. The board shall issue major waste tire facility permits pursuant to the regulations upon application therefor.

66799.83. On or after July 1, 1991, no person shall establish a new major waste tire facility or expand an existing minor waste tire facility unless the person has obtained from the board a major waste tire facility permit issued pursuant to Section 66799.82.

66799.84. (a) On or after September 1, 1992, it is unlawful to direct or transport waste tires to a major waste tire facility or to accept waste tires at a major waste tire facility unless the operator has obtained a major waste tire facility permit.

(b) Any person who accepts waste tires at a major waste tire facility which has not been issued a permit or knowingly directs or transports waste tires to a major waste tire facility which has not been issued a permit shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

Article 4. Minor Waste Tire Facility Permits

66799.85. (a) On or before December 1, 1991, the board, in consultation with the State Fire Marshal and the State Department of Health Services, shall adopt emergency regulations setting forth the procedures and requirements necessary to obtain a minor waste tire facility permit.

(b) Regulations adopted pursuant to subdivision (a) shall not require the issuance of a separate permit to a solid waste disposal facility which is permitted in accordance with Section 66796.30.

66799.86. The board may exempt either of the following from the permit requirements of this article:

(a) An owner or operator of a tire retreading business for the business site if no more than 3,000 waste tires are kept on the business premises.

(b) A person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

66799.87. The regulations for minor waste tire facility permits shall include, but not be limited to, all of the following:

(a) Fire prevention measures.

(b) Vector control measures.

(c) Other measures determined by the board to be necessary to protect the public health and safety.

66799.88. The board shall issue minor waste tire facility permits pursuant to the regulations upon application therefor.

66799.89. (a) On or after July 1, 1993, it is unlawful to direct or transport waste tires to a minor waste tire facility or to accept waste tires at a minor waste tire facility unless the operator has obtained a minor waste tire facility permit.

(b) Any person who accepts waste tires at a minor waste tire facility which has not been issued a permit or knowingly directs or transports waste tires to a minor waste tire facility which has not been issued a permit shall, upon conviction, be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

Article 5. Renewal, Suspension, or Revocation

66799.90. (a) A waste tire facility permit issued pursuant to this chapter is valid for five years unless suspended or revoked. The permit shall be renewed prior to the expiration thereof.

(b) The board may refuse to issue or renew a waste tire facility permit on any grounds for which it may suspend or revoke a permit.

66799.91. The board may deny, suspend, or revoke a waste tire facility permit in accordance with the procedures in Sections 66799.92 and 66799.93 if the applicant or holder of the permit has done any of the following acts:

(a) Committed any violation of, or failed to comply with any requirement of, this chapter.

(b) Aided, abetted, or permitted any violation of this chapter.

(c) Aided, abetted, or permitted a failure to comply with this chapter if the failure of compliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(d) Committed any violation of, or failed to comply with, any order issued by the board relating to the safe storage or processing of waste tires.

(e) Committed any misrepresentation or omission of a significant fact or other required information in the application for a waste tire facility permit.

66799.92. Except as provided in Section 66799.93, proceedings for the denial, suspension, or revocation of a permit under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted by those provisions. In the event of a conflict between this chapter and the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, those provisions of the Government Code shall prevail.

66799.93. The board may temporarily suspend any permit issued pursuant to this chapter prior to any hearing if the board determines that the action is necessary to prevent or mitigate an imminent or substantial endangerment to the public health or safety or the environment. The board shall notify the holder of the permit of the temporary suspension and the effective date thereof and, at the same time, shall serve the person with an accusation. Upon receipt by the

board of a notice of defense to the accusation from the holder of the permit, the board shall, within 15 days, set the matter for a hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the board has made a final determination on the merits, which shall be made within 60 days after the completion of the hearing. If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

66799.94. (a) Any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required pursuant to this chapter, or in violation of the terms and conditions of the permit, the provisions of this chapter, or the regulations adopted under this chapter, shall, upon order of the board, clean up those waste tires or abate the effects thereof, or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply therewith. In any suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(b) The board may expend available moneys to perform any cleanup, abatement, or remedial work required under the circumstances set forth in subdivision (a) which in its judgment is required by the magnitude of endeavor or urgency of prompt action needed to prevent substantial pollution, nuisance, or injury to the public health or safety. The action may be taken in default of, or in addition to, remedial work by the violator or other persons, and regardless of whether injunctive relief is being sought. The board may perform the work itself, or by or in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the board may enter into oral contracts for that work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts shall be exempt from approval by the Department of General Services pursuant to the provisions of Section 14780 of the Government Code.

(c) If waste tires are cleaned up, the effects of the tires abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who unlawfully stored, stockpiled, or accumulated the waste tires or who unlawfully permitted the storage, stockpile, or accumulation of waste tires or who threatened to cause or permit the unlawful storage, stockpile, or accumulation of waste tires within the meaning of subdivision (a), shall be liable to that governmental

agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects thereof, or taking other remedial actions. The amount of those costs shall be recoverable in a civil action by, and paid to, the governmental agency and the board to the extent of the latter's contribution to the cleanup costs from available funds.

(d) If, despite reasonable efforts by the board to identify the person responsible for the unlawful storage, stockpiling, or accumulation of waste tires or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the board shall not be required to issue an order under this section.

(e) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, natural resources, or the public health or safety.

Article 6. Administrative Enforcement

66799.95. (a) Except as provided in Section 66799.73, any person who intentionally or negligently violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation of a separate provision or for continuing violations for each day that violation continues.

(b) Liability under this section and Section 66799.73 may be imposed in a civil action or liability may be imposed administratively pursuant to Section 66799.96.

66799.96. (a) The board may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 66799.73 or 66799.95. 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 that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing. If the party waives the right to a hearing, the board shall issue an order setting liability in the amount proposed in the complaint unless the board and the party have entered into a settlement agreement, in which case the board shall issue an order setting liability in the amount specified in the settlement agreement. If the party has waived the right to a hearing or if the board 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 the 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 governs 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 does 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.

66799.97. All penalties collected under Section 66799.96 shall be deposited in the California Tire Recycling and Management Fund created pursuant to Section 66799.140.

Article 7. Waste Tires to Energy

66799.98. On or before December 1, 1991, the board, in consultation with the State Air Resources Board and the State Energy Resources and Conservation Commission shall complete and submit to the Legislature a report on the feasibility of using waste tires as a fuel supplement for cement kilns, lumber operations, and other industrial processes.

The report shall include an assessment of air quality impacts, the indentification of major obstacles to the utilization of waste tires as fuel supplements, and, if appropriate, recommendations to

encourage greater utilization of waste tires as fuel supplements.

SEC. 2. Chapter 6 (commencing with Section 66799.100) is added to Title 7.3 of the Government Code, to read:

CHAPTER 6. CALIFORNIA TIRE RECYCLING ACT

Article 1. Findings

66799.100. This chapter shall be known and may be cited as the California Tire Recycling Act.

66799.101. The Legislature finds and declares the following:

(a) The problem posed by used tire storage and disposal requires a comprehensive, statewide response, including, but not limited to, reducing landfill disposal of used whole tires, recycling of tires into secondary uses, source material development and promotion of secondary markets for used tire byproducts, tire shredding, and energy recovery.

(b) California is currently faced with an existing used tire inventory of at least 100 million tires, an amount which grows by over 20 million tires per year. Without a dedication of resources to address the state's growing tire population, the health and safety of all Californians will be increasingly at risk.

(c) There are currently no dedicated resources for the recycling of used tires, or a comprehensive tire shredding program. Therefore, the levying of a fee on the disposal of used whole tires in the state is needed to support tire recycling activities.

(d) Used tires represent a valuable state resource which should be reclaimed and recycled whenever possible. An abundance of tire recycling alternatives exist which have been demonstrated to be environmentally safe. These alternatives need to be promoted in order to achieve the maximum use of used tires.

(e) Shredding of used tires represents a preferable alternative to whole tire storage or disposal. Given the rapidly decreasing amount of landfill space available to local jurisdictions, shredding represents a positive way of storing tires until a secondary use can be developed.

Article 2. Storage at Landfills

66799.110. (a) It is the policy of the state that until a state tire recycling program is fully underway and operational, the shredding of used tires shall be encouraged.

(b) For the purposes of this act, a "tire" refers to any vehicle tire whose major component is rubber, and its component parts. "Shredding" includes both mechanical and cryogenic shredding which reduces tires to a size of less than four inches in width.

66799.111. The board shall adopt emergency regulations setting forth procedures for the authorization of at least one landfill in each region of the state to accept and store shredded tires. These regulations shall require that shredded tires be separate from other

forms of solid waste and stored in a manner that will encourage their removal for future use.

66799.112. Except as otherwise determined by the board, only landfills authorized in this article shall be eligible for financial assistance in the shredding of tires pursuant to Article 3 (commencing with Section 66799.120).

Article 3. Tire Recycling

66799.120. It is the intent of the Legislature:

(a) To reduce the landfill disposal and stockpiling of used whole tires by 25 percent within four years of full implementation of a statewide tire recycling program and to recycle and reclaim used tires and used tire components to the greatest extent possible in order to recover valuable natural resources.

(b) To eliminate illegal dumping and unnecessary stockpiling of used tires.

66799.121. (a) On or before July 1, 1991, the board shall initiate a tire recycling program which promotes and develops alternatives to the landfill disposal of used whole tires. Activities of the board may include, but are not limited to, the following:

(1) The awarding of grants, subsidies, and loans to businesses or other enterprises, and public entities, involved in activities and applications that result in reduced landfill disposal of used whole tires and reduced illegal disposal or stockpiling of used whole tires.

(2) The awarding of grants for research aimed at developing technologies or improving current activities and applications that result in reduced landfill disposal of used whole tires.

(3) The awarding of grants or loans for the evaluation, planning, design, improvement, and implementation of alternative used tire recycling programs in this state.

(4) The awarding of grants or loans to businesses which shred used tires for purposes of recycling.

(5) Development and implementation of an information and education program, including seminars and conferences, aimed at promoting alternatives to the landfill disposal of used whole tires.

(6) The awarding of grants or loans to tire shredding programs at authorized landfills, solid waste transfer stations, or dedicated tire shredding facilities, including the direct purchase of shredders or financing of shredder contracts.

(b) Activities eligible for funding under this section that reduce, or that are designed to reduce or promote the reduction of, landfill disposal of used whole tires may include the following:

(1) Polymer treatment.

(2) Rubber reclaiming and crumb rubber production.

(3) Retreading.

(4) Shredding.

(5) The manufacture of products made from used tires, including, but not limited to, all of the following:

(A) Artificial reefs.
(B) Rubber asphalt.
(C) Playground equipment.
(D) Crash barriers.
(E) Erosion control materials.
(F) Nonslip floor and track surfacing.
(G) Oil spill recovery equipment.
(H) Roofing adhesives.

(6) Other environmentally safe applications or treatments determined to be appropriate by the board. The board shall delay any determination of whether the use of waste tires for fuel is appropriate until it has reviewed the report required pursuant to Section 66799.98.

66799.122. (a) The board shall evaluate applications for loans or grants under this article based upon, but not limited to, the following factors in the proposal:

(1) The quantity of used tires that will be diverted from landfills.

(2) The estimated cost per tire in the recycling, processing, or conversion process.

(3) The availability of markets for the recycled tire product.

(4) The degree to which the processing program mitigates or avoids adverse environmental effects.

(b) The board may also consider the following factors in awarding grant or loan applications:

(1) The ability of the proposed processing program to integrate with existing or proposed solid waste management activities.

(2) Financial support for implementation and operation of the proposed processing program from sources other than loans and grants from the board.

(3) The degree to which the technical approach of the proposal makes the loan and grant program financially self-sufficient.

(4) The degree to which the program can be measured or evaluated for success.

(5) The probability that the processing program can be implemented and operated with the funds applied for and the amount of funds sought.

(6) The time that the land or property on which the proposed processing facility is available to the applicant. No proposal shall be considered for a loan or grant unless the property or facility is available for at least five years.

(7) The business plan for operation of the facility.

Article 4. Administration

66799.130. The board shall administer this chapter. For organizational purposes, the board may create a new division, bureau, office, or unit to administer this chapter.

66799.131. (a) In addition to any regulations which the board is required by statute to adopt, the board may adopt any rules or

regulations which the board determines may be necessary or useful to carry out this chapter or any of the board's duties or responsibilities imposed pursuant to this chapter.

(b) The board may prepare, publish, or issue printed materials which the board determines to be necessary for the dissemination of information concerning the activities of the board pursuant to this chapter.

66799.132. In carrying out this chapter, the board may solicit and use any and all expertise available in other state agencies, including, but not limited to, the State Board of Equalization, and, where an existing state agency performs functions of a similar nature to the board's functions, the board may contract with, or cooperate with that agency in carrying out this chapter.

66799.133. The recipient of a grant, subsidy, or loan pursuant to Article 3 (commencing with Section 66799.120) shall on or before January 1 of each year submit a report to the board containing information required by the board, including, but not limited to, the number of used whole tires recycled, necessary to measure the success of the recipient's program in reducing the number of tires disposed of in landfills or stockpiled.

66799.134. On or before May 1, 1992, and each May 1 thereafter, the board shall report to the Legislature on the number of tires recycled or otherwise diverted from disposal in landfills or stockpiles and the comparative costs and benefits of the recycling or conversion processes funded under this chapter.

Article 5. Financial Provisions

66799.140. (a) On or after July 1, 1990, every person who leaves tires for disposal with a seller of new or used tires shall pay a disposal fee of twenty-five cents ($0.25) per tire to the seller. The seller may retain 10 percent of the fee as reimbursement for any costs associated with the collection of the fee and shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(b) The board, or its agent authorized pursuant to Section 66799.132, shall be reimbursed for its costs of collection, auditing, and refunds associated with the fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(c) This section shall become inoperative on June 30, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

66799.141. (a) The fees are due and payable quarterly on or before the fifteenth day following the end of each calendar quarter year.

(b) A penalty of 20 percent of any fees not paid when due shall be assessed and collected.

(c) Except in the case of fraud, intent to evade this chapter or rules and regulations adopted to implement this chapter, or failure to file a return, the notice of a deficiency determination shall be mailed within three years after the amount that is proposed to be determined was due or within three years after the return is filed, whichever period expires later. In the case of failure to file a return, the notice of determination shall be mailed within eight years after the amount that is proposed to be determined was due.

(d) (1) Except as agreed to by the board, no refund shall be approved by the board after three years from the date the payment was due for which the overpayment was made, or with respect to deficiency or jeopardy determinations, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given by the board.

(2) A refund may be approved by the board for any period agreed to by the board for good cause if a claim therefor is filed with the board before the expiration of the period agreed upon.

(e) The money in the fund shall, upon order of the Controller, be drawn therefrom for the payment of refunds under this chapter. The balance of the money in the fund shall be appropriated in the annual Budget Act to the board for expenditure as provided in Section 66799.142.

66799.142. The board shall expend the money in the fund for the following purposes:

(a) To pay the costs of administration of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually.

(b) In addition to payments authorized by subdivision (a), to pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (b) of Section 66799.140.

(c) To pay the costs associated with operating the recycling program specified in Article 3 (commencing with Section 66799.120).

(d) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires.

(e) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of used whole tires.

(f) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of used whole tires.

(g) To pay the costs associated with a statewide shredding program at authorized landfills and solid waste transfer stations.

(h) To pay the offsetting costs associated with a purchase preference granted by the state for materials manufactured from recycled tires, not to exceed one hundred thousand dollars

($100,000) annually.

Article 6. Use of Recycled Tire Products by State Agencies

66799.150. "Recycled tire product" means a product with not less than 50 percent of its total content derived from recycled used tires.

66799.151. (a) The Department of General Services shall revise its procedures and procurement specifications for state purchases of products which are made of, or contain components which can be derived from the recycling of, used tires, including, but not limited to, rubber, oil, natural gas, carbon black, asphalt rubber, floor tiles, carpet underlays, mats, drainage pipes, garbage cans, retreaded tires, and water hoses. For those purchases, the department shall give preference, wherever feasible, to the suppliers of recycled tire products. This preference shall be 5 percent of the lowest bid or price quoted by suppliers offering similar products made from nonrecycled components.

(b) In bids in which the state has reserved the right to make multiple awards, the recycled tire product preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of recycled tire product businesses in the contract award.

(c) The combined amount of preference granted pursuant to this section shall not exceed one hundred thousand dollars ($100,000) each year.

(d) Notwithstanding subdivision (b), the recycled tire product preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers a similar product made of nonrecycled tire components and is qualified in accordance with Section 14838 of the Government Code. This provision applies regardless of whether the small business is the lowest responsible bidder or is eligible for the contract award on the basis of application of the 5 percent small business preference.

(e) To encourage the use of recycled tires, the department's specifications shall require recycled tire product contracts to be awarded to the bidder whose product has the greatest percentage of recycled tire content if the fitness, quality, and price are otherwise equal.

(f) The department may adopt rules and regulations to carry out this article.

SEC. 3. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped any waste matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for that purpose

by the governing board or body having charge of that property.

(b) It is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks or dirt in or upon any private highway or road, including any portion of the right-of-way thereof, or any private property, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

(c) Any person, firm, or corporation violating this section is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of this section shall be punished by a mandatory fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than one thousand dollars ($1,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than eight hours.

SEC. 4. The sum of one million dollars ($1,000,000) is hereby transferred, as of July 1, 1990, from the Environmental License Plate Fund as a loan to the California Tire Recycling Management Fund and is appropriated to the California Waste Management Board for the purposes of implementing Chapter 6 (commencing with Section 66799.100) of Title 7.3 of the Government Code.

This loan shall be repaid, on or before June 30, 1991, to the

Environmental License Plate Fund, together with interest at the rate earned by the Surplus Money Investment Fund from July 1, 1990, to the date of repayment.

SEC. 5. 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 y 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 975

An act to add Section 21604 to the Public Utilities Code, relating to airports.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 21604 is added to the Public Utilities Code, to read:

21604. (a) Notwithstanding any other provision of law, no political subdivision or political subdivisions acting jointly or with the state, shall submit to the Federal Aviation Administration any project application, under the federal Airport and Airway Safety and Capacity Expansion Act of 1987 (49 U.S.C. Sec. 2201 et seq.) which provides airport construction, planning, and development funds for the expansion and improvement of the airport system in this state unless the project preapplication and planning grant application have first been reviewed and accepted and the project ranked by the department.

(b) The department, in conjunction with representatives of local airport-operating entities and the Federal Aviation Administration, shall develop criteria by which to rank projects governed by subdivision (a), and shall notify all of the public-use-airports in California affected by the enactment of this section of those criteria.

(c) Following the acceptance and ranking of projects governed by subdivision (a), and the submission of the preapplications to the Federal Aviation Administration, the political subdivision or political subdivisions, acting singularly or jointly, or with the state, may contract directly with the Federal Aviation Administration.

(d) Notwithstanding subdivision (a), any political subdivision owning or operating any primary airport, as defined in the federal Airport and Airway Safety and Capacity Expansion Act of 1987 (49

U.S.C. Sec. 2201 et seq.) may directly submit a project application for the primary airport to the Federal Aviation Administration without first obtaining acceptance by the department.

(e) It is the intent of the Legislature that all of the administrative costs incurred by the department in connection with the acceptance and ranking process shall be borne by the department.

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

CHAPTER 976

An act to add Sections 1855.1, 1855.2, 1855.3, 1855.4, and 1855.5 to the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1855.1 is added to the Insurance Code, to read:

1855.1. It is the intent of the Legislature in enacting this article to promote competition in the insurance business and provide a means whereby insurance consumers can more easily comparison shop for insurance coverage by allowing insurance advisory organizations to develop and draft for use by all insurers in California common forms, coverages, and endorsements for insurance policies and bonds.

SEC. 2. Section 1855.2 is added to the Insurance Code, to read:

1855.2. As used in this article, "advisory organization" means every group, association, or other organization of insurers, whether located within or outside of this state, that develops and prepares policy or bond forms for use by admitted insurers, carries on research relative to the development and preparation of policy and bond forms, and acts in an advisory, as distinguished from a ratemaking, capacity.

Every advisory organization shall, prior to operation, file with the commissioner (a) a copy or its constitution, its articles of agreement

or association, or its certificate of incorporation, and its bylaws, rules, and regulations governing its activities, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his or her direction may be served. Every advisory organization shall thereafter promptly notify the commissioner of every material change in the documents required to be filed with the commissioner.

SEC. 3. Section 1855.3 is added to the Insurance Code, to read:

1855.3. Two or more insurers may cooperate with and act in concert with others as members of an advisory organization with respect to any matters pertaining to the preparation or making of insurance policy or bond forms, or carrying on of research relative to the preparation and development of policy or bond forms.

SEC. 4. Section 1855.4 is added to the Insurance Code, to read:

1855.4. Members and subscribers of advisory organizations may use the policy or bond forms of advisory organizations, either consistently or intermittently, but, except for insurers having common ownership or management, shall not agree with each other or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of an advisory organization, use, either consistently or intermittently, the policy or bond forms prepared by an advisory organization, shall not be sufficient in itself to support a finding that an agreement to adhere to those forms exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of an agreement to adhere to those forms.

SEC. 5. Section 1855.5 is added to the Insurance Code, to read:

1855.5. (a) All insurance policy or bond forms of an advisory organization shall prior to being used by insurers be submitted in writing to the commissioner for his or her consideration and approval, together with any information the commissioner may reasonably require. All of those documents shall be available for public inspection at the office of the commissioner. The commissioner shall approve only those policy forms or bonds forms that are found by him or her to contemplate activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this code.

(b) Upon submission of any policy forms or bond forms, the commissioner may review them, and if after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than 10 days' notice to an advisory organization he or she finds that the policy forms or bond forms are unfair or unreasonable, or are otherwise inconsistent with the provisions of this chapter, he or she may issue a written order to the advisory organization specifying in what respect the policy forms or bond forms are unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and disapprove the use of the forms. Notwithstanding the provisions of this section, if the commissioner fails to act within 90 days of the submission of a proposed policy or

bond form by an advisory organization, the policy or bond form shall be deemed approved. For good cause, and after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than 10 days' notice to the advisory organization, the commissioner may revoke approval of any policy form or bond form.

(c) Nothing in this chapter shall be interpreted to allow an advisory organization to set or establish rates for any insurance coverage, policy endorsement, or bond.

CHAPTER 977

An act to amend Section 1206 of the Health and Safety Code, and to add Section 5601.5 to the Welfare and Institutions Code, relating to mental health services.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1206 of the Health and Safety Code is amended to read:

1206. This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

(b) Any clinic directly conducted, maintained or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 which is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations which utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, and which is located on land recognized as tribal land by the federal government.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning which teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art.

(h) A clinic which is operated by a primary care community or free clinic and which is operated on separate premises from the licensed clinic and is only open for limited services of no more than 20 hours a week. An intermittent clinic as described in this paragraph shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340) of Division 2.

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exception to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act, Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(*l*) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, which conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or

jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center as defined in Section 5601.5 of the Welfare and Institutions Code.

SEC. 2. Section 5601.5 is added to the Welfare and Institutions Code, to read:

5601.5. "Community mental health center" means a nonprofit agency which has been certified to provide Short-Doyle Medi-Cal services, and which provides a comprehensive program of mental health services in an outpatient setting designed to improve the function of persons with diagnosed mental health problems. A community mental health center provides diagnostic and therapeutic services for these individuals, together with related counseling, pursuant to policies and procedures governing all aspects of the program formulated with the aid of multidisciplinary staff including physicians and surgeons, all of whom serve on quality assurance and utilization review committees. For purposes of law, including the Health and Safety Code and the Insurance Code, a community mental health center shall be considered to be a licensed facility.

CHAPTER 978

An act to add and repeal Section 4833 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. The Legislature finds and declares that:

(a) Consistency and substantial fairness are hallmarks of any successful system of taxation.

(b) Taxpayers should be able to exercise and preserve their rights under the law in a straightforward manner.

(c) Taxpayers in Los Angeles County may be required to pay property tax amounts in excess of their proper obligation when corrections or adjustments of assessments to lower amounts cannot be completed prior to the delinquent date for property tax amounts currently due.

(d) This act is intended to prevent the hardship to property owners resulting from higher than appropriate assessed valuations which affect property tax amounts. Because of the time required to correct or adjust assessments, it is often impossible to issue corrected

tax bills prior to the end of the fiscal year in question.

(e) A general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution due to the unique circumstances of the County of Los Angeles. The Legislature finds, therefore, due to the unique burdens of administering the property tax system in a county as large and as populous as the County of Los Angeles, that this special act is necessary.

SEC. 2. Section 4833 is added to the Revenue and Taxation Code, to read:

4833. (a) When the assessor of a county having a population of over 8,000,000 determines that the assessment appearing on the roll for the current year for any property is incorrect, due to the error of either the assessor or the assessee, or that the assessment appearing on the roll for the current year for any property is to be reduced by application of the provisions of Section 68 or 69.5, and that the correction of the error or the application of those provisions cannot be completed prior to the delinquency date for current taxes, the assessor may so notify the assessee of his or her intent to establish an in-lieu payment amount and provide notice of the in-lieu amount to the auditor-controller and tax collector. The assessor and tax collector shall determine the necessary forms and procedures for this notification.

(b) Upon receipt of the notices from the assessor, and notwithstanding any other provision of law, the tax collector shall do the following:

(1) Take appropriate measures to notify the assessee that an in-lieu amount will be accepted, and of the amount and the time for payment of that amount.

(2) Accept, in place of the tax amount appearing on the roll for the current year, an in-lieu amount to be determined by the assessor as follows:

(A) If the assessment is in error, the tax amount for the property which appeared or should have appeared on the last roll prior to the occurrence of the error and all direct assessments charged on the current roll.

(B) If Section 68 is being applied, the tax amount which was enrolled or should have been enrolled for the property from which the assessee was displaced on the roll immediately prior to displacement and all direct assessments charged on the current roll.

(C) If Section 69.5 is being applied, the tax amount which was enrolled or should have been enrolled for the original property on the roll immediately prior to the sale of that property by the assessee and all direct assessments charged on the current roll.

(3) Place a notation on the appropriate roll or maintain a file on record that the taxes thereon for the property in question are not the amount of taxes due and payable on that property, and until the correct amount has been ascertained the property will not be deemed tax-defaulted for the year in question if the in-lieu amount is timely paid.

(4) Place a notation on the supplemental roll, if applicable, or maintain a file on record that collection of taxes shown thereon for the property in question is suspended without penalty, interest, or default until formal correction of the supplemental assessment is completed for the year in question.

(5) Set delinquency dates for the payment of in-lieu amounts, to be the same as the delinquency dates for the payment of taxes for which the in-lieu amounts are to be accepted as provided in Section 2610.5.

(c) Whenever the assessor has notified the auditor-controller and the tax collector as provided in subdivision (a), the in-lieu amount determined by the assessor as provided in paragraph (2) of subdivision (b) shall be treated for all purposes, including issuance of policies of title insurance and the grant of loans secured by the property, as the total property tax due and payable for that property for the current year until such time as the corrected assessed value is entered on the roll for determination of actual taxes due. A supplemental tax bill suspended as provided in paragraph (4) of subdivision (b) shall not be considered to be a property tax due and payable until the assessment is deleted or corrected for the appropriate tax year in question.

(d) Notwithstanding any other provision of law, the assessor shall deliver to the auditor-controller the corrected assessment or deletion thereof for the property in question not more than six months following the assessor's notice to the assessee provided in subdivision (a).

(e) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

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

SEC. 4. This act shall become operative only if the Board of Supervisors of the County of Los Angeles, upon request of the county assessor, adopts a resolution making the act applicable to that county.

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:

A large number of property owners in the County of Los Angeles are presently or soon will be listed as being in default of their property tax payments by virtue of erroneous property tax assessments failing to account for corrections or adjustments to the amount of property taxes shown as due. As a result, affected property

owners suffer damage to their credit ratings and are placed at risk that their mortgage loans will be foreclosed. In order to preclude serious consequences to property owners, it is necessary that this act take effect immediately.

CHAPTER 979

An act to add and repeal Section 3502.5 of the Penal Code, relating to prisoners, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. (a) The Legislature finds that state law designed to protect prisoners from inappropriate medical experimentation has had the unintended effect of preventing prisoners from having access to drugs or treatments which might be required for good medical care.

(b) The Legislature further finds that while the standard of practice for health providers practicing outside prisons has sometimes included access to "investigational new drugs" which the United States Food and Drug Administration allows to be made available for a serious or immediately life-threatening disease condition in patients for whom no comparable or satisfactory alternative drug or therapy is available, health providers caring for state prisoners with HIV disease cannot use such drugs, even when they are determined to be the best medical treatment available to a particular prisoner.

(c) Therefore, it is the intent of the Legislature by this act to provide prisoners access to certain investigational drugs or treatments on the same basis that they are made available to patients outside the prison setting.

(d) It is the further intent of the Legislature to encourage ongoing evaluation of the effect that this section has on prisoners' medical care, particularly as it concerns people with AIDS or other forms of HIV disease, by requiring that affirmative steps be taken if the validity of this act is to extend beyond six years.

SEC. 2. Section 3502.5 is added to the Penal Code, to read:

3502.5. (a) Notwithstanding Section 3502, any physician who provides medical care to prisoners is not prohibited from providing a patient who is a prisoner with a drug or treatment available only through a treatment protocol or treatment IND (investigational new drug), as defined in Section 312 of Title 21 of the Code of Federal Regulations, if the physician determines that access to that drug is in the best medical interest of the patient, and the patient has given

informed consent under Section 3521.

(b) Notwithstanding any other provision of law, neither a public entity nor a public employee shall be liable for any injury caused by the administration of a drug pursuant to subdivision (a), where the administration is made in accordance with a treatment IND or a treatment protocol as defined in Section 312 of Title 21 of the Code of Federal Regulations.

(c) This section shall remain in effect only until January 2, 1996, and as of that date is repealed unless a later enacted statute, which is enacted before January 2, 1996, deletes or extends that date.

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 physicians practicing within state prisons the legal authority to provide medical care to prison inmates with AIDS or other diseases that meets the community standard of medical practice, it is necessary that this act go into immediate effect.

CHAPTER 980

An act to amend Section 42000.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 42000.5 of the Vehicle Code is amended to read:

42000.5. Every person convicted of an infraction for a violation of Section 22350, 22406, or 22407 while operating a bus, motor truck, or truck tractor having three or more axles, or any motor truck or truck tractor drawing any other vehicle, shall be punished by a fine not exceeding one hundred dollars ($100) for a first conviction, except that if the person has exceeded the specified speed limit by 10 miles per hour or more, the fine shall not exceed two hundred dollars ($200) for a first conviction, and not exceeding three hundred dollars ($300) for a second or subsequent conviction.

CHAPTER 981

An act to amend Section 31153 of the Public Resources Code, and to amend Item 3760-303-786 of the Budget Act of 1989, relating to coastal resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 31153 of the Public Resources Code is amended to read:

31153. If the conservancy is unable to purchase an interest in agricultural land which meets the provisions of Section 31152, the conservancy may request the State Public Works Board to acquire the interest under the power of eminent domain pursuant to Section 31105.

SEC. 2. Item 3760-303-786 of Section 2.00 of the Budget Act of 1989 is amended to read:

3760-303-786—For capital outlay, State Coastal Conservancy, payable from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 8,750,000

Schedule:

(1) 80.18.010-Agricultural Land Preservation	750,000
(2) 80.18.020-Coastal Restoration.....	3,000,000
(3) 80.18.030-Public Access	3,000,000
(4) 80.19.040-Resource Enhancement	2,000,000

Provisions:

1. The conservancy shall not enter into a grant contract with a nonprofit organization or local government for property acquisition which provides for either of the following:
   a. A reversionary interest to the state, unless the grant contract specifies that the property shall not revert to the state without review and approval by the conservancy and the State Public Works Board.
   b. A state leasehold interest in property acquired by a nonstate public agency with conservancy grant funds, unless the lease terms are approved by the Director of General Services. Except to the extent above, the expenditures of funds for grants, to public agencies and nonprofit organizations shall be exempt from State Public Works Board re-

view.

2. Notwithstanding Section 6.50 of this act, the conservancy may transfer funds between programs in categories (1) through (3), inclusive. The conservancy shall provide quarterly reports to the chairperson of the committee of each house which considers appropriations, and to the Joint Legislative Budget Committee. The report shall summarize the conservancy's actions with a comparison of the amounts scheduled in categories (1) through (3), inclusive, the amounts allocated by the conservancy, and an explanation of any difference between the scheduled and allocated amounts.
3. The amount appropriated in this item is available for expenditure for either capital outlay or local assistance.

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

This act amends the 1989 Budget Act to correct an error in Provision 3 of Item 3760-303-786, which if ieft uncorrected would limit the State Coastal Conservancy's ability to provide assistance to local governments needed to complete vital projects which provide public recreation and economic development and for the conservancy to carry out its functions in a more efficient manner. In order to make these changes as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 982

An act to amend Section 1951.4 of, and to add Chapter 6 (commencing with Section 1995.010) to Title 5 of Part 4 of Division 3 of, the Civil Code, relating to commercial real property leases.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1951.4 of the Civil Code is amended to read:

1951.4. (a) The remedy described in this section is available only if the lease provides for this remedy. In addition to any other type of provision used in a lease to provide for the remedy described in this section, a provision in the lease in substantially the following form satisfies this subdivision:

"The lessor has the remedy described in California Civil Code

Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations)."

(b) Even though a lessee of real property has breached the lease and abandoned the property, the lease continues in effect for so long as the lessor does not terminate the lessee's right to possession, and the lessor may enforce all the lessor's rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease, if any of the following conditions is satisfied:

(1) The lease permits the lessee, or does not prohibit or otherwise restrict the right of the lessee, to sublet the property, assign the lessee's interest in the lease, or both.

(2) The lease permits the lessee to sublet the property, assign the lessee's interest in the lease, or both, subject to express standards or conditions, provided the standards and conditions are reasonable at the time the lease is executed and the lessor does not require compliance with any standard or condition that has become unreasonable at the time the lessee seeks to sublet or assign. For purposes of this paragraph, an express standard or condition is presumed to be reasonable; this presumption is a presumption affecting the burden of proof.

(3) The lease permits the lessee to sublet the property, assign the lessee's interest in the lease, or both, with the consent of the lessor, and the lease provides that the consent shall not be unreasonably withheld or the lease includes a standard implied by law that consent shall not be unreasonably withheld.

(c) For the purposes of subdivision (b), the following do not constitute a termination of the lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver upon initiative of the lessor to protect the lessor's interest under the lease.

SEC. 2. Chapter 6 (commencing with Section 1995.010) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 6. ASSIGNMENT AND SUBLEASE

Article 1. General Provisions

1995.010. This chapter applies to transfer of a tenant's interest in a lease of real property for other than residential purposes.

1995.020. As used in this chapter:

(a) "Landlord" includes a tenant who is a sublandlord under a sublease.

(b) "Lease" means a lease or sublease of real property for other than residential purposes, and includes modifications and other agreements affecting a lease.

(c) "Restriction on transfer" means a provision in a lease that

restricts the right of transfer of the tenant's interest in the lease.

(d) "Tenant" includes a subtenant or assignee.

(e) "Transfer" of a tenant's interest in a lease means an assignment, sublease, or other voluntary or involuntary transfer or encumbrance of all or part of a tenant's interest in the lease.

1995.030. Except as provided in Section 1995.270, this chapter applies to a lease executed before, on, or after January 1, 1990.

Article 2. Restrictions on Transfer

1995.210. (a) Subject to the limitations in this chapter, a lease may include a restriction on transfer of the tenant's interest in the lease.

(b) Unless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease.

1995.220. An ambiguity in a restriction on transfer of a tenant's interest in a lease shall be construed in favor of transferability.

1995.230. A restriction on transfer of a tenant's interest in a lease may absolutely prohibit transfer.

1995.240. A restriction on transfer of a tenant's interest in a lease may provide that the transfer is subject to any express standard or condition, including, but not limited to, a provision that the landlord is entitled to some or all of any consideration the tenant receives from a transferee in excess of the rent under the lease.

1995.250. A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including, but not limited to, either of the following:

(a) The landlord's consent may not be unreasonably withheld.

(b) The landlord's consent may be withheld subject to express standards or conditions.

1995.260. If a restriction on transfer of the tenant's interest in a lease requires the landlord's consent for transfer but provides no standard for giving or withholding consent, the restriction on transfer shall be construed to include an implied standard that the landlord's consent may not be unreasonably withheld. Whether the landlord's consent has been unreasonably withheld in a particular case is a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer.

1995.270. (a) The Legislature finds and declares:

(1) It is the public policy of the state and fundamental to the commerce and economic development of the state to enable and facilitate freedom of contract by the parties to commercial real property leases.

(2) The parties to commercial real property leases must be able

to negotiate and conduct their affairs in reasonable reliance on the rights and protections given them under the laws of the state.

(3) Until the case of Kendall v. Ernest Pestana, Inc., 40 Cal. 3d 488 (1985), and its predecessor, Cohen v. Ratinoff, 147 Cal. App. 3d 321 (1983), the parties to commercial real property leases could reasonably rely on the law of the state to provide that if a lease restriction requires the landlord's consent for transfer of the tenant's interest in the lease but provides no standard for giving or withholding consent, the landlord's consent may be unreasonably withheld.

(4) The Kendall and Cohen decisions reversed the law on which parties to commercial real property leases executed before September 23, 1983, the date of the Cohen decision, could reasonably rely, thereby frustrating the expectations of the parties, with the result of impairing commerce and economic development.

(b) Section 1995.260 applies to a restriction on transfer executed on or after September 23, 1983. If a restriction on transfer executed before September 23, 1983, requires the landlord's consent for the tenant's transfer but provides no standard for giving or withholding consent, the landlord's consent may be unreasonably withheld. For purposes of this subdivision, if the terms of a restriction on transfer are fixed by an option or other agreement, the restriction on transfer is deemed to be executed on the date of execution of the option or other agreement.

CHAPTER 983

An act to amend Sections 216, 305, 1513, 3564.1, 3702, 3754, 3785.1, 4055, 5014.1, 5157.6, 5326, and 29202 of the Elections Code, relating to elections.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 216 of the Elections Code is amended to read:

216. A person domiciled in a house or apartment lying in more than one precinct shall be registered as domiciled in the precinct designated by the county elections official on the basis of the street address or other precinct the county elections official considers appropriate unless the person requests, either by letter or in person at the office of the county elections official, that he or she wishes to be domiciled for registration purposes in another precinct in which his or her house or apartment lies. In order to fulfill the requirements of this section, the letter of request shall include the name, signature, and residence address of the requester.

SEC. 2. Section 305 of the Elections Code is amended to read:

305. (a) Except as provided in subdivision (b), the county clerk shall accept affidavits of registration at all times except during the 28 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

(b) The county clerk or his or her deputy shall accept an affidavit of registration executed as part of a voter registration card in the forthcoming election if (1) the affidavit is executed on or before the 29th day prior to the election, and (2) the affidavit is received by the county clerk or his or her deputy by mail after the 29th day and by the fourth day after the 29th day.

(c) Upon request, the county clerk may accept an affidavit of registration that was not received in accordance with subdivision (a) or (b) or a newly executed affidavit of registration when evidence supports that the affidavit was executed on or before the 29th day prior to the election and that the affidavit was mishandled by a third party, including the postal service. Evidence is limited to the postmark on the affidavit, or, for that election only, possession of a valid affidavit receipt or a photocopy of a properly executed affidavit. However, when the evidence consists only of possession of a valid affidavit receipt or a photocopy of a properly executed affidavit, the county elections official shall not accept the affidavit of registration after the 27th day prior to the election.

SEC. 3. Section 1513 of the Elections Code is amended to read:

1513. No precinct shall be established so that its boundary crosses the boundary of any supervisorial district, congressional district, senatorial district, Assembly district, board of equalization district, judicial district, incorporated city, ward, or city council district. To the extent possible, without subjecting the voter to significant inconvenience, precinct boundaries should not cross census tract or enumeration district lines.

If at any election any precinct contains an insufficient number of qualified persons to make up a precinct board, the precinct may be consolidated with an adjoining precinct.

SEC. 4. Section 3564.1 of the Elections Code is amended to read:

3564.1. A ballot argument or a rebuttal argument which includes in its text the name or title of a person, other than the author of the argument, who is represented as being for or against a measure, shall not be accepted unless the argument is accompanied by a signed consent of that person. The consent of a person, other than an individual, shall be signed by an officer or other duly authorized representative. "Person" as used in this section means any individual, partnership, corporation, association, committee, labor organization, and any other organization or group of persons.

SEC. 5. Section 3702 of the Elections Code is amended to read:

3702. (a) Before circulating any initiative petition in a county, or any petition relating to the annexation of territory by a county, the consolidation of counties, or the dissolution of a county, its proponents shall file with the clerk a notice of intention to do so. The notice shall include the names and business or residence addresses of at least one but not more than five proponents of the petition, and shall be accompanied by the written text of the initiative. The notice may be accompanied by a printed statement, not exceeding 500 words in length, stating the reasons for the proposed petition.

(b) The notice prescribed in subdivision (a), and a title and summary of the proposed measure prepared by the county counsel, shall be published by the proponents at least once in a newspaper of general circulation published in that county.

(c) The notice shall be in substantially the following form:

Notice of Intention to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of _____ for the purpose of _____. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

(d) Any person filing a notice of intent with the county clerk shall pay a fee to be established by the board of supervisors not to exceed two hundred dollars ($200) to be refunded to the filer if, within one year of the date of filing the notice of intent, the county clerk certifies the sufficiency of the petition.

SEC. 6. Section 3754 of the Elections Code is amended to read:

3754. If the board of supervisors does not entirely repeal the ordinance against which a petition is filed, the board shall submit the ordinance to the voters either at the next regularly scheduled county election occurring not less than 88 days after the date of the order or at a special election called for that purpose not less than 88 days after the date of the order. The ordinance shall not become effective unless and until a majority of the voters voting on the ordinance vote in favor of it.

SEC 7. Section 3785.1 of the Elections Code is amended to read:

3785.1. A ballot argument or a rebuttal argument which includes in its text the name or title of a person, other than the author of the argument, who is represented as being for or against a measure, shall not be accepted unless the argument is accompanied by a signed consent of that person. The consent of a person, other than an individual, shall be signed by an officer or other duly authorized representative. "Person" as used in this section means any individual, partnership, corporation, association, committee, labor organization, and any other organization or group of persons.

SEC. 8. Section 4055 of the Elections Code is amended to read:

4055. If the legislative body does not entirely repeal the ordinance against which the petition is filed, the legislative body shall submit the ordinance to the voters, either at the next regular

municipal election occurring not less than 88 days after the order of the legislative body or at a special election called for the purpose not less than 88 days after the order of the legislative body. The ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it. If the legislative body repeals the ordinance or submits the ordinance to the voters and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters.

SEC. 9. Section 5014.1 of the Elections Code is amended to read:

5014.1. A ballot argument or, if applicable, a rebuttal argument which includes in its text the name or title of a person, other than the author of the argument, who is represented as being for or against a measure, shall not be accepted unless the argument is accompanied by a signed consent of that person. The consent of a person, other than an individual, shall be signed by an officer or other duly authorized representative. "Person" as used in this section means any individual, partnership, corporation, association, committee, labor organization, and any other organization or group of persons.

SEC. 10. Section 5157.6 of the Elections Code is amended to read:

5157.6. A ballot argument or a rebuttal argument which includes in its text the name or title of a person, other than the author of the argument, who is represented as being for or against a measure, shall not be accepted unless the argument is accompanied by a signed consent of that person. The consent of a person, other than an individual, shall be signed by an officer or other duly authorized representative. "Person" as used in this section means any individual, partnership, corporation, association, committee, labor organization, and any other organization or group of persons.

SEC. 11. Section 5326 of the Elections Code is amended to read:

5326. A ballot argument or a rebuttal argument which includes in its text the name or title of a person, other than the author of the argument, who is represented as being for or against a measure, shall not be accepted unless the argument is accompanied by a signed consent of that person. The consent of a person, other than an individual, shall be signed by an officer or other duly authorized representative. "Person" as used in this section means any individual, partnership, corporation, association, committee, labor organization, and any other organization or group of persons.

SEC. 12. Section 29202 of the Elections Code is amended to read:

29202. Any person who knowingly or negligently (a) interferes with the prompt transfer of a completed affidavit of registration to the county clerk, (b) retains a voter's completed registration card, without the voter's authorization, for more than three days, excluding Saturdays, Sundays, and state holidays, or after the close of registration, or (c) denies a voter the right to return to the county clerk the voter's own completed registration card is guilty of a misdemeanor punishable by a fine not to exceed one thousand

dollars ($1,000).

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 984

An act to add Section 12235 to the Government Code, relating to the state archives, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 12235 is added to the Government Code, to read:

12235. (a) The Director of General Services, as agent for the Secretary of State, shall construct on Site 7, Capital Area Plan, a Secretary of State and State Archives Building Complex, parking facilities, and any other improvements, betterments, and facilities related thereto, for the primary use of the Secretary of State and State Archives as outlined in the study report required by Section 12234.

(b) Revenue bonds, negotiable notes, and negotiable bond anticipation notes may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955, Part 10b (commencing with Section 15800), to finance the construction and equipping of the Secretary of State and State Archives Building Complex, parking facilities, and any other improvements, betterments, and facilities related thereto as described in subdivision (a).

(c) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of construction and equipping of the complex and facilities, the cost of working drawings, sums necessary to pay financing costs, including interest during construction, and a reasonable reserve fund. Construction costs shall not exceed one hundred million dollars ($100,000,000) based on the Lee-Saylor Cost Index 433.

(d) The amount of negotiable bond anticipation notes sold shall

not exceed the amount of revenue bonds and negotiable notes authorized by this section. Any augmentation of the approved project costs shall be subject to Section 13332.11. The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313.

(e) At least 20 days prior to the award of the principal bid for the construction of the complex, the director shall notify the chairpersons of the fiscal committees of each house of the Legislature of the amount of the bid.

(f) (1) The Director of General Services may lease the complex and facilities financed with the proceeds of the revenue bonds, negotiable notes, or negotiable bond anticipation notes from the board pursuant to Section 15817 for use by the Secretary of State and State Archives.

(2) The director shall notify the Chairperson of the Joint Legislative Budget Committee of the director's intention to execute any lease agreement authorized by paragraph (1) at least 20 days prior to its execution.

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 state archives documents may be saved from deterioration as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 985

An act to amend Section 76140 of the Education Code, relating to education.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 76140 of the Education Code is amended to read:

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college

district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis.

A district may contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. The governing board of each community college district shall provide nonresident students with notice of nonresident tuition fee changes during the spring term before the fall term in which the change will take effect. Nonresident tuition fee increases shall be gradual, moderate, and predictable. The fee may be paid in installments, as determined by the governing board of the district.

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district, or (d) an amount not to exceed the amount which was expended by the district for the current expense of education but in no case less than the statewide average as set forth in subdivision (b) of this chapter. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

The governing board of each community college district shall also adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in the preceding paragraph by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

In adopting a tuition fee for nonresident students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section that require a mandatory fee for nonresidents shall not apply to any district that borders on another state and has fewer than 500 average daily attendance.

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

CHAPTER 986

An act to amend Sections 75061 and 77208 of the Government Code, relating to courts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 75061 of the Government Code is amended to read:

75061. (a) Any person who becomes a judge during the period of January 1, 1980, through December 31, 1988, shall not be eligible to be retired for disability unless the judge is credited with at least two years of judicial service or unless the disability is a result of injury or disease arising out of and in the course of judicial service.

(b) Any person who becomes a judge on or after January 1, 1989, shall not be eligible to be retired for disability unless the judge is credited with at least four years of judicial service or unless the disability is a result of injury or disease arising out of and in the course of judicial service.

SEC. 2. Section 77208 of the Government Code is amended to read:

77208. Except as provided in Sections 73642, 73952, 74342, and 74742 with respect to San Diego County, the board of supervisors of an option county may, at county cost, provide municipal court judges serving in any municipal court in the county with retiree health benefits substantially equal to the retiree health benefits provided to superior court judges.

CHAPTER 987

An act to amend Sections 1947.7 and 1947.8 of, and to add Sections 1947.10 and 1947.11 to, the Civil Code, relating to rent control.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1947.7 of the Civil Code is amended to read:

1947.7. (a) The Legislature finds and declares that the operation of local rent stabilization programs can be complex and that disputes often arise with regard to standards of compliance with the regulatory processes of those programs. Therefore, it is the intent of the Legislature to limit the imposition of penalties and sanctions against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory processes.

(b) An owner of a residential rental unit who is in substantial compliance with an ordinance or charter that controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, or any regulation adopted pursuant thereto, shall not be assessed a penalty or any other sanction for noncompliance with the ordinance, charter, or regulation.

Restitution to the tenant or recovery of the registration or filing fees due to the local agency shall be the exclusive remedies which may be imposed against an owner of a residential rental unit who is in substantial compliance with the ordinance, charter, or regulation.

"Substantial compliance," as used in this subdivision, means that the owner of a residential rental unit has made a good faith attempt to comply with the ordinance, charter, or regulation sufficient to reasonably carry out the intent and purpose of the ordinance,

charter, or regulation, but is not in full compliance, and has, after receiving notice of a deficiency from the local agency, cured the defect in a timely manner, as reasonably determined by the local agency.

"Local agency," as used in this subdivision, means the public entity responsible for the implementation of the ordinance, charter, or regulation.

(c) For any residential unit which has been registered and for which a base rent has been listed or for any residential unit which an owner can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements or who was exempt from registration requirements in a previous version of the ordinance or charter and for which the owner of that residential unit has subsequently found not to have been in compliance with the ordinance , charter, or regulation, all annual rent adjustments which may have been denied during the period of the owner's noncompliance shall be restored prospectively once the owner is in compliance with the ordinance, charter, or regulation.

(d) In those jurisdictions where, prior to January 1, 1990, the local ordinance did not allow the restoration of annual rent adjustment, once the owner is in compliance with this section the local agency may phase in any increase in rent caused by the restoration of the annual rent adjustments that is in excess of 20 percent over the rent previously paid by the tenant, in equal installments over three years, if the tenant demonstrates undue financial hardship due to the restoration of the full annual rent adjustments. This subdivision shall remain operative only until January 1, 1993, unless a later enacted statute which is chaptered by January 1, 1993, deletes or extends that date.

(e) For purposes of this subdivision, an owner shall be deemed in compliance with the ordinance, charter, or regulation if he or she is in substantial compliance with the applicable local rental registration requirements and applicable local and state housing code provisions, has paid all fees and penalties owed to the local agency which have not otherwise been barred by the applicable statute of limitations, and has satisfied all claims for refunds of rental overcharges brought by tenants or by the local rent control board on behalf of tenants of the affected unit.

(f) Nothing in this section shall be construed to grant to any public entity any power which it does not possess independent of this section to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any power to do so which that public entity may possess, except as specifically provided in this section.

SEC. 2. Section 1947.8 of the Civil Code is amended to read:

1947.8. (a) If an ordinance or charter controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and requires the registration of rents, the ordinance or charter, or any regulation adopted pursuant thereto,

shall provide for the establishment and certification of permissible rent levels for the registered rental units, and any changes thereafter to those rent levels, by the local agency as provided in this section.

(b) If the ordinance, charter, or regulation is in effect on January 1, 1987, the ordinance, charter, or regulation shall provide for the establishment and certification of permissible rent levels on or before January 1, 1988, including completion of all appeals and administrative proceedings connected therewith. After July 1, 1990, no local agency may maintain any action to recover excess rent against any property owner who has registered the unit with the local agency within the time limits set forth in this section if the initial certification of permissible rent levels affecting that particular property has not been completed, unless the delay is willfully and intentionally caused by the property owner or is a result of court proceedings or further administrative proceedings ordered by a court. If the ordinance, charter, or regulation is adopted on or after January 1, 1987, the ordinance, charter, or regulation shall provide for the establishment and certification of permissible rent levels within one year after it is adopted, including completion of all appeals and administrative proceedings connected therewith. Upon the request of the landlord or the tenant, the local agency shall provide the landlord and the tenant with a certificate or other documentation reflecting the permissible rent levels of the rental unit. A landlord may request a certificate of permissible rent levels for rental units which have a base rent established, but which are vacant and not exempt from registration under this section. The landlord or the tenant may appeal the determination of the permissible rent levels reflected in the certificate. The permissible rent levels reflected in the certificate or other documentation shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency unless the determination of the permissible rent levels is being appealed.

(c) After the establishment and certification of permissible rent levels under subdivision (b), the local agency shall, upon the request of the landlord or the tenant, provide the landlord and the tenant with a certificate of the permissible rent levels of the rental unit. The certificate shall be issued within five business days from the date of request by the landlord or the tenant. The permissible rent levels reflected in the certificate shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency unless the determination of the permissible rent levels is being appealed. The landlord or the tenant may appeal the determination of the permissible rent levels reflected in the certificate. Any appeal of a determination of permissible rent levels as reflected in the certificate, other than an appeal made pursuant to subdivision (b), shall be filed with the local agency within 15 days from issuance of the certificate. The local agency shall notify, in writing, the landlord and the tenant of its decision within 60 days following the filing of the appeal.

(d) The local agency may charge the person to whom a certificate is issued a fee in the amount necessary to cover the reasonable costs incurred by the local agency in issuing the certificate.

(e) The absence of a certification of permissible rent levels shall not impair, restrict, abridge, or otherwise interfere with either of the following:

(1) A judicial or administrative hearing.

(2) Any matter in connection with a conveyance of an interest in property.

(f) The record of permissible rent levels is a public record for purposes of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(g) Any notice specifying the rents applicable to residential rental units which is given by an owner to a public entity or tenant in order to comply with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code shall not be considered a registration of rents for purposes of this section.

(h) "Local agency," as used in this section, means the public entity responsible for the implementation of the ordinance, charter, or regulation.

(i) Nothing in this section shall be construed to grant to any public entity any power which it does not possess independent of this section to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any such power which that public entity may possess, except as specifically provided in this section.

SEC. 3. Section 1947.10 is added to the Civil Code, to read:

1947.10. (a) After July 1, 1990, in any city, county, or city and county which administers a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, any owner who evicts a tenant based upon the owner's or the owner's immediate relative's intention to occupy the tenant's unit, shall be required to maintain residence in the unit for at least six continuous months. If a court determines that the eviction was based upon fraud by the owner or the owner's immediate relative to not fulfill this six-month requirement, a court may order the owner to pay treble the cost of relocating the tenant from his or her existing unit back into the previous unit and may order the owner to pay treble the amount of any increase in rent which the tenant has paid. If the tenant decides not to relocate back into the previous unit, the court may order the owner to pay treble the amount of one month's rent paid by the tenant for the unit from which he or she was evicted and treble the amount of any costs incurred in relocating to a different unit. The prevailing party shall be awarded attorney's fees and court costs.

(b) The remedy provided by this section shall not be construed to prohibit any other remedies available to a any party affected by this section.

SEC. 4. Section 1947.11 is added to the Civil Code, to read:

1947.11. (a) In any city, county, or city and county which administers a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, upon the establishment of a certified rent level, any owner who charges rent to a tenant in excess of the certified lawful rent ceiling shall refund the excess rent to the tenant upon demand. If the owner refuses to refund the excess rent and if a court determines that the owner willfully or intentionally charged the tenant rent in excess of the certified lawful rent ceiling, the court shall award the tenant a judgment for the excess amount of rent and may treble that amount. The prevailing party shall be awarded attorney's fees and court costs.

(b) The remedy provided by this section shall not be construed to prohibit any other remedies available to a any party affected by this section.

(c) This section shall not be construed to extend the time within which actions are required to be brought beyond the otherwise applicable limitation set forth in the Code of Civil Procedure.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 988

An act to add Chapter 3 (commencing with Section 16100) to Division 12.5 of the Health and Safety Code, and to add Section 74.5 to the Revenue and Taxation Code, relating to seismic safety.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Chapter 3 (commencing with Section 16100) is added to Division 12.5 of the Health and Safety Code, to read:

CHAPTER 3. EARTHQUAKE HAZARD MITIGATION TECHNOLOGIES

16100. As used in this chapter:

(a) "Earthquake hazard mitigation technologies" includes, but is not limited to, seismic isolation, energy dissipation, ductility, damping systems, and other technologies which endeavor to

reasonably protect buildings and nonstructural components, building contents, and functional capability from earthquake damage. Earthquake hazard mitigation technologies do not include those technologies with detailed code provisions in the 1988 edition of the model codes as defined in Section 18916.

(b) "Life cycle cost" includes, but is not limited to, the present value of the cost of initial construction, earthquake insurance premiums, operating and maintenance costs, physical earthquake damage cost to the facility, and related earthquake disruption costs including, but not limited to, loss of production or loss of business anticipated over the projected useful life of the building.

(c) "Peer review" is a review conducted by a multidisciplinary group of experienced technical professionals, including, but not limited to, architects and structural and geotechnical engineers who have recognized expertise in the design and performance of earthquake hazard mitigation technologies, who are independent of the subject of the review, and who are peers with the same professional registration as that of the design professionals responsible for the subject of the review.

(d) "Public agency" means any state agency, any county, city and county, city, regional agency, public district, redevelopment agency, or any other political subdivision.

16101. (a) The Seismic Safety Commission, in cooperation with the State Architect, shall develop a state policy on acceptable levels of earthquake risk for new and existing state-owned buildings and submit their policy to the Legislature for consideration by January 1, 1991.

(b) The State Architect, in conjunction with state agency owners and operators of buildings, shall identify activities carried out within state-owned buildings which are necessary for postearthquake operation.

16102. (a) The State Architect shall develop and adopt by January 1, 1992, regulations for the application of earthquake hazard mitigation technologies to buildings which do all of the following:

(1) Prescribe design criteria and performance standards with the objective of reasonably ensuring the limitation of earthquake damage or the continuous operational capability of buildings with earthquake hazard mitigation technologies, or both.

(2) Determine the procedure for estimating the life cycle costs of a building designed and constructed according to the provisions of this chapter.

(3) Establish the criteria for determining the suitability of earthquake hazard mitigation technology as compared to conventional construction considering project-specific design requirements and life cycle costs.

(b) The advisory board established pursuant to Section 16022 shall advise the State Architect in the development of regulations for this chapter.

16103. (a) The State Architect shall seek the advice and

cooperation of appropriate state agencies, structural and earthquake engineering professional organizations, the California Building Officials, the International Conference of Building Officials, and other professional organizations or associations to carry out the provisions of this section.

(b) The State Architect shall encourage technical and professional societies to conduct forums and seminars to increase the understanding of design professionals and building officials about new earthquake hazard mitigation technologies.

(c) The State Architect shall encourage state and federal governments, the University of California, other state agencies, the private educational institutions and the private sector to increase the availability of earthquake research funds and equipment, including, but not limited to, shake tables. The State Architect shall encourage the development of educational materials for earthquake hazard mitigation technologies.

(d) The State Architect, in cooperation with structural engineering professional organizations, shall submit the regulations developed according to this chapter to the International Conference of Building Officials for consideration of adoption in future model codes, as defined in Section 18916, by August 1, 1993.

16104. (a) The State Architect shall select suitable buildings and provide direction and supervision for the use of earthquake hazard mitigation technologies on three buildings owned by the Department of General Services, or other state-owned buildings proposed by another state agency, as demonstration projects. Buildings owned by the University of California, the California State University, the Department of Corrections, or other state agencies may be proposed as demonstration projects by the respective state agency but are subject to the approval of the State Architect for selection as a demonstration project and review by the State Architect according to provisions of this chapter.

(b) One demonstration project shall be a new building and two projects shall be existing buildings.

(c) It is in the best interest of the state that these demonstration projects should be fully instrumented and monitored by the Strong Motion Instrumentation Program (Chapter 8 (commencing with Section 2700) of Division 2 of the Public Resources Code) of the Division of Mines and Geology. The Strong Motion Instrumentation Program is encouraged to instrument these demonstration projects. The State Architect shall consult with the Strong Motion Instrumentation Program prior to the selection of demonstration projects.

It is the intent of the Legislature that the cost of instrumentation be funded by the appropriation that funds the construction of the building.

16105. The State Architect, in consultation with other agencies, shall recommend to the Legislature a long-term plan to study the retrofitting of existing state buildings and to recommend

incorporating new earthquake hazard mitigation technologies where appropriate. Buildings of the University of California, the California State University, and the Department of Corrections are not required to comply with this section.

16106. (a) The State Architect shall develop and publish informational material describing the anticipated earthquake performance of new and existing buildings afforded by current and earlier building codes, the threat of earthquakes, and earthquake hazard mitigation technologies. This information shall be made available to the federal government, public agencies, and the public to assist building owners, occupants, and managers to better understand the anticipated earthquake performance of buildings.

(b) The State Architect shall provide information by various methods, including publications and seminars, to insurance companies, building owners, and the general public explaining the significant reductions in damage to buildings and contents which may be effected through the use of earthquake hazard mitigation technologies with the objective of encouraging the use of these technologies, reducing earthquake damage and disruption, and reducing insurance premiums for earthquake peril coverage.

16107. (a) The University of California, the California State University, the Department of Corrections, and public agencies are encouraged to develop and implement policies and performance standards according to lowest reasonable life cycle costs in a similar manner to Section 16101.

(b) No provision of this chapter shall apply to the Regents of the University of California unless the regents, by resolution, make the provision applicable.

16107.5. No provision of this chapter or the regulations adopted pursuant thereto, shall reduce, alter, or diminish the authority of the design professional who signs the plans and specifications for a project subject to this chapter.

16108. (a) Private and public agency building owners and developers may, and are encouraged to, use the provisions of this chapter for new and existing buildings. Private and public agency building owners and developers are encouraged to consider the building standards enacted by local governments for building reconstruction pursuant to Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13.

(b) The State Architect, using the advisory committee defined in Section 16022 shall review the suitability of the candidate buildings for earthquake hazard mitigation technologies upon request from building owners or developers, public agencies, or design professionals and shall review the adequacy of the project-specific design and earthquake performance criteria and report its findings to the appropriate public agency prior to the approval of design concepts, preliminary design criteria, geotechnical reports, and ground response reports by the appropriate public agency.

(c) The advisory committee established pursuant to Section 16022

shall be used by the State Architect to perform a peer review of the earthquake hazard mitigation technologies for a project at the State Architect's discretion or at the request of a building owner, design professional, or responsible public agency. The State Architect may add to the advisory committee additional peers for a particular project from a list of recognized experts in the field of earthquake hazard mitigation technologies.

(d) An appropriate fee for all reviews by the State Architect and advisory committee shall be established by the State Architect and paid for by building owners prior to reviews. The fees established pursuant to this subdivision shall not exceed the actual costs of performing the individual peer review.

(e) No local agency may require any private or public agency, building owner or developer, or their design professionals, to comply with the provisions of this chapter as a condition of local agency review, permitting, or approval.

16109. (a) In the event that a project involving buildings utilizing earthquake mitigation technologies and other new seismic resistant design technologies requires design review and plan approval by more than one public agency, the Coordinating Council of the Building Standards Commission shall, to the maximum extent feasible, consolidate the various hearings which may be required in order to minimize the time required for the hearings. This consolidation shall be for procedural purposes only and shall not be construed as consolidating the statutory responsibilities of the public agencies conducting the consolidated hearings.

(b) The Coordinating Council of the Building Standards Commission, in consultation with the State Architect, shall report to the Legislature by January 1, 1991, on recommendations for expediting and facilitating design review and plan approval of buildings utilizing earthquake mitigation technologies and other new seismic resistant design technologies.

16110. The State Architect shall periodically inform the Seismic Safety Commission with respect to the implementation and administration of this chapter.

16111. Nothing contained in this chapter shall expand or enlarge the jurisdiction of the Office of the State Architect to review and approve design concepts, preliminary design criteria, geotechnical reports or ground response reports, except as provided by state law prior to the effective date of this chapter and except as provided in Section 16108. This section shall be repealed on January 1, 2000.

SEC. 2. Section 74.5 is added to the Revenue and Taxation Code, to read:

74.5. (a) Where an existing building has been identified by a local government as being hazardous to life in the event of an earthquake, "newly constructed" and "new construction" does not include the portion of reconstruction of or installation in the building of: (1) seismic rehabilitation improvements, which are designed to increase seismic structural safety in accordance with a local

earthquake safety ordinance adopted pursuant to Section 19163 of the Health and Safety Code; or, (2) improvements utilizing earthquake hazard mitigation technologies approved by the State Architect pursuant to Section 16102 of the Health and Safety Code. This exclusion from "newly constructed" and "new construction" is not applicable to seismic safety reconstruction and improvements which qualify for the exclusion provided in subdivision (d) of Section 70.

(b) For purposes of claiming the exclusion pursuant to paragraph (1) of subdivision (a), the governing body which enacted the local ordinance shall issue a certificate of compliance upon the request of the owner who, pursuant to a notice or permit issued by the governing body which specified that the seismic rehabilitation improvements are necessary to comply with a seismic safety ordinance, so reconstructs or improves his or her building in accordance with the ordinance. The certificate of compliance and proof that the building was identified as hazardous by the governing body shall be filed by the property owner with the assessor on or before the following April 15. The provisions of paragraph (1) of subdivision (a) shall not apply to any building for which a certificate and proof are not filed.

(c) For purposes of claiming exclusion pursuant to paragraph (2) of subdivision (a), the property owner shall notify the assessor prior to, or within 30 days of, completion of reconstruction that he or she intends to claim the exclusion for improvements utilizing earthquake hazard mitigation technologies. All documents necessary to support the exclusion shall be filed by the property owner with the assessor on or before the following April 15. The provisions of paragraph (2) of subdivision (a) shall not apply to any building for which the necessary documents are not filed.

SEC. 3. Section 2 of this act shall become operative only if Senate Constitutional Amendment 33 of the 1989–90 Regular Session is chaptered and adopted by the electorate, and shall only apply to seismic rehabilitation improvements or improvements utilizing earthquake hazard mitigation technologies which are reconstructed or installed in existing buildings on or after the effective date of the constitutional amendment.

CHAPTER 989

An act to add Section 2053.1 to the Penal Code, relating to prisoners.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 2053.1 is added to the Penal Code, to read:

2053.1. The Director of the Department of Corrections shall implement in every state prison literacy programs that are designed to ensure that upon parole inmates are able to achieve a ninth-grade reading level. The department shall prepare an implementation plan for this program, and shall request the necessary funds to implement this program as follows:

(a) To make the program available to at least 25 percent of eligible inmates in the state prison system by July 1, 1991.

(b) To make the program available to at least 60 percent of eligible inmates in the state prison system by January 1, 1996.

In complying with the requirements of this section, the department shall give strong consideration to computer assisted training and other innovations which have proven to be effective in reducing illiteracy of disadvantaged adults.

CHAPTER 990

An act to add and repeal Section 43804.3 of, and to repeal and add Section 43802 of, the Health and Safety Code, to add Section 25310.3 to the Public Resources Code, and to add and repeal Section 6356.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The maintenance and improvement of air quality is a primary environmental concern of all Californians.

(b) Our dependence on foreign sources of fossil fuels can be lessened by the use of vehicles capable of using fuels other than conventional gasoline.

(c) Therefore, it is in California's best interest to encourage the development and popularization of low-emission vehicles capable of using alternative fuels.

SEC. 2. Section 43802 of the Health and Safety Code is repealed.

SEC. 3. Section 43802 is added to the Health and Safety Code, to read:

43802. (a) At the time of certification pursuant to Article 1 (commencing with Section 43100) of Chapter 2 of this part, the state board shall identify those motor vehicles which qualify as low-emission vehicles as defined in Section 39037.05. As part of the identification process, the state board shall require qualifying vehicles to be clearly labeled as low-emission vehicles. Labeling shall include a statement of the incremental cost, determined pursuant to Section 43804.3, exempted from sales and use tax pursuant to subdivision (a) of Section 6356.5 of the Revenue and Taxation Code. For motor vehicles identified as low-emission motor vehicles by the board, the standards specified in Section 39037.05 shall be the applicable emission standards for Chapter 2 (commencing with Section 43100) of this part. No later than October 1, 1990, and at least annually thereafter, the state board shall submit a listing of certified low-emission motor vehicles to the Department of General Services. Certification determinations for all vehicle and fuel types shall be based solely on vehicle emissions and shall not be based on emissions from the production, compressing, refining, or transportation of fuel.

(b) Each time a resolution is granted pursuant to Section 27156 of the Vehicle Code, the state board shall identify those motor vehicle control devices and applications which convert conventional vehicles into low-emission vehicles as identified in Section 39037.05. As part of the identification process, the state board shall require identified devices to be clearly labeled as such for purposes of those applications specified by the state board. Labeling shall include a statement that the device is exempt from sales and use tax pursuant to subdivision (b) of Section 6356.5 of Revenue and Taxation Code.

(c) For purposes of this section, "device" means physical equipment to be installed on a vehicle.

SEC. 3.5. Section 43804.3 is added to the Health and Safety Code, to read:

43804.3. (a) The State Energy Resources Conservation and Development Commission, in consultation with the state board and the Department of General Services, shall, after one or more public hearings, determine a reasonable incremental cost of qualifying "low-emission motor vehicles" as defined pursuant to Section 39037.5. Separate determinations shall be made for light, medium, and heavy duty vehicles. The initial determination shall be completed by December 31, 1990, and shall be updated as deemed necessary by the commission. For purposes of this section, incremental cost means the difference between the cost of a qualifying low-emission motor vehicle and the cost of a comparable gasoline or diesel fueled vehicle.

(b) The determination specified in subdivision (a) shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2

of the Government Code).

(c) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

SEC. 4. Section 25310.3 is added to the Public Resources Code, to read:

25310.3. The 1991 report and subsequent biennial reports prepared pursuant to Section 25310 shall include a report on the impact and administration of incentives designed to encourage the purchase and use of low-emission vehicles, including, but not limited to, the incentives established under Section 6356.5 of the Revenue and Taxation Code.

SEC. 5. Section 6356.5 is added to the Revenue and Taxation Code, to read:

6356.5. (a) There are exempted from the taxes imposed by this part the incremental costs of the sale of, and the storage, use, or other consumption in this state of, new low-emission motor vehicles as identified by the State Air Resources Board pursuant to subdivision (a) of Section 43802 of the Health and Safety Code, provided that the incremental cost is separately stated on all of the following:

(1) The manufacturer's label affixed to the vehicle.

(2) The manufacturer's invoice to the retailer.

(3) The retailer's contract of sale with the purchaser. For purposes of this section, incremental cost means the amount determined by the State Energy Resources Conservation and Development Commission pursuant to Section 43804.3 of the Health and Safety Code.

(b) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any retrofit device which has been identified and labeled pursuant to subdivision (b) of Section 43802 of the Health and Safety Code, provided low-emission labeling appears on all of the following:

(1) The device itself or its packaging.

(2) Documentation from the manufacturer to be retained by the retailer upon sale of the device.

(3) The retailer's contract of sale with the purchaser.

(c) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

SEC. 6. The Legislative Analyst shall submit a report to the Legislature no later than January 1, 1993, on the impact and effectiveness of the sales and use tax exemptions provided for in Section 6356.5 of the Revenue and Taxation Code.

SEC. 7. 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. 8. 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 State Energy Resources Conservation and Development Commission has made the determination specified in Section 43804.3 of the Health and Safety Code and reported its determination to the State Board of Equalization.

CHAPTER 991

An act to add and repeal Section 39912 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 39912 is added to the Health and Safety Code, to read:

39912. (a) The state board shall conduct a study of acid deposition on agriculture in the San Joaquin Valley. The study shall include, but not be limited to, all of the following:

(1) The levels and types of acid deposition in the valley.

(2) The sources of the pollutants which are precursors of acid deposition in the valley.

(3) The effects of acid deposition on crops in the valley.

(4) The effects on agriculture of combined and cumulative exposure to acid deposition and photochemical oxidants in the valley.

(5) The economic impacts of acid deposition and of the combined and cumulative exposure to photochemical oxidants and acid deposition on agriculture and within the San Joaquin Valley.

(b) The state board shall hold at least one hearing in the San Joaquin Valley prior to completing the study. The state board shall submit the completed study to the Legislature by July 1, 1992.

(c) 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.

CHAPTER 992

An act to add Section 790.036 to the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 790.036 is added to the Insurance Code, to read:

790.036. (a) It is an unfair and deceptive act or practice in the business of insurance for an insurer to advertise insurance that it will not sell.

(b) Nothing in this section shall be construed to prohibit any insurer from advertising insurance products for which it is licensed to sell in this state where the product is not available for sale so long as the unavailability is disclosed in the advertisement.

(c) A violation of this section is subject to the sanctions provided for by this article.

(d) An intentional violation of this section is a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000).

(e) This section does not apply to any insurer that refuses to sell a policy of insurance on the basis of its underwriting guidelines.

(f) This section does not apply to advertisements by an insurer where the advertisements are broadcast and originate from outside this state. As used in this subdivision, "broadcast" includes electronic media, television, and radio. As used in this subdivision, "originate from outside this state" includes cable transmittal of programs broadcast by stations located outside California.

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

CHAPTER 993

An act to amend Section 13144.5 of, to add Sections 1531.2, 1569.149, and 1596.809 to, and to add Chapter 5.5 (commencing with Section 13235) to Part 2 of Division 12 of, the Health and Safety Code, relating to fire safety in care facilities.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. The Legislature finds and declares the following:

Community care facilities, residential care facilities for the elderly, and child care facilities serve the needs of thousands of persons who are either physically impaired, mentally disabled, frail, elderly, or children, and who warrant care in a specialized, noninstitutional environment.

It is in the best interest of the California public that private citizens be encouraged to develop and operate community care facilities, residential care facilities for the elderly, and child day care facilities throughout the state in order to meet the critical demand for quality, specialized care homes.

Complex and unclear fire safety codes have frustrated the attempts of persons seeking to establish community care facilities, residential care facilities for the elderly, and child day care facilities, and have resulted in significant loss of money and resources to individuals who have received incorrect information regarding fire safety requirements from state or local officials, or no guidance at all.

Interpretation of state and local fire safety regulations varies between the more than 1,200 fire jurisdictions, and in some cases varies within the same jurisdiction, causing confusion and, in numerous instances, project cancellation.

Therefore, it is the intention of the Legislature that a prospective applicant for community care facility, residential care facility for the elderly, or child day care facility licensure shall be clearly informed in advance of making design modifications to a structure to meet specific fire safety requirements.

The Legislature futher intends that it is incumbent on state and local agencies to assist persons in the interpretation of fire safety regulations for community care facilities, residential care facilities for the elderly, and child day care facilities, and that greater efforts must be made to clarify and streamline the fire safety clearance process.

SEC. 2. Section 1531.2 is added to the Health and Safety Code, to read:

1531.2. A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall

secure and maintain a fire clearance approval from the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

SEC. 3. Section 1569.149 is added to the Health and Safety Code, to read:

1569.149. A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall secure and maintain a fire clearance approval from the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

SEC. 4. Section 1596.809 is added to the Health and Safety Code, to read:

1596.809. A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall secure and maintain a fire clearance approval from the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

SEC. 5. Section 13144.5 of the Health and Safety Code is amended to read:

13144.5. The State Fire Marshal shall prepare and conduct voluntary regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Code of Regulations relating to fire and panic safety. The training sessions shall include, but need not be limited to, interpretation of the regulations pertaining to community care facilities licensed pursuant to Section 1508, to residential care facilities for the elderly licensed pursuant to Section 1569.10, and to child day care facilities licensed pursuant to Section 1596.80, in order to coordinate a consistent interpretation and application of the regulations among local fire enforcement agencies.

SEC. 4. Chapter 5.5 (commencing with Section 13235) is added to Part 2 of Division 12 of the Health and Safety Code, to read:

CHAPTER 5.5. FIRE SAFETY INSPECTIONS OF CARE FACILITIES

13235. (a) Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or State Fire Marshal, whichever has primary jurisdiction, shall conduct a preinspection of the facility prior to the final fire clearance approval. At the time of the preinspection, the primary fire enforcing agency shall provide consultation and interpretation of fire safety regulations, and shall notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval. A fee of not more than fifty dollars ($50) may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars ($100) may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.

(b) The primary fire enforcing agency shall complete the final fire clearance inspection for a community care facility, residential care facility for the elderly, or child day care facility within 30 days of receipt of the request for the final inspection, or as of the date the prospective facility requests the final prelicensure inspection by the State Department of Social Services, whichever is later.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 994

An act to amend Section 224n of the Civil Code, relating to adoption.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 224n of the Civil Code is amended to read:

224n. The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights shall be responsible for the care of the child, and shall be entitled to the exclusive custody and control of the

child until a final decree of adoption has been granted. Any placement for temporary care, or for adoption made by the department or a licensed adoption agency, may be terminated at its discretion at any time prior to the granting of a final decree of adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.

No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either or both of his or her parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the petition for adoption has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or a licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or a licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the superior court may nevertheless decree the adoption if it finds that the refusal to consent is not in the best interest of the child.

Notwithstanding any other provision of law, if the child has been in foster care for a period of more than four months, the child has substantial emotional ties to the foster parent or parents, the child's removal from the foster parent or parents would be seriously detrimental to the child's well-being, and the foster parent or parents make a written request to be considered to adopt the child, the foster parent or parents shall be considered with respect to that child along with all other prospective adoptive families. The department or agency shall take into consideration any relevant factors that it deems necessary in determining the adoptive placement which is in the best interests of the child.

The decision of the department or licensed adoption agency for the adoptive placement of the child shall be presumed to be in the best interests of the child. This presumption may be rebutted in an action, filed by the foster parent or parents, by a preponderance of the evidence that foster care has been provided by the requesting foster parent or parents for more than four months, that the child has substantial emotional ties to the foster parent or parents, and that the adoptive placement of the child with someone other than the foster parent or parents would be seriously detrimental to the child's well-being.

For purposes of this section, the "department" means the State Department of Social Services.

CHAPTER 995

An act to amend Section 1768.8 of the Welfare and Institutions Code, relating to youths.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 1768.8 of the Welfare and Institutions Code is amended to read:

1768.8. (a) An assault or battery by any person confined in an institution under the jurisdiction of the Youth Authority upon the person of any individual who is not confined therein shall be punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both a fine and imprisonment.

(b) An assault or battery by any person confined in an institution under the jurisdiction of the Youth Authority upon the person of any individual who is not confined therein, which inflicts serious bodily injury upon the victim, is punishable by imprisonment in the state prison for two, three, or four years, or in county jail for not more than one year.

CHAPTER 996

An act to add Section 14085.6 to the Welfare and Institutions Code, relating to Medi-Cal, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

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

(a) Federal medicaid laws encourage special recognition of disproportionate share hospitals for Medi-Cal payment purposes.

(b) Due to state budget constraints, the amounts paid to disproportionate share hospitals under the Medi-Cal contracting program during the past several years have not been sufficient to allow the hospitals to keep up with the increasing costs of providing care to Medi-Cal patients, especially for emergency services.

(c) A crisis exists in California regarding emergency services.

(d) Numerous Medi-Cal patients are provided emergency services by disproportionate share hospitals.

(e) Federal laws permit and encourage the state to fund the

Medi-Cal program through flexible means, including public and private contributions to serve as the state share for purposes of federal financial participation.

SEC. 2. Section 14085.6 is added to the Welfare and Institutions Code, to read:

14085.6. (a) Except as stated in subdivision (g), each disproportionate share hospital contracting to provide services under this article which meets the state criteria contained in the state medicaid plan and selective provider contracting waiver developed pursuant to the federal medicaid provisions regarding disproportionate share hospitals shall be eligible to negotiate with the commission for distributions from the Disproportionate Share and Emergency Services Fund, which is hereby created, pursuant to subdivision (f).

(b) (1) To the extent permitted by federal law, the department shall administer the fund in accordance with this section.

(2) The money in this fund shall be available for expenditure by the department for the purposes of this section, subject to approval through the regular budget process.

(c) The fund shall include all of the following:

(1) All public funds transferred by public agencies to the department for deposit in the fund, as permitted under subdivision (a) of Section 433.45 of Title 42 of the federal Code of Regulations and any other applicable federal medicaid laws.

(2) All private donated funds transferred by private individuals or entities for deposit in the fund as permitted under subdivision (b) of Section 433.45 of Title 42 of the Code of Federal Regulations and any other applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Interest which accrues on amounts in the fund.

(5) Federal financial participation amounts matching the amounts referred to in paragraphs (1) to (4), inclusive, which are to be expended from the fund.

(d) Distributions from the fund shall be supplemental to any and all other amounts which hospitals would have received under the contracting program, including contract rate increases and distributions under Chapter 981 of the Statutes of 1988.

(e) Distributions from the fund shall not serve as the state's program for compliance with Section 4112 of the federal Omnibus Budget Reconciliation Act of 1987 (P. L. 100-203). To the extent permitted by federal law, and except as otherwise provided in this section, distributions from the fund shall not be subject to requirements contained in or related to Section 4112 of Public Law 100-203. The state's means for compliance with Section 4112 of Public Law 100-203 shall be the program established under Chapter 981 of the Statutes of 1988.

(f) Distributions from the fund may be on any federally permissible basis, as negotiated between the commission and the hospital.

(g) In order to qualify for distributions from the fund, a hospital shall meet all of the following criteria:

(1) Be a contracting hospital under this article.

(2) Be a disproportionate share hospital as described in subdivision (a).

(3) Be one of the following:

(A) A licensed provider of basic emergency services as described in Sections 70411 et sequitur, of Title 22 of the California Code of Regulations.

(B) A licensed provider of comprehensive emergency medical services as defined in Sections 70451 et sequitur of Title 22 of the California Code of Regulations.

(C) A children's hospital as defined in Section 14087.21 which satisfies subparagraph (A) or (B) or which jointly provides basic or comprehensive emergency services in conjunction with another licensed hospital.

(4) Be able to demonstrate a need for additional funding to cover the cost of emergency services and other health care services included in the selective provider contracting program.

(h) (1) The department shall seek federal financial participation for expenditures made from the fund to the full extent permitted by federal law.

(2) The department shall promptly seek any necessary federal approvals regarding this section.

(i) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in following fiscal years.

(j) For purposes of this section, "fund" means the Disproportionate Share and Emergency Services Fund.

(k) Consistent with Section 1902 (h) of the Social Security Act and any applicable federal regulations, there shall be no limitations on the amount of payment adjustments which may be made under Medi-Cal to disproportionate share hospitals.

(*l*) Any county transferring amounts to the fund, as specified in paragraph (1) of subdivision (c), may for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A county may also utilize county general funds for purposes of transfers to the fund.

(m) If transfers to the fund are made from federal moneys, they shall be federal moneys authorized by federal law to be used to match other federal funds.

(n) The department may adopt emergency regulations, if necessary, for the purposes of this section.

(o) The state shall be held harmless from any federal disallowance resulting from this section. 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 with respect to that hospital. The state may recoup that federal disallowance from the hospital in any

manner authorized by law or contract.

SEC. 3. The sum of two hundred fifty thousand dollars ($250,000) is appropriated from the Disproportionate Share and Emergency Services Fund for the 1989–90 fiscal year for the combined administrative costs of the California Medical Assistance Commission and the State Department of Health Services pursuant to this act.

CHAPTER 997

An act to add Section 33334.14 to the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 33334.14 is added to the Health and Safety Code, to read:

33334.14. (a) The covenants or restrictions imposed by the agency pursuant to subdivision (e) of Section 33334.3 may be subordinated under any of the following alternatives:

(1) To a lien, encumbrance, or regulatory agreement under a federal or state program when a federal or state agency is providing financing, refinancing, or other assistance to the housing units or parcels, if the federal or state agency refuses to consent to the seniority of the agency's covenant or restriction on the basis that it is required to maintain its lien, encumbrance, or regulatory agreement or restrictions due to statutory or regulatory requirements, adopted or approved policies, or other guidelines pertaining to the financing, refinancing, or other assistance of the housing units or parcels.

(2) To a lien, encumbrance, or regulatory agreement of a lender other than the agency or from a bond issuance providing financing, refinancing, or other assistance of owner-occupied units or parcels where the agency makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available.

(3) To an existing lien, encumbrance, or regulatory agreement of a lender other than the agency or from a bond issuance providing financing, refinancing, or other assistance of rental units, where the agency's funds are utilized for rehabilitation of the rental units.

(4) To a lien, encumbrance, or regulatory agreement of a lender other than the agency or from a bond issuance providing financing, refinancing, or other assistance of rental units or parcels where the agency makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on

substantially comparable terms and conditions, but without subordination, is not reasonably available, and where the agency obtains written commitments reasonably designed to protect the agency's investment in the event of default, such as any of the following:

(A) A right of the agency to cure a default on the loan.

(B) A right of the agency to negotiate with the lender after notice of default from the lender.

(C) An agreement that if prior to foreclosure of the loan, the agency takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the agency.

(D) A right of the agency to purchase property from the owner at any time after a default on the loan.

(b) Notwithstanding the definition of "construction and rehabilitation" in subdivision (a) of Section 33487, an agency which has merged redevelopment projects pursuant to Article 16 (commencing with Section 33485) of Chapter 4, and which is required to deposit taxes into the Low and Moderate Income Housing Fund pursuant to subdivision (a) of Section 33487, may use any of the funds for the purposes and in the manner permitted by Sections 33334.2 and 33334.3. However, in that event, the time periods specified in paragraphs (1) and (2) of subdivision (e) of Section 33334.3 shall both be extended to 30 years. Nothing in this subdivision shall allow an agency with merged project areas pursuant to Article 16 (commencing with Section 33485) to utilize the provisions of paragraph (1), (2), or (3) of subdivision (a) of Section 33334.2 so as to avoid or reduce its obligations to deposit taxes from merged project areas into the Low and Moderate Income Housing Fund.

CHAPTER 998

An act to amend Section 40469 of, and to add Section 40469.5 to, the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 40469 of the Health and Safety Code is amended to read:

40469. (a) Following submittal by the south coast district, the state board shall review the plan to determine its adequacy to meet federally mandated primary ambient air quality standards and all

other requirements of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and its adequacy to meet the requirements of the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) and to attain state ambient air quality standards through application of the best available control technology, indirect source controls, transportation control measures, and the use of cleaner burning alternative fuels. If the state board determines that portions of the plan meet the requirements of the state and federal acts and are adequate to attain state ambient air quality standards, it shall adopt those portions and submit to the Environmental Protection Agency the portions of the plan required by the federal act within 120 days after receipt of the plan from the south coast district.

(b) If the state board determines that the plan does not meet all the requirements of the state and federal acts, or does not include a deadline for the attainment of the state ambient air quality standards by application of the best available control technology, indirect source controls, transportation control measures, and the use of cleaner burning alternative fuels, the state board shall, prior to amending the plan, convene a committee comprised of two members each of the state board, the Executive Committee of the Southern California Association of Governments, and the south coast district board appointed by the entity they represent to attempt to resolve the differences. If it is necessary to amend the plan, the state board shall do so at a public hearing held pursuant to Section 41652 and shall submit to the Environmental Protection Agency the portions of the plan required by the federal act within 120 days after receipt of the plan from the south coast district. In submitting the plan to the Environmental Protection Agency, the state board shall indicate what changes have been made to the plan.

(c) Within 30 days after the receipt of the plan from the south coast district, the state board shall determine if, with respect to any part of the plan concerning the control of a source of emissions that is within the state board's responsibility under law, it has sufficient information to determine whether the plan, or any part of the plan, meets the applicable requirements of the state and federal acts and is adequate to attain state ambient air quality standards. The state board shall thereupon notify the south coast district, in writing, of the additional information needed to make the determination, and the south coast district shall promptly furnish the information.

SEC. 2. Section 40469.5 is added to the Health and Safety Code, to read:

40469.5. Following the adoption of those portions of the plan that comply with the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) and the federal Clean Air Act of (42 U.S.C. Sec. 7401 et seq.) and are adequate to attain state ambient air quality standards, the state board shall make all reasonable efforts to assist the south coast district by providing any additional information required to achieve an approvable state implementation plan, including convening joint public workshops on air quality

monitoring, modeling, control technologies, and other matters coming within the state board's responsibility under law, and assisting the south coast district in researching and testing transportation control measures.

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:

Section 40469 of the Health and Safety Code requires that the State Air Resources Board submit portions of the plan adopted by the South Coast Air Quality Management District to the Environmental Protection Agency within 120 days after receipt of the plan from the south coast district. In order for this act to apply to the most recent revision of the plan, it is necessary that this act take effect immediately.

CHAPTER 999

An act to amend Sections 5250 and 5350 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 5250 of the Welfare and Institutions Code is amended to read:

5250. If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism, under the following conditions:

(a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan as required by Section 5651.3.

(c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.

(d) (1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter.

SEC. 2. Section 5350 of the Welfare and Institutions Code is amended to read:

5350. A conservator of the person, of the estate, or of the person and the estate may be appointed for any person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism.

The procedure for establishing, administering and terminating conservatorship under this chapter shall be the same as that provided in Division 4 (commencing with Section 1400) of the Probate Code, except as follows:

(a) A conservator may be appointed for a gravely disabled minor.

(b) Appointment of a conservator under this part shall be subject to the list of priorities in Section 1812 of the Probate Code unless the officer providing conservatorship investigation recommends otherwise to the superior court.

(c) No conservatorship of the estate pursuant to this chapter shall be established if a conservatorship or guardianship of the estate exists under the Probate Code. When a gravely disabled person already has a guardian or conservator of the person appointed under the Probate Code, the proceedings under this chapter shall not terminate the prior proceedings but shall be concurrent with and superior thereto. The superior court may appoint the existing guardian or conservator of the person or another person as conservator of the person under this chapter.

(d) The person for whom conservatorship is sought shall have the right to demand a court or jury trial on the issue whether he or she is gravely disabled. Demand for court or jury trial shall be made within five days following the hearing on the conservatorship petition. If the proposed conservatee demands a court or jury trial before the date of the hearing as provided for in Section 5365, such demand shall constitute a waiver of the hearing.

Court or jury trial shall commence within 10 days of the date of the demand, except that the court shall continue the trial date for a period not to exceed 15 days upon the request of counsel for the

proposed conservatee.

This right shall also apply in subsequent proceedings to reestablish conservatorship.

(e) (1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter.

(f) Conservatorship investigation shall be conducted pursuant to this part and shall not be subject to Section 1826 or Chapter 2 (commencing with Section 1850) of Part 3 of Division 4 of the Probate Code.

(g) Notice of proceedings under this chapter shall be given to a guardian or conservator of the person or estate of the proposed conservatee appointed under the Probate Code.

(h) As otherwise provided in this chapter.

CHAPTER 1000

An act to amend Section 980 of the Government Code, relating to public works contracts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 980 of the Government Code is amended to read:

980. (a) Whenever a request for payment from the state or a local entity pursuant to the terms of a contract for the construction of a public works project, as defined in Section 1720 of the Labor Code, is properly filed and the validity of the claim is not disputed or has been settled or agreed upon, payment of the claim by the disbursing officer of the state or local public entity shall include interest at the legal rate of 7 percent per annum commencing on the date upon which the claim was submitted if payment has not been made by the 60th day after the proper submission of the claim.

(b) If a request for payment has not been properly filed at an

earlier date, then the request shall be deemed to be properly filed on the next business day after the contractor provides written notification to the public entity's designated jobsite representative that the contractor accepts the proposed final estimate as prepared by the public entity. This subdivision shall not apply to the California State University.

CHAPTER 1001

An act to amend Section 1226 of the Health and Safety Code, relating to clinics.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 1226 of the Health and Safety Code is amended to read:

1226. (a) The regulations shall prescribe the kinds of services which may be provided by clinics in each category of licensure and shall prescribe minimum standards of adequacy, safety, and sanitation of the physical plant and equipment, minimum standards for staffing with duly qualified personnel, and minimum standards for providing the services offered. These minimum standards shall be based on the type of facility, the needs of the patients served, and the types and levels of services provided.

(b) The Office of Statewide Health Planning and Development, in consultation with the Community Clinics Advisory Committee, shall prescribe minimum construction standards of adequacy and safety for the physical plant of clinics and submit these standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 and for publication in the State Building Standards Code.

(c) A facility seeking licensure as a surgical clinic shall be deemed to have met the minimum construction standards of adequacy and safety for the physical plants of clinics if the facility meets all the following requirements:

(1) An application for licensure is made no later than July 1, 1990.

(2) The facility is certified for participation in the federal Medicare program (42 U.S.C. Sec. 1395 et seq.), as an ambulatory surgical center as of June 1, 1988, or, if in the process of construction on June 1, 1989, the facility is certified for participation in the federal Medicare program as an ambulatory surgical center by December 31, 1989.

(3) The facility was constructed as a "Type I-1 or Type I-2 Occupancy" pursuant to Title 24 of the California Code of Regulations.

(4) The facility has been determined by the State Fire Marshal as meeting minimum safety standards for fire and life safety as provided for in this section.

(5) The licensure is limited to those services which the department determines can be safely provided in the existing facility.

(6) The facility owner has submitted a seismic hazards evaluation report for the facility to the Office of Statewide Health Planning and Development for its approval, which has been prepared under the responsible charge and signed by a structural engineer by July 1, 1990. A structural engineer is a person who is authorized to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

(A) The structural engineer shall state in the seismic hazards evaluation report that the existing structural elements of the building are in conformance with or will be made to conform with the 1985 Triennial edition of Title 24 of the California Code of Regulations using an Importance Factor, as defined in Chapter 23 (commencing with Section 2-2301) of those regulations, equal to 0.75. The structural engineer shall also state that the anchorage of nonstructural elements of the building which include, but are not limited to, fixed equipment, ceiling systems, piping, ductwork, and electrical systems is in conformity with or will be made to conform with the latest edition of Title 24 of the California Code of Regulations using an Importance Factor of 1.5.

(B) The Office of Statewide Health Planning and Development shall review and approve the seismic hazards evaluation report.

(d) If the approved seismic hazards evaluation report contains requirements for retroactive compliance with the seismic safety requirememts in paragraph (6) of subdivision (c), the owner shall comply with those requirements by July 1, 1993. If the owner does not comply with the report's requirements by that date, the license shall be revoked by the state department.

(e) The Office of Statewide Health Planning and Development shall review and approve the design and inspection of the reconstruction or retrofit of, or alteration of, or addition to, any surgical center as it deems necessary to comply with the latest edition of Title 24 of the California Code of Regulations.

(f) The Office of the Statewide Health Planning and Development shall establish an appropriate fee for the review and approval of the seismic hazards evaluation report and the design review, approval, and construction inspection of the requirements for retroactive compliance defined in this section. The fee shall be paid for by the facility owner prior to review and construction inspection and shall not exceed the actual costs of performing the individual review and construction inspection.

(g) The office of the State Fire Marshal shall prescribe minimum safety standards for fire and life safety in surgical clinics. The office of the State Fire Marshal, shall, by regulation, review and adopt

minimum safety standards, consistent with the 1981 Life Safety Code or any subsequent issue of that code (National Fire Protection Association, Code 101), which shall be met as a condition of licensure for private facilities built after January 1, 1982, which are not licensed as surgical clinics on January 1, 1987, if licensure as a surgical clinic is sought on or after January 1, 1987. In addition, all surgical clinics shall meet minimum construction and existing requirements as adopted by regulation of the State Fire Marshal, unless exempted by the State Fire Marshal upon determination that a reasonable degree of fire and life safety is provided.

(h) Regulations adopted pursuant to this chapter establishing standards for laboratory services shall not be applicable to any clinic which operates a clinical laboratory licensed pursuant to Section 1265 of the Business and Professions Code.

CHAPTER 1002

An act to add Section 54.8 to the Civil Code, and to amend Section 754 of the Evidence Code, relating to handicapped persons.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 54.8 is added to the Civil Code, to read:

54.8. (a) On and after January 1, 1991, in any civil or criminal proceeding, including, but not limited to, juvenile court proceedings, where a party, witness, attorney, judicial employee, judge, or juror is hard of hearing, the hard-of-hearing person, upon his or her request, shall be provided with a functioning assistive listening system.

(b) Assistive listening systems include, but are not limited to, special devices which transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission. Personal receivers equipped with headphones for, or use with, hearing aids shall be available upon request by persons who are hard of hearing.

(c) The requirement of an assistive listening system in subdivision (a), may be satisfied in the alternative by the use of computer-aided transcription equipment, if sufficient display terminals are provided to allow the hard-of-hearing person to read the real time transcript of the proceeding without difficulty.

(d) A sign shall be posted in a prominent place indicating the availability of an assistive listening system or a computer-aided transcription system.

(e) Each county shall have at least one portable assistive listening device system for use by any court within the county. The system

shall be located in a location jointly determined by the county board of supervisors and the judges. Notice of the availability of the system shall be posted with notice of trials.

(f) The Judicial Council shall develop and approve official forms for notice of the availability of assistive listening systems or computer-aided transcription systems for the hard of hearing. The Judicial Council shall also develop and maintain a system to record utilization by the courts of these assistive listening systems and computer-aided transcription systems.

(g) If the hard-of-hearing person in question is a juror, the jury deliberation room shall be equipped with an assistive listening system or a computer-aided transcription system upon the request of the juror.

(h) A court reporter may be present in the jury deliberating room during a jury deliberation if the services of a court reporter for the purpose of operating computer-aided transcription systems are required for a hearing-impaired juror.

(i) In any civil or criminal proceeding in which the hard-of-hearing person is a party, witness, attorney, judicial employee, judge, or juror, and has requested use of an assistive listening system or computer-aided transcription system, the proceedings shall not commence until the system is in place and functioning.

(j) As used in this section, " hard-of-hearing person" means a person with a partial hearing loss, who, with sufficient amplification, can understand spoken language.

SEC. 2. Section 754 of the Evidence Code is amended to read:

754. (a) As used in this section, "deaf person" means a person with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include a hard-of-hearing person provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, including any action involving a traffic or other infraction or any juvenile court proceeding, or any proceeding to determine the mental competency of a person, or any administrative hearing, where a party or witness is a deaf person and the deaf person is present in court and participating, the proceedings shall be interpreted in a language that the deaf person understands by a qualified interpreter appointed by the court, tribunal, or hearing officer, or as agreed upon by the parties.

(c) For the purposes of this section, "qualified interpreter" means only a person who meets both of the following criteria:

(1) Has been issued a certificate of competency by the National Registry of Interpreters for the Deaf, or by a state group affiliated with the National Registry of Interpreters for the Deaf, or by any other group determined by the Judicial Council to possess a level of competence in training, testing, and certification of interpreters for

the deaf equivalent to that of the National Registry of Interpreters for the Deaf, which certificate has been determined by the issuing agency to be appropriate for the purpose of interpreting the proceedings specified in subdivision (b).

(2) Has been included on a list of recommended court interpreters which shall be established by the superior court in each county.

(d) In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation, or the interpreter is not familiar with use of slang, the deaf person may be permitted by the court, tribunal, or hearing officer to nominate another person to act as intermediary between himself or herself and the appointed qualified interpreter during the proceedings.

(e) Persons appointed to serve as interpreters under this section shall be paid, in addition to actual travel costs, the prevailing rate paid to persons employed by the court to provide other interpreter services unless such service is considered to be a part of the person's regular duties as an employee of the state, county, or other political subdivision of the state. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which such action is pending. Payment of the interpreter's fee in administrative proceedings shall be a charge against the appointing board, agency, commission, or licensing authority.

(f) No statement, written or oral, made by a person who is deaf in reply to a question of a peace officer, or any other person having prosecutorial function in any criminal or quasi-criminal proceeding, may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently, or the court makes a special finding that the statement was made knowingly, voluntarily, and intelligently.

(g) In any action or proceeding in which a deaf person is a participant, the court or administrative authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1003

An act to add Section 14669.4 to the Government Code, relating to state property, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 14669.4 is added to the Government Code, to read:

14669.4. Notwithstanding Section 14669, the director may enter into a lease-purchase agreement, or a lease with an option to purchase, with an initial option purchase price which may exceed two million dollars ($2,000,000), to provide for a California Conservation Corps facility and office space in the City of Fortuna in Humboldt County.

SEC. 2. In addition to the purposes specified in subdivision (d) of Section 3 of Chapter 1479 of the Statutes of 1988, the appropriation therein may also be used for purposes, as necessary, of site studies and suitability reports, environmental studies, master planning, architectural programming, and schematics for new general population facilities.

SEC. 3. The sum of five million two hundred thousand dollars ($5,200,000) is hereby appropriated from the 1988 Prison Construction Fund to the Department of Corrections as follows:

(a) For purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, long lead and equipment items for the work-based camp facility in Humboldt County	$2,700,000
(b) For purposes, as necessary, of site studies and suitability reports, environmental studies, master planning, architectural programming, and preliminary plans for a 2,000-bed medium security prison, with a 200-bed minimum security unit, in the vicinity of Coalinga in Fresno County, provided that the Coalinga environmental impact report includes three or more sites	$2,500,000

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 for the financing of the California Conservation Corps facility and office space to commence as soon as possible, it is necessary that this act take effect immediately. In addition, the state prison system is currently overcrowded. The prison population increased during the last year at an average rate of more than 200 inmates each week. The Legislature and the people of this state have determined that immediate expansion of the prison system by the swiftest possible means is necessary to relieve the system from current and anticipated overcrowding and to maintain the public safety and security. In order to permit the state to deal with this immediate and current crisis at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 1004

An act to amend Section 22218.6 of, and to add Sections 22514 and 22515 to, the Education Code, and to amend Section 3543.2 of the Government Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 22514 is added to the Education Code, to read:

22514. (a) The Legislature hereby finds and declares that it is the intent of the Legislature in enacting this section and Section 22515 that members of the State Teachers' Retirement System not be adversely impacted, to the extent deemed reasonable, by the application of Section 415 of the Internal Revenue Code.

(b) The State Teachers' Retirement System shall work closely with teacher organizations to develop a supplemental plan which, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code, maintains the future retirement benefits of its members and the fiscal integrity of the Teachers' Retirement Fund. The supplemental plan should not result in any additional liability to the employer.

(c) The State Teachers' Retirement System shall also monitor the benefits of its members and notify affected individuals of their options, if deemed appropriate by the State Teachers' Retirement System.

SEC. 2. Section 22515 is added to the Education Code, to read:

22515. (a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member on or after January 1, 1990, shall be subject to the limitations set forth in Section

415 of the Internal Revenue Code without regard to Section 415(b)(2)(F) of the Internal Revenue Code.

(b) Notwithstanding any other law, the benefits payable to any person who became a member prior to January 1, 1990, shall not be less than the accrued benefit of the member under this system (determined without regard to any amendment to the system made after October 14, 1987) as provided in Section 415(b)(10) of the Internal Revenue Code.

(c) The board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution to each person who, for the first time, becomes a member on or after January 1, 1990.

SEC. 3. Section 22218.6 of the Education Code is amended to read:

22218.6. The board shall submit an annual report to the Legislature, which report shall include:

(a) A copy of the annual audit performed pursuant to Section 22220.

(b) A review by a consultant, a summary of any changes in actuarial assumptions from the previous year, a review of the system's asset mix strategy, a market review of the economic and financial environment in which investments were made, and a summary of the system's general investment strategy.

(c) A description of the investments of the system, including the concentration of stocks and bonds, at cost and market value, including dividends and coupons, and a summary of major changes that occurred since the previous year.

(d) The following information regarding the rate of return of the system by asset type:

(1) Time-weighted return on a five-year, three-year, two-year, and one-year basis.

(2) Dollar-weighted return on a five-year, three-year, two-year, and one-year basis.

(3) Book valuation return on a five-year, three-year, two-year, and one-year basis.

(4) Portfolio return comparisons which compare investment returns with an alternative theoretical portfolio of comparable funds, universes, and indexes.

(5) Returns as credited to employer accounts.

(6) Returns as reported in annual reports.

(7) Returns as reported by the Controller.

(e) A transaction summary which shall adequately review the system's custodial relationship and daily cash management, purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads and accommodations.

(f) The system shall report on the use of outside investment advisers and managers and any participation in corporate annual meetings and shareholder voting.

(g) A statement of actuarial gains and losses, including the

components of the employer contribution rate, and the sensitivity of the statement information to changes in the economic or noneconomic actuarial assumptions.

(h) A discussion of the system portfolio of the system containing the following information:

(1) Concentration, current holdings at cost and market value, risk characteristics (R-squared, Beta, standard error), fundamentals (P/E, dividend yield, measures of growth, size, earnings quality, debt/equity) of equities.

(2) Concentration, current holdings at cost and market value, maturity, duration, quality, coupon, and current yield of fixed income instruments.

(3) Current holdings at cost and market value of real estate equities.

(4) Current holdings at cost and market value of mortgages.

(5) Securities lending activity.

(6) Options and forward commitments.

(7) Cash and cash equivalents.

(i) Include a performance review of asset allocation, of equities due to market timing, sector selection, stock selection and trading, of fixed income instruments due to interest rate anticipation skills, credit analysis, sector trading and swapping and of value added over indexing (alpha).

(j) A review of the system's custodial relationship and daily cash management and a summary of the system's investment transactions, including purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads and accommodations.

(k) A review of the role of any outside managers and advisers, stockholder voting, and changes in investment staff or reorganization.

SEC. 4. Section 3543.2 of the Government Code is amended to read:

3543.2. (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22515 of the Education Code, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of

educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

(b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

(c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply.

(d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

SEC. 5. There is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board the sum of one hundred thousand dollars ($100,000) for expenditure to carry out the purposes of Sections 1 and 2 of this act.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1005

An act to amend Section 148 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 148 of the Penal Code is amended to read:

148. (a) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of or immediate presence of a public officer or peace officer is punishable by imprisonment in the county jail not to exceed one year, or in the state prison.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of or immediate presence of a public officer or peace officer is guilty of a felony.

(d) Every person who, during the commission of any offense described in subdivision (a), attempts to remove or take a firearm from the person or immediate presence of a public officer or peace officer is guilty of a public offense, punishable by imprisonment in a county jail not to exceed one year or in the state prison.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

(1) The officer's holster strap was unfastened by the defendant.

(2) The firearm was partially removed from the officer's holster by the defendant.

(3) The firearm safety was released by the defendant.

(4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

(5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

(6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable

procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A violation of subdivision (a) may not be charged in addition to a charge of a violation of subdivision (b), (c), or (d).

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

CHAPTER 1006

An act to amend Sections 22202, 22203, 22204, 22208, and 22302 of, and to add Section 22560 to, and to add and repeal Sections 22009.03 and 22156 of, the Government Code, relating to public employees, and making an appropriation therefor.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. (a) The Legislature finds and declares that under the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), Congress extended to state and local employees the benefit of participation in the federal Medicare program.

(b) The Legislature hereby reaffirms its 1985 statement of intent contained in Section 22018 of the Government Code, that, to the extent possible, members of the State Teachers' Retirement System earn credit toward Medicare coverage, and declares its intention that persons who were employed in positions covered by the State Teachers' Retirement System on March 31, 1986, should also benefit from participation in the federal Medicare program.

SEC. 2. Section 22009.03 is added to the Government Code, to read:

22009.03. "Public agency" also includes a school district with respect to employees eligible for membership in the State Teachers' Retirement System.

This section shall become operative on July 1, 1990, and shall become inoperative on July 1, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it

becomes inoperative and is repealed.

SEC. 3. Section 22156 is added to the Government Code, to read:

22156. (a) A division of the State Teachers' Retirement System is hereby authorized by the Legislature to provide medicare coverage for employees of a public agency as defined in Section 22009.03, upon the request of the public agency.

(b) The division authorized by subdivision (a) shall be conducted pursuant to this article.

(c) A member of the State Teachers' Retirement System on whose behalf a request is made pursuant to subdivision (a), may elect to be covered by Medicare, pursuant to Section 218 of the federal Social Security Act (42 U.S.C. Sec. 418), and applicable federal regulations if (1) the member was employed in a position covered by the system on March 31, 1986, and (2) the member has not since been mandated into medicare coverage due to the enactment of Public Law 99-272, and (3) the member is in a position covered or the member is eligible to elect to be covered by the retirement system on the date of the division.

(d) The public agency shall, immediately after the elections authorized in subdivision (b) have been made, make application pursuant to Chapter 2 (commencing with Section 22200) of this part for Medicare coverage for those members who have elected to receive Medicare coverage.

(e) The effective date of the coverage may be retroactive a maximum of five years but not earlier than January 1, 1987.

(f) This section shall become operative on July 1, 1990, and shall become inoperative on July 1, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 22202 of the Government Code is amended to read:

22202. With respect to employees in the coverage group defined in subdivision (a) of Section 22100, the application shall be deemed to be made by a public agency if made by the Adjutant General. With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the application shall be deemed to be made by a public agency if made prior to July 1, 1993, by the legislative or governing body of a public agency as defined in Section 22009.03, or if made on or after July 1, 1993, the application shall be deemed to be made by a public agency if made by the Teachers' Retirement Board. With respect to employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1, the application shall be deemed to be made by a public agency if made by the Regents of the University of California.

SEC. 5. Section 22203 of the Government Code is amended to read:

22203. Notwithstanding Section 22201, before the board shall

execute on behalf of the state an agreement with the federal agency as provided in this chapter, the public agency and the board shall enter into a written agreement, which shall include provisions not inconsistent with this part which the board deems necessary in the administration of the federal system as it affects the state and the public agency and its employees.

For the purposes of this section, the state shall not be deemed to be a public agency, but nevertheless an agreement entered into pursuant to this part by the board and, (a) if prior to July 1, 1993, by the legislative or governing body of a public agency as defined in Section 22009.03; (b) if on or after July 1, 1993, by the Teachers' Retirement Board; or (c) the Adjutant General or the Regents of the University of California shall be deemed to be entered into by the board and a public agency.

SEC. 6. Section 22204 of the Government Code is amended to read:

22204. The agreement between the state and the federal agency shall include each coverage group or retirement system coverage group as to which formal request for the inclusion is made by the legislative or governing body of the employing public agency pursuant to this chapter, prior to the effective date of the agreement. For the purposes of this section, the state shall not be deemed to be a public agency, but nevertheless any formal request for the inclusion made with respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, shall be deemed to be made by a public agency, if made prior to July 1, 1993, by the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 1993, the application shall be deemed to be made by a public agency if made by the Teachers' Retirement Board. With respect to employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1, any formal request for the inclusion, made by the Regents of the University of California, or by the Adjutant General, shall be deemed to be made by the governing body of an employing public agency.

SEC. 7. Section 22208 of the Government Code is amended to read:

22208. With respect to each retirement system coverage group, the legislative or governing body of every public agency having employees in positions covered by a retirement system, may, upon the affirmative vote of a majority of eligible retirement system employees of the retirement system coverage group at a referendum conducted in accordance with Article 2 (commencing with Section 22300) of this chapter and the rules and regulations promulgated by the board pursuant to this part, make formal application to the board for the inclusion of the employees in each retirement system coverage group in the agreement. With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the formal application shall be deemed to be

made, if made prior to July 1, 1993, by the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 1993, by the Teachers' Retirement Board.

SEC. 8. Section 22302 of the Government Code is amended to read:

22302. In the case of employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, if prior to July 1, 1993, the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 1993, the Teachers' Retirement Board shall conduct the referendum; if the referendum is authorized by the Legislature.

In the case of employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1 the board shall authorize the referendum upon the request of the Regents of the University of California and the Regents shall conduct the referendum.

SEC. 9. Section 22560 is added to the Government Code, to read:

22560 (a) Due to the required administrative services necessary for implementation of the act enacting this section, the Public Employees' Retirement System is authorized 3.0 limited-term retirement program specialist II positions and 2.0 limited-term office assistant II (typing) positions for the 1990–91 fiscal year, 2.0 limited-term retirement program specialist II positions and 1.0 limited-term office assistant II (typing) positions for the 1991–92 fiscal year, and 1.0 limited-term retirement program specialist II positions and 1.0 limited-term office assistant II (typing) positions for the 1992–93 fiscal year.

(b) There is hereby appropriated, for salary and benefits, equipment, and work stations, and other administrative costs which result from the act enacting this section, from the Public Employees' Retirement Fund to the Board of Administration of the Public Employees' Retirement System as follows:

(1) For the 1990–91 fiscal year, the sum of three hundred two thousand three hundred four dollars ($302,304).

(2) For the 1991–92 fiscal year, the sum of one hundred thirty-eight thousand four hundred eighty-eight dollars ($138,488).

(3) For the 1992–93 fiscal year, the sum of thirty-six thousand fifty-one dollars ($36,051).

(c) The board shall charge or assess each public agency as defined in Section 22009.3 and each public agency shall pay and reimburse the state at such times and in such amounts as the board may determine, the approximate cost to the state, of any and all work, services, equipment, and other administrative costs relating to a division under Article 2.5 (commencing with Section 22150) of Chapter 1 of this part or the referendum provided by Article 2 (commencing with Section 22300) of Chapter 2 of this part and requested by the agency. The charges may differ from public agency to public agency.

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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1007

An act to amend Section 11044 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 11044 of the Government Code is amended to read:

11044. (a) For state agencies, departments, or programs which are charged for the costs of legal services rendered by the Attorney General, the Attorney General shall charge an amount sufficient to recover the costs incurred in providing the legal services. Except as approved by the Department of Finance, charges for legal services may not be made against the General Fund, but may be made against any other fund or special account in the General Fund.

(b) Upon the request of the Attorney General in the form prescribed by the Controller, the Controller shall transfer the amount of the charges for services rendered from the agency's appropriation to the appropriation for the support of the Attorney General's office, provided that the Attorney General shall not request an amount which, when added to previous charges in the same fiscal year, exceeds the amount budgeted by the state agency for Attorney General legal services. Reimbursements for these charges shall be credited to and in augmentation of the appropriation for the support of the Attorney General's office from which the cost of the services was or will be paid.

(c) A state agency that has a dispute regarding charges for legal services provided by the Attorney General shall notify the Attorney General, in writing, of the dispute and the basis therefor. The Attorney General shall immediately provide a credit to the state agency in the subsequent billing or billings for the amount of the

charges in dispute. No further transfer of funds shall occur with respect to the services for which charges are disputed until the dispute is resolved by the Attorney General, subject to the approval of the Department of Finance.

SEC. 2. This act shall become operative on July 1, 1989.

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 for the payment procedures established by this act to become operational at the beginning of the 1989–90 fiscal year and thereby make possible and facilitate the orderly administration of public finance, it is necessary that this act take effect immediately.

CHAPTER 1008

An act to add Section 6106.8 to the Business and Professions Code, relating to attorneys.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 6106.8 is added to the Business and Professions Code, to read:

6106.8. (a) The Legislature hereby finds and declares that there is no rule that governs propriety of sexual relationships between lawyers and clients. The Legislature further finds and declares that it is difficult to separate sound judgment from emotion or bias which may result from sexual involvement between a lawyer and his or her client during the period that an attorney-client relationship exists, and that emotional detachment is essential to the lawyer's ability to render competent legal services. Therefore, in order to ensure that a lawyer acts in the best interest of his or her client, a rule of professional conduct governing sexual relations between attorneys and their clients shall be adopted.

(b) With the approval of the Supreme Court, the State Bar shall adopt a rule of professional conduct governing sexual relations between attorneys and their clients in cases involving, but not limited to, probate matters and domestic relations, including dissolution proceedings, child custody cases, and settlement proceedings.

(c) The State Bar shall submit the proposed rule to the Supreme Court for approval no later than January 1, 1991.

(d) Intentional violation of this rule shall constitute a cause for suspension or disbarment.

CHAPTER 1009

An act to add and repeal Section 380.4 of the Streets and Highways Code, relating to state highways.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 380.4 is added to the Streets and Highways Code, to read:

380.4. (a) The Legislature finds and declares that there will be increased traffic on San Pablo Avenue in the Cities of Richmond, San Pablo, Pinole, Hercules, and El Cerrito, and other portions of San Pablo Avenue in the County of Contra Costa by motor vehicles detoured because of construction work on Route 80 in Contra Costa County.

(b) It is the intent of the Legislature in enacting this section that the state share in the cost of maintaining and operating San Pablo Avenue to the extent that it is used as an alternative to Route 80 during construction. It is the further intent of the Legislature that the department pay up to the amount authorized in this section to the County of Contra Costa and to each city specified in subdivision (a).

(c) During the period of construction, the department may pay annually to the County of Contra Costa and to each of the cities specified in subdivision (a) for the added costs of maintenance and operation of San Pablo Avenue. The total obligation of the department for this purpose shall not exceed seventy-five thousand dollars ($75,000) per year, adjusted for inflation, as reflected by a change in a national or regional index that measures the rate of inflation, as determined by the department.

(d) This section shall remain in effect only until the commission certifies to the Secretary of State that construction is complete on the project on Route 80 in Contra Costa County to convert the existing shoulder to additional traffic lanes, and as of the date of that certification is repealed.

SEC. 2. Section 380.4 of the Streets and Highways Code shall become effective only if Senate Bill 1716 of the 1989–90 Regular Session is enacted and becomes effective.

CHAPTER 1010

An act to amend Sections 130.5, 632, 1375.1, 1379, 2118.5, 2739, and 2742 of, to add Sections 1379.6, 2129, 2739.1, and 2739.2 to, and to repeal Section 1597 of, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 130.5 of the Unemployment Insurance Code is amended to read:

130.5. "Benefit Audit Fund" means the Employment Development Department Benefit Audit Fund.

SEC. 2. Section 632 of the Unemployment Insurance Code is amended to read:

632. "Employment" does not include service performed in the employ of any other state or its political subdivisions or in the employ of the United States government or of any instrumentality of the United States, but if Congress permits the states to require any instrumentalities of the United States to make payments into a fund under a state unemployment compensation act, and to comply with state regulations thereunder, then, to the extent permitted by Congress, all of the provisions of this division shall be applicable to the instrumentalities and to services performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services.

If this state is not certified by the Secretary of Labor under Section 3304 of the Internal Revenue Code of 1986 for any year, then the payments required of the instrumentalities and their workers with respect to the year shall be refunded from the Unemployment Fund without interest.

SEC. 3. Section 1375.1 of the Unemployment Insurance Code is amended to read:

1375.1. If the director finds that an individual has been overpaid unemployment compensation benefits because he or she willfully, for the purpose of obtaining unemployment compensation benefits, either made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact, the director shall assess against the individual an amount equal to 30 percent of the overpayment amount. Assessments collected under this section shall be deposited in the Benefit Audit Fund.

SEC. 4. Section 1379 of the Unemployment Insurance Code is amended to read:

1379. The director, subject to this article, may do any or all of the following in the recovery of overpayments of unemployment

compensation benefits:

(a) File a civil action against the liable person for the recovery of the amount of the overpayment within one year after any of the following, or, in cases where the individual has been overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section 1375.1, within three years of any of the following:

(1) The mailing or personal service of the notice of overpayment determination if the person affected does not file an appeal to an administrative law judge.

(2) The mailing of the decision of the administrative law judge if the person affected does not initiate a further appeal to the appeals board.

(3) The date of the decision of the appeals board.

(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision applies only where the director has found, pursuant to Section 1375, that the overpayment may not be waived because it was due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient. The director may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

(1) The amount due, including the assessment made under Section 1375.1, plus interest from the date that the initial determination of overpayment was made pursuant to Section 1376.

(2) A statement that the director has complied with all the provisions of this article prior to the filing of the certificate.

(3) A request that judgment be entered against the liable person in the amount set forth in the certificate.

The clerk, immediately upon the filing of the certificate, shall enter a judgment for the State of California against the liable person in the amount set forth in the certificate.

For the purposes of this subdivision only, an overpayment is final and due and payable after any of the following:

(A) The liable person has not filed an appeal pursuant to Section 1377.

(B) The liable person has filed an appeal to the administrative law judge and a decision of an administrative law judge has become final.

(C) The liable person has filed an appeal to the appeals board and the decision of the appeals board has become final because the liable person has not sought judicial review within the six-month period provided by Section 410.

(c) Reduce or vacate a summary judgment by filing a certificate to that effect with the clerk of the proper court.

(d) Offset the amount of the overpayment received by the liable person against any amount of benefits to which he or she may become entitled under this division within six years of the date of the mailing or personal service of the notice of overpayment

determination.

SEC. 5. Section 1379.6 is added to the Unemployment Insurance Code, to read:

1379.6. (a) If an abstract has been recorded as provided in Section 1379.5, and the lien, including any interest, costs, and penalty, has been satisfied in full, the department shall, pursuant to Section 724.050 of the Code of Civil Procedure do all of the following:

(1) File an acknowledgment of satisfaction of judgment with the court.

(2) Serve an acknowledgment of satisfaction of judgment on the claimant. Service shall be made personally or by mail.

(3) Record an acknowledgment of satisfaction of judgment in the office of the county recorder where the abstract of judgment is recorded.

(b) If an acknowledgment of satisfaction of judgment is recorded, the cost of recording is an obligation of the claimant and may be collected from the claimant in any manner provided by law for the collection of benefit overpayments.

(c) If payment is made by check, any action specified in subdivision (a) shall not be required until the check has been paid by the financial institution upon which it was drawn.

SEC. 6. Section 1597 of the Unemployment Insurance Code is repealed.

SEC. 7. Section 2118.5 of the Unemployment Insurance Code is amended to read:

2118.5. Any person required by this code to collect, account for, and pay over any tax or amount required to be withheld who willfully fails to collect or truthfully account for and pay over the tax or amount shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined an amount not more than twenty thousand dollars ($20,000), or imprisoned in the state prison, or both the fine and imprisonment, at the discretion of the court.

SEC. 8. Section 2129 is added to the Unemployment Insurance Code, to read:

2129. For the purposes of this chapter, "person" includes, a claimant for benefits and any officer, employee, director, partner, or agent having charge of the affairs of any employer or employing unit with regard to the violation which occurred. "Person" also includes both natural persons and legal entities. More than one person may be charged with violations under this chapter, where control of the affairs of the employing unit, or employer, is shared by more than one person.

SEC. 9. Section 2739 of the Unemployment Insurance Code is amended to read:

2739. The Director of Employment Development, subject to this article, may do any or all of the following in the recovery of overpayments of disability benefits:

(a) File a civil action against the liable person for the recovery of

the amount of the overpayment within one year after any of the following, or, in cases where the individual has been overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section 2735.1, within three years of any of the following:

(1) The mailing or personal service of the notice of overpayment determination if the person affected does not file an appeal to an administrative law judge.

(2) The mailing of the decision of the administrative law judge if the person affected does not initiate a further appeal to the appeals board.

(3) The date of the decision of the appeals board.

(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision applies only where the director has found, pursuant to Section 2735, that the overpayment may not be waived because it was due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient. The director may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county in which the claimant resides, a certificate containing all of the following:

(1) The amount due, including the assessment made under Section 2735.1, plus interest from the date that the initial determination of overpayment was made pursuant to Section 2735.

(2) A statement that the director has complied with all of the provisions of this article prior to the filing of the certificate.

(3) A request that judgment be entered against the liable person in the amount set forth in the certificate.

The clerk, immediately upon filing of the certificate, shall enter a judgment for the State of California against the liable person in the amount set forth in the certificate.

For purposes of this subdivison only, an overpayment is final and due and payable after one of the following:

(A) The liable person has not filed an appeal pursuant to Section 2737.

(B) The liable person has filed an appeal to the administrative law judge and a decision of an administrative law judge upholding the overpayment has become final.

(C) The liable person has filed an appeal to the appeals board and the decision of the appeals board upholding the overpayment has become final because the liable person has not sought judicial review within the six month period provided by Section 410.

(c) Reduce or vacate a summary judgment by filing a certificate to that affect with the clerk of the proper court.

(d) Offset the amount of the overpayment received by the liable person against any amount of disability benefits to which he or she may become entitled under this division within six years of the date of mailing or personal service of the notice of overpayment determination.

SEC. 10. Section 2739.1 is added to the Unemployment Insurance

Code, to read:

2739.1. An abstract of judgment obtained pursuant to subdivision (a) or (b) of Section 2739, or a copy thereof, may be recorded with the county recorder of any county. From the time of recording, the judgment shall constitute a lien against all real or personal property of the liable person in that county owned by the liable person at the time, or which the liable person may afterwards, but before the lien expires, acquire. The lien shall have the force, effect, and priority of a judgment lien and shall continue for 10 years from the time of recording of the abstract of judgment obtained pursuant to subdivision (a) or (b) of Section 2739, unless sooner released or otherwise discharged.

The lien may, within 10 years from the date of recording of the abstract of judgment or within 10 years from the date of the last extension of the lien in the manner provided, be extended by recording a new abstract in the office of the county recorder of any county. From the date of the recording, the lien shall be extended for 10 years unless sooner released or otherwise discharged.

Execution shall issue upon the judgment upon request of the director in the same manner as execution may issue upon other judgments. Sales shall be held under the execution as prescribed in the Code of Civil Procedure. In all proceedings under this section, the director or his or her authorized agents may act on behalf of the state.

SEC. 11. Section 2739.2 is added to the Unemployment Insurance Code, to read:

2739.2. (a) If an abstract has been recorded as provided in Section 2739.1 and the lien, including any interest, costs, and penalty has been satisfied in full, the department shall, pursuant to Section 724.050 of the Code of Civil Procedure do all of the following:

(1) File an acknowledgment of satisfaction of judgment with the court.

(2) Serve an acknowledgment of satisfaction of judgment on the claimant. Service shall be made personally or by mail.

(3) Record an acknowledgment of satisfaction of judgment in the office of the county recorder where the abstract of judgment is recorded.

(b) If an acknowledgment of satisfaction of judgment is recorded, the cost of recording shall be an obligation of the claimant and may be collected from the claimant in any manner provided by law for the collection of the benefit overpayment.

(c) If payment is made by check, any action specified in subdivision (a) shall not be required until the check has been paid by the financial institution upon which it was drawn.

SEC. 12. Section 2742 of the Unemployment Insurance Code is amended to read:

2742. The director shall enforce collection of any judgment obtained by him or her under subdivision (a) or subdivision (b), or both, of Section 2739. Amounts collected under this section shall be

deposited in the fund from which the overpayment was made.

CHAPTER 1011

An act relating to the Department of Food and Agriculture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. The sum of two million three hundred thousand dollars ($2,300,000) is hereby appropriated from the General Fund to the Department of Food and Agriculture for continued construction of the Veterinary Laboratory Conversion Project in Sacramento.

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 continued construction of the urgently needed Veterinary Laboratory Conversion Project in Sacramento, it is necessary that this act take effect immediately.

CHAPTER 1012

An act to amend Section 667.5 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior 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.

(12) Attempted murder.

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.

CHAPTER 1013

An act to amend Section 9392 of the Welfare and Institutions Code, relating to elderly persons.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 9392 of the Welfare and Institutions Code is amended to read:

9392. In order to select the contractors pursuant to Section 9390, the department shall seek proposals through the development of a request for proposal. During the 1984–85 fiscal year, the department shall contract with no more than 10 nonprofit organizations or governmental entities. Expansion beyond the 1984–85 fiscal year limits shall be subject to subsequent administrative action and budget appropriations. The department shall contract with nonprofit organizations or governmental entities to arrange for the provision of services under subdivisions (a) to (d), inclusive, of Section 9390.

A copy of each completed request for a proposal shall be filed by the applicant with either the applicant's local adult day health care planning council or a specified local long-term care planning council, for review and comment. Each local area agency on aging shall receive timely notice of all grants awarded pursuant to this chapter.

CHAPTER 1014

An act to add Sections 741.2, 741.3, and 742.5 to the Public Utilities Code, relating to telephones.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 741.2 is added to the Public Utilities Code, to read:

741.2. (a) No nonpublic utility provider of telephone services, including, but not limited to, a hotel, motel, hospital, university, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling services provided by a telephone corporation to its patients or guests is required to file or maintain tariff schedules.

(b) No such nonpublic utility provider of telephone services which provides service to hospital patients may charge more for any

nontoll telephone call than the maximum rate of charge authorized by the commission for a nontoll call placed from a coin-activated telephone owned or operated by other than a telephone corporation plus twenty-five cents ($0.25).

(c) No such nonpublic utility provider of telephone services which provides service to hospital patients may charge more for any toll telephone call than the sum of all of the following:

(1) The applicable tariff rate or charge of the telephone corporation whose service is resold for that telephone call.

(2) The surcharge or surcharges, if any, applicable to that call if placed from a coin-activated telephone owned or operated by the telephone corporation within whose service area the nonpublic utility provider of telephone services is located, unless that surcharge is included in the tariff rate or charge for that call.

(3) Twenty-five cents ($0.25).

(d) No such nonpublic utility provider of telephone services may make any charge for any uncompleted telephone call unless notice pursuant to subdivision (e) is provided specifying the circumstances under which a charge will be made for an uncompleted call.

(e) Every telephone corporation shall, as a part of an agreement with a nonpublic utility provider of telephone services for the resale of its telephone services, require that there be displayed or posted on or near the telephone equipment so as to be easily seen by telephone users a notice of all of the following:

(1) The charges applicable to all of the available telephone services.

(2) That these charges are consistent with this section, if applicable.

(3) The telephone number of the Consumer Affairs Division of the commission to which questions or complaints may be directed.

(f) Subdivision (e) does not require separate notices for multiple or extension telephones having the same telephone extension number.

(g) This section does not require any such nonpublic utility provider of telephone services to make any charge for the furnishing of any telephone service, and this section does not apply to any such provider that makes no charge for telephone services furnished. This section does not constitute any such provider a telephone corporation or otherwise subject it to regulation by the commission as a public utility.

SEC. 2. Section 741.3 is added to the Public Utilities Code, to read:

741.3. The commission shall, by rule or order, adopt and enforce operating requirements applicable to operator-assisted telephone services, whether furnished by a telephone corporation or other than a telephone corporation, for nonpublic utility providers of telephone services, including, but not limited to, hotels, motels, hospitals, universities, and similar places of temporary accommodation owning or operating message switching or billing equipment solely for the

purpose of reselling services provided by a telephone corporation to its patients or guests. These operating requirements shall include, but not be limited to, all of the following:

(a) That there be displayed or posted on or near the telephone equipment so as to be easily seen by telephone users a notice stating the identity of the nonpublic utility provider of the telephone services; the method for obtaining the rates, terms, or conditions of operator-assisted services; the operator-assisted services provider's procedures for handling complaints; the means by which the telephone user may gain access to other providers of operator-assisted services; and the means by which the telephone user may gain access to the services of the telephone corporation operating within the service area within which the telephone services of the nonpublic utility provider are furnished. The notice shall also provide the telephone number of the Consumer Affairs Division of the commission to which questions or complaints may be directed.

(b) That, when contacted for service by the telephone user, the operator-assisted services provider orally identify itself by name prior to the connection of the telephone call or the commencement of any charges.

(c) That the telephone equipment permit access by the telephone user to any other provider of operator-assisted services generally available in the service area.

(d) Any other operating requirement determined necessary and in the public interest by the commission.

SEC. 3. Section 742.5 is added to the Public Utilities Code, to read:

742.5. (a) No telephone corporation which operates within a service area shall provide billing and collection services for either of the following:

(1) Any telephone corporation which has not obtained a certificate of public convenience and necessity but is required to do so.

(2) Any person or corporation providing billing and collection services for any telephone corporation which has not obtained a certificate of public convenience and necessity but is required to do so.

(b) Subdivision (a) does not prohibit a telephone corporation operating within a service area from providing billing and collection services for a provider of enhanced service, as defined by Section 64.702 of Title 47 of the Code of Federal Regulations.

(c) No telephone corporation which provides billing and collection services for any call placed by a subscriber of the telephone corporation from a coin-activated telephone available for public use owned or operated by other than a telephone corporation shall transmit any charge which is in excess of the maximum tariff rate or charge for that call placed from that telephone, as determined by the commission. Any reasonable cost incurred by the telephone

corporation in verifying any such charge may be included in the fees or charges for conducting the billing and collection services. The commission shall adopt rules and procedures for the implementation of this subdivision.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1015

An act to amend Sections 52314 and 52314.6 of the Education Code, relating to regional occupational centers and programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature emphasizes that the primary reason for authorizing the admission of pupils under the age of 16 years in regional occupational centers or programs is to motivate those pupils to remain in school.

SEC. 2. Section 52314 of the Education Code is amended to read:

52314. (a) Except as provided in subdivision (b), any pupil eligible to attend a high school or adult school in a school district subject to the jurisdiction of a county superintendent of schools operating a regional occupational center or regional occupational program, and who resides in a school district which by itself or in cooperation with other school districts, has not established a regional occupational center, or regional occupational program, is eligible to attend a regional occupational center or regional occupational program maintained by the county superintendent of schools. Any school district which in cooperation with other school districts maintains a regional occupational center, or regional occupational program, or any such cooperating school districts may admit to the center, or program, any pupil, otherwise eligible, who resides in the district or in any of the cooperating districts. Any school district which by itself maintains a regional occupational center, or regional occupational program, may admit to the center, or program, any pupil, otherwise eligible, who resides in the district. No pupil,

including adults under Section 52610 shall be admitted to a regional occupational center, or regional occupational program, unless the county superintendent of schools or governing board of the district or districts maintaining the center, or program, as the case may be, determines that the pupil will benefit therefrom and approves of his or her admission to the regional occupational center or regional occupational program.

A pupil may be admitted on a full-time or part-time basis, as determined by the county superintendent of schools or governing board of the school district or districts maintaining the center, or program, as the case may be.

A county superintendent of schools maintaining a regional occupational program or regional occupational center may admit pupils residing in the county but outside of school districts participating in the county regional occupational program or regional occupational center pursuant to the provisions of Section 46617.5. The county superintendent of schools may authorize pupils who reside in school districts participating in the regional occupational center or regional occupational program conducted by the county superintendent of schools to enroll in other regional occupational programs or regional occupational centers when it is determined that it is in the best interest of the pupils to do so. This attendance shall be pursuant to an attendance agreement specifying that the county superintendent of schools authorizes the regional occupational center or regional occupational program conducting the classes to report the average daily attendance in the classes to the district of residence for the purpose of receiving state apportionments and determining the revenue limit. The agreements shall specify that the district of residence shall pay the regional occupational program or regional occupational center the actual cost per unit of average daily attendance.

(b) No pupil shall be eligible to be admitted to a regional occupational center or program, nor may his or her attendance be credited to a regional occupational center or program, until he or she has attained the age of 16 years, unless the pupil meets one or more of the following conditions:

(1) The pupil is enrolled in grade 11 or a higher grade.

(2) The pupil received a referral and:

(A) The pupil is referred to a regional occupational center or program by a school counselor, school administrator, or classroom teacher. The referral shall include a written statement of the reasons why the pupil's educational needs cannot be met without the pupil being enrolled in a regional occupational center or program.

Pupils under 16 years of age eligible for enrollment in regional occupational centers and programs under this paragraph include, but are not necessarily limited to, pupils for whom there is a high probability that they will leave school prior to graduation.

(B) The referral is reviewed and approved by the principal of the school in which the pupil is enrolled.

(C) The referral is reviewed and approved by the director of the regional occupational center or program to which the pupil has been referred.

(D) The pupil is enrolled in a high school, which, for purposes of this requirement, means a school that maintains any of grades 9 to 12, inclusive.

(3) The pupil's individualized education program adopted pursuant to the requirements of Chapter 2 (commencing with Section 56300) of Part 30 prescribes occupational training for which his or her enrollment in a regional occupational center or program is deemed appropriate.

(c) Each school district, county superintendent of schools, or joint powers agency which maintains a regional occupational center or regional occupational program shall submit to the State Department of Education, at the time and in the manner prescribed by the Superintendent of Public Instruction, the enrollment and average daily attendance for each grade level and the enrollment and average daily attendance for each exemption set forth in subdivision (b).

The State Department of Education shall submit this information to the Legislature and to the Director of Finance by April 1 of each year for the preceding school year.

SEC. 3. Section 52314.6 of the Education Code is amended to read:

52314.6. The average daily attendance claimed for pupils enrolled in a regional occupational center or program pursuant to paragraph (2) of subdivision (b) of Section 52314 shall not exceed 3 percent of the average daily attendance funded in the prior year for the center or program, or the following amount, whichever is greater:

(1) Divide the enrollment of pupils under the age of 16 years in the regional occupational center or program in the 1982–83 fiscal year by three.

(2) Multiply the amount computed pursuant to paragraph (1) by 0.25.

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

In order to ensure continuity of programs for the next school year, it is necessary that this act take effect immediately.

CHAPTER 1016

An act to amend Section 14005.9 of, and to amend, repeal and add Section 14005.8 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 14005.8 of the Welfare and Institutions Code is amended to read:

14005.8. (a) To the extent required by federal law, families who have at any time ceased to receive public assistance under the Aid to Families with Dependent Children program solely due to the expiration of the provision which permits thirty dollars ($30) plus one-third of an individual's income to be disregarded when determining eligibility shall remain eligible for health care services under Section 14005.1 for a period of nine months.

(b) This section shall remain in effect only until April 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before April 1, 1990, deletes or extends that date.

SEC. 2. Section 14005.8 is added to the Welfare and Institutions Code, to read:

14005.8. (a) (1) To the extent required by subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code and regulations adopted pursuant thereto, a family who was receiving aid pursuant to a state plan approved under Part A of Subchapter IV (commencing with Section 601) of Title 42 of the United States Code in at least three of the six months immediately preceding the month in which that family became ineligible for that assistance due to increased hours of employment, income from employment, or the loss of earned income disregards, shall remain eligible for health care services as provided in this chapter during the immediately succeeding six-month period.

(2) The department shall terminate extensions of health care services authorized by paragraph (1) as required under federal law.

(b) The department shall notify persons eligible under subdivision (a) of their right to continued health care services for each six-month period and a description of their reporting requirement, and the circumstances under which the extension may be terminated. The notice shall also include a Medi-Cal card or other evidence of entitlement to those services.

(c) Notwithstanding any other provision of this section, the department, in conformance with federal law, shall offer beneficiaries covered under subdivision (a) the option of remaining eligible for health care services provided in this chapter for an additional extension period of six months. Health services shall be

continued in as automatic a manner as permitted by federal law, and without any unnecessary paperwork.

(d) During the initial extension period and any additional six-month extension period, the department, consistent with federal law, may, whenever the department determines it to be cost-effective, elect to pay a family's expenses for premiums, deductibles, coinsurance, or similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or by an employer of the absent parent of the dependent child. If, during the additional six-month extension period, the department elects to pay health premiums and this coverage exists, the beneficiary may be given the opportunity to express his or her preference between continuing the Medi-Cal coverage or obtaining health insurance.

(e) During the additional six-month extension period, the department may impose a premium for the health insurance or other health coverage consistent with Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) if the department determines that the imposition of a premium is cost-effective.

(f) The department shall adopt emergency regulations in order to comply with mandatory provisions of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) for extension of medical assistance. These regulations shall become effective immediately upon filing with the Secretary of State.

(g) This section shall become operative April 1, 1990.

SEC. 3. Section 14005.9 of the Welfare and Institutions Code is amended to read:

14005.9. (a) Share of cost shall be determined on a monthly basis. No person or family shall be required to incur more than one month's share of cost prior to being certified as specified in Section 14018.

(b) For persons in long-term care, any income exempted under Sections 14005.4 and 14005.7 shall be considered in the share-of-cost determination to the extent required by federal law or regulations.

(c) Once the beneficiary has incurred expenses for Medicare and other health insurance deductibles or coinsurance charges and necessary medical and remedial services that are not subject to payment by a third party and which equal or exceed his or her share of cost, the individual is entitled to receive health care services pursuant to Section 14005 if all other applicable conditions of eligibility under this chapter are met.

SEC. 4. Prior to the hearings on the 1990–91 Governor's Budget, the State Department of Health Services shall report to the Joint Legislative Budget Committee, the Senate Committee on Appropriations, the Senate Committee on Health and Human Services, the Assembly Committee on Ways and Means, and the Assembly Committee on Health on the implementation of this act. The department's report shall explain in detail how, and under what circumstances, families are eligible for extended health care coverage through options which "buy into" health care insurance

available through an employer. If the department has not implemented these options, it shall explain the reasons for its decision.

CHAPTER 1017

An act to amend Section 6924 of the Public Resources Code, relating to geothermal resources.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 6924 of the Public Resources Code is amended to read:

6924. Where the surface of state-owned lands sought for use or development of geothermal resources or the waters thereon are under the jurisdiction of a state department or agency other than the commission, the commission may issue permits or leases under this article only with the consent of and subject to such reasonable terms and conditions as may be prescribed by that other department or agency to ensure the adequate utilization of the surface of the lands or the waters thereon for the purposes for which they are then being administered or for which they were acquired. The other department or agency shall not prescribe any terms and provisions inconsistent with this article.

Notwithstanding Section 6217, as of June 30th of each year, a sum that is 50 percent of the revenue received by the state for the fiscal year ending on that June 30th, pursuant to leases for the development of geothermal resources on the surface of lands under the jurisdiction of that state department or agency, shall be available for appropriation by the Legislature solely for the programs of that state department or agency.

CHAPTER 1018

An act relating to local agencies, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. By the enactment of Chapter 374, of the Statutes of 1988, the Legislature did the following:

(a) Found and declared that there is a need to automate the reporting process which requires the officer of each local agency who has charge of the financial records to annually file a report of all the financial transactions of the local agency with the Controller.

(b) Required the Controller to conduct a feasibility study for special districts to do the following:

(1) Determine the capability of special districts to submit their financial transactions report using some form of electronic media.

(2) Analyze present practices and procedures.

(3) Identify problems, needs, and objectives.

(4) Identify alternate solutions.

(5) Produce as an end product, a feasibility study report following Department of Finance guidelines to be completed and submitted to the Legislature by March 31, 1989.

(c) Appropriated the sum of twenty thousand dollars ($20,000) from the General Fund to the Controller to conduct the feasibility study and produce the feasibility study report.

SEC. 2. The Controller's Feasibility Study Report, approved by the Department of Finance, indicates the following:

(a) It is feasible for a significant number of the reports of the annual financial transactions of special districts to be submitted to the Controller by electronic media.

(b) Approximately 51 percent of the special districts of California have expressed a desire to submit their annual financial transactions report to the Controller by electronic media.

(c) An electronic data processing system for receiving and processing special district financial reports submitted to the Controller by electronic media could be developed.

SEC. 3. The Controller shall develop and implement an electronic data processing system which will allow special districts the option of submitting their annual reports of financial transactions to the Controller by electronic media.

SEC. 4. The sum of two hundred and fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the Controller for the purposes of this act.

CHAPTER 1019

An act to amend Sections 19567, 19611.5, 19614.2, and 19616 of, to add Sections 19596.2, 19617.2, and 19617.4 to, and to repeal and add Section 19617 of, the Business and Professions Code, relating to horseracing.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 19567 of the Business and Professions Code is amended to read:

19567. (a) Since the purpose of this chapter is to encourage agriculture and the breeding of horses in this state, a sum equal to 10 percent of the first money of every purse won by a California-bred horse at a horserace meeting shall be paid by the licensee conducting the meeting to the breeder of the animal. This section shall apply to any California-bred standardbred horse that is foaled on or after the first day of November 1977 for all races, except the California standardbred sires stakes races.

(b) This section does not apply to thoroughbred horses or thoroughbred racing.

SEC. 2. Section 19596.2 is added to the Business and Professions Code, to read:

19596.2. (a) Notwithstanding paragraphs (1) and (2) of subdivision (c) of Section 19596.5 or paragraphs (1) and (2) of subdivision (d) of Section 19596.6, or any other provision of law, of the amounts deducted from wagers at satellite wagering facilities pursuant to subdivision (c) of Section 19596.5 and subdivision (d) of Section 19596.6 on thoroughbred meetings or thoroughbred races at mixed breed or fair meetings, four-tenths of 1 percent shall be deposited with the official registering agency for distribution pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

(b) Notwithstanding subdivision (d) of Section 19596.5 or subdivision (e) of Section 19596.6, on thoroughbred meetings only, the funds remaining after distribution of the amounts set forth in subdivision (c) of Section 19596.5 or subdivision (d) of Section 19596.6 shall be distributed 50 percent as commissions to the racing association which conducts the racing meeting and 50 percent as purses to horsemen participating in the racing meeting without exception as to payment for owners' premiums.

SEC. 3. Section 19611.5 of the Business and Professions Code is amended to read:

19611.5. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association other than the California State Fair and Exposition or a district or county fair which conducts a thoroughbred race meeting may deduct from the total amount handled in daily double, quiniela, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as commissions and purses in the following percentage ratios: in 1978, 56 percent as commissions and 44 percent as purses; in 1979, 55 percent as commissions and 45 percent as purses; in 1980,

54 percent as commissions and 46 percent as purses; in 1981, 53 percent as commissions and 47 percent as purses; in 1982, 52 percent as commissions and 48 percent as purses; in 1983, 51 percent as commissions and 49 percent as purses; and in 1984 and thereafter, 50 percent as commissions and 50 percent as purses.

(b) From the amount deducted for thoroughbred purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

(c) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

SEC. 4. Section 19614.2 of the Business and Professions Code is amended to read:

19614.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, the California Exposition and State Fair, or a district or county fair, or an association conducting its meeting pursuant to Section 19549.1, may deduct from the total amount handled in daily double, quiniela, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the current year of the fair meet. Of the amount deducted, if any, 52 percent shall be distributed as additional purses and 48 percent shall be distributed as additional commissions. For racing meetings conducted pursuant to Section 19549.3, of the amounts deducted, if any, 50 percent shall be distributed as purses and 50 percent shall be distributed as commissions.

(b) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(c) From the amount deducted for thoroughbred purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

(d) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning or placing at the meeting. The premiums shall be distributed within 30 days of the date on which the funds are received by the officially recognized organization designated to administer this subdivision on a prorated percentage basis of first and

second place moneys earned to persons owning California-bred quarter horses at the time of their wins or places in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year.

The board shall designate the officially recognized organizations representing quarter horse horsemen to administer this subdivision and to distribute premiums.

The organization may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(e) From the amount deducted for Appaloosa and Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owner's premiums for California-breds winning at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred Appaloosa and Arabian horses at the time of their wins in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. The board shall designate the officially recognized organization representing Appaloosa and Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

SEC. 5. Section 19616 of the Business and Professions Code is amended to read:

19616. (a) Notwithstanding any other provision of law, wagers on out-of-state feature races conducted pursuant to Section 19596 shall be placed in a separate parimutuel pool or pools and shall be distributed as provided by this section.

(b) Each association accepting wagers on an out-of-state feature race shall deduct a percentage of the amount handled in its conventional and exotic parimutuel pools which is equal to the percentage deducted from the amount handled by the association in its parimutuel pools at its racing meeting.

(c) Each association shall pay a state license fee at the rate or rates applicable to the races of the association's racing program for the day on which the out-of-state feature race is offered. In the event that the association does not conduct a regular racing program on that day of the meeting, the state license fee shall be paid at the rate or rates applicable to the most immediate prior day of the racing program.

(d) Breakage and unclaimed tickets on out-of-state feature races shall be distributed 50 percent as commissions and 50 percent as purses.

(e) The amount remaining from the deduction under subdivision (b), after payment of the state license fee and the contractual payment to the out-of-state host racing association, shall be

distributed 50 percent as commissions and 50 percent as purses.

(f) From the amount distributed under subdivision (e) for quarter horse and Appaloosa purses, a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning at the meeting. The sum shall be deposited within 10 days of the close of the meeting with the officially recognized organizations representing the respective breeds. After deduction of expenses, not to exceed 5 percent, and approval of all the deductions by the board, the fund shall be distributed on a prorated percentage basis of first moneys earned to persons owning California-bred racehorses at the time of their wins in accordance with the provisions of subdivision (b) of Section 19612.2 and subdivision (c) of Section 19617.

(g) From the amount distributed for thoroughbred purses under subdivision (e), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

SEC. 5.5. Section 19616 of the Business and Professions Code is amended to read:

19616. (a) Notwithstanding any other provision of law, wagers accepted on out-of-state feature races pursuant to Section 19596, but not included in the parimutuel pool or pools if the entity conducting the out-of-state racing, shall be placed in a separate parimutuel pool or pools and shall be distributed as provided by this section.

(b) Each association accepting wagers on an out-of-state feature race shall deduct a percentage of the amount handled in its conventional and exotic parimutuel pools which is equal to the percentage deducted from the amount handled by the association in its parimutuel pools at its racing meeting.

(c) Each association shall pay a state license fee at the rate or rates applicable to the races of the association's racing program for the day on which the out-of-state feature race is offered. If the association does not conduct a regular racing program on that day of the meeting, the state license fee shall be paid at the rate or rates applicable to the most immediate prior day of the racing program.

(d) Breakage and unclaimed tickets on out-of-state feature races shall be distributed 50 percent as commissions and 50 percent as purses.

(e) The amount remaining from the deduction under subdivision (b), after payment of the state license fee and the contractual payment to the out-of-state host racing association, shall be distributed 50 percent as commissions and 50 percent as purses.

(f) From the amount distributed under subdivision (e) for quarter horse and Appaloosa purses, a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning at the meeting. The sum shall be deposited within 10 days of the close of the meeting with the

officially recognized organizations representing the respective breeds. After deduction of expenses, not to exceed 5 percent, and approval of all the deductions by the board, the fund shall be distributed on a prorated percentage basis of first moneys earned to persons owning California-bred racehorses at the time of their wins in accordance with subdivision (b) of Section 19612.2 and subdivision (c) of Section 19617.

(g) From the amount distributed for thoroughbred purses under subdivision (e), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

SEC. 6. Section 19617 of the Business and Professions Code is repealed.

SEC. 7. Section 19617 is added to the Business and Professions Code, to read:

19617. The following definitions shall govern the construction of this chapter:

(a) "Breeder" means a person who is registered as a breeder of a California-bred thoroughbred with the official registering agency and is named on the applicable Certificate of Registration issued by the Jockey Club of New York.

(b) "Qualifying race" means the following:

(1) In the case of breeder awards, all races in this state, and all graded stakes races conducted within the United States.

(2) In the case of owner premiums, all nonclaiming races and certain claiming races conducted in this state.

(3) In the case of stallion awards, all nonclaiming races, and certain claiming races conducted in this state, and all graded stakes races conducted within the United States.

(4) "Certain claiming races" means those claiming races in the central and southern zone in which the total purse exceeds the daily average purse in races, excluding stakes, distributed at that meeting during the prior year, or a claiming race in the northern zone in which the total purse exceeds 125 percent of the daily average purse in races, excluding stakes, distributed at that meeting during the prior year. In determining whether a race complies with this definition, the official registering agency shall base its determination on the actual amount of the purse at the time the race was conducted and shall not take into consideration any postrace adjustments to that purse.

(c) "Eligible earnings" means the following:

(1) In the case of breeder awards, the annual amount earned by a California-bred thoroughbred for finishing first, second, or third in qualifying races.

(2) In the case of owner premiums, the annual amount earned by a California-bred thoroughbred for winning qualifying races.

(3) In order for earnings from a qualifying race to be considered

as eligible earnings, a California-bred thoroughbred shall be registered as such with the official registering agency before the date entries were taken by the association for the qualifying race in which that horse earned purse money.

(4) In the case of stallion awards, the annual amount earned by California-conceived or California-bred foals of an eligible thoroughbred sire in winning qualifying races plus the amount earned by those foals for finishing second or third in a stakes race in this state and for finishing first, second, or third in a graded stakes race within the United States.

(5) For purposes of this paragraph, the maximum purse considered earned in any qualifying race within this state shall be three hundred thirty thousand dollars ($330,000) for a win, one hundred twenty thousand dollars ($120,000) for a second, and ninety thousand dollars ($90,000) for a third place finish and the maximum purse considered earned in any qualifying race outside of this state shall be one hundred sixty-five thousand dollars ($165,000) for a win, sixty thousand dollars ($60,000) for a second, and forty-five thousand dollars ($45,000) for a third place finish.

(6) In determining the purse earned in any qualifying race which is a stakes race, the amount earned shall be based solely on the added money, with no consideration to be given to other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(7) On or before February 1 of any year, it is the ultimate responsibility of the stallion owner to advise the official registering agency of any and all purses earned during the preceding year that shall be considered in determining the amount of the stallion award to which the owner is entitled.

(8) On or before February 1 of any year, it is the ultimate responsibility of the breeder to advise the official registering agency of any and all purses earned during the preceding year in graded stakes races outside of this state by horses bred by breeder.

(d) "Eligible thoroughbred sire" means a thoroughbred stallion that was continuously present in this state from February 1 to July 15, inclusive, of the calendar year in which the qualifying race was conducted, and if the sire left this state after July 15 of the calendar year in which the qualifying race was conducted, the sire returned to and was present in this state by February 1 of the following calendar year and thereafter remained until July 15 of that year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible thoroughbred sire. Notwithstanding any provision to the contrary, a thoroughbred stallion shall be considered an eligible thoroughbred sire only if its owner has filed a claim for stallion award on or before February 1 of the calendar year immediately following the calendar year for which the awards are being distributed.

(e) "Official registering agency" means the California Thoroughbred Breeders Association.

(f) "Owner" means the person who is registered with the paymaster of purses on the date the qualifying race was conducted as the owner of the California-bred thoroughbred earning purse money in that race.

(g) "Quotient," for any fund, means the amount allocated to that fund pursuant to subdivision (b) of Section 19617.2 divided by the aggregate eligible earnings of the horses applicable to that fund. In calculating the quotient for each of the funds, any retroactive purse payments with respect to a race shall not be considered after the disbursement of the fund.

(h) "Stallion owner" means the person who is the owner of the eligible thoroughbred sire as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible thoroughbred sire on the date that the sire died.

SEC. 8. Section 19617.2 is added to the Business and Professions Code, to read:

19617.2. (a) Any association conducting a race meeting which includes thoroughbred racing shall deposit with the official registering agency 0.34 percent of the total amount handled on-track, and 0.40 percent of the total amount handled off-track, in daily conventional and exotic parimutuel pools resulting from thoroughbred racing. These deposits shall be made at the following intervals:

(1) For any meeting of 20 racing days or less, the requisite deposit shall be made not later than seven days immediately following the last day of that meeting.

(2) For any meeting of more than 20 racing days, the initial deposit shall be made not later than 27 racing days after the commencement of that meeting and every 20 racing days thereafter, with a final deposit made not later than seven days following the last day of that meeting. The initial deposit for that meeting shall be based upon the applicable amount handled during the first 20 racing days of the meeting and deposits thereafter shall be based upon the applicable amount handled during the ensuing periods of 20 racing days with the last deposit being based upon the applicable amount handled from the end of the last 20-racing day period for which a deposit has been made to the end of the meeting.

(b) After deducting a sum equal to 5 percent of the total deposits made pursuant to subdivision (a) and the total deposits made pursuant to other provisions of this chapter, including Sections 19596.5, 19596.6, 19611.5, 19614.2, and 19616, the amount to compensate the official registering agency for its administrative cost and for expenses it incurs for educational, promotional, and research programs, the official registering agency shall for computational purposes distribute annually the balance of the deposits in the following manner:

(1) To the breeder fund, 55 percent from which breeder awards are to be paid.

(2) To the owner fund, 20 percent from which owner premiums

are to be paid.

(3) To the stallion fund, 20 percent from which stallion awards are to be paid.

(4) Until January 1, 1992, to the California-bred race fund, 5 percent to be used for the promotion of California-bred races and from which purses are to be provided or supplemented for California-bred races, which fund shall be administered by the official registering agency. Any funds not so used during any year shall augment the owner fund of that year and be distributable therefrom. On and after January 1, 1992, that fund's share of the deposits shall be equally distributed among the funds provided under paragraph (2).

(c) The official registering agency shall make the following payments to the breeder, owner, and stallion owner so as to encourage agriculture and the breeding of higher quality horses in this state:

(1) The breeder shall be paid a breeder award equal to the quotient for the breeder fund multiplied by the eligible earnings of the horse bred by the breeder.

(2) The owner shall be paid an owner premium equal to the quotient for the owner fund multiplied by the eligible earnings of the horse he or she owns.

(3) The stallion owner shall be paid a stallion award equal to the quotient for the stallion fund multiplied by the eligible earnings of the stallion owner's eligible thoroughbred sire.

(4) The breeder awards, owner premiums, and stallion awards shall be paid not later than March 31 of the calendar year immediately following the calendar year for which the awards or premiums were earned.

SEC. 9. Section 19617.4 is added to the Business and Professions Code, to read:

19617.4. (a) The official registering agency shall invest the funds deposited with it, and the interest earned on those deposits shall be a part of the total deposits distributable under subdivisions (b) and (c) of Section 19617.2.

(b) In the event there are insufficient funds to make the distributions described in Section 19617.2, there shall be no additional assessments made against any association or the state to fund the deficiencies.

(c) Any award or premium remaining uncollected for two consecutive years from that date of disbursement shall be deemed null and void. The official registering agency shall deposit the amount of the uncollected award or premium into the breeder fund existing at that time.

(d) Any dispute with respect to a breeder award, owner premium, or stallion award shall be decided by the official registering agency, which may demand and inspect any registration certificate or record, or require the submission of claims forms, affidavits, and declarations or make that inspection and require

submissions of that information. The decision of the official registering agency shall be subject to review by the board pursuant to subdivision (e).

(e) A decision made by the official registering agency with respect to a breeder award, owner premium, or stallion award may be appealed to the board. The appeal shall be submitted in writing to the board in such manner and at such time as to permit the board, in the exercise of reasonable diligence, to determine the appeal prior to the time at which distribution of that award or premium is to be made. The board's decision on this matter shall be final and binding upon all parties.

(f) The official registering agency shall report annually to the board, which in turn shall report annually to the Governor and Legislature, with respect to the funds deposited pursuant to subdivision (a) of Section 19617.2.

SEC. 10. (a) The Legislature hereby finds and declares that the establishment of a day each year, on which a number of stakes races for California-bred thoroughbreds, conducted as the California Cup Day, is an event that should be undertaken as a pilot project to further promote the thoroughbred industry in this state. The Legislature understands that California Cup Day will be funded, in part, through the California-bred race fund, as well as from other traditional sources of purse money.

(b) It is the intent of the Legislature that the California Horse Racing Board, through the exercise of its licensing power, shall cause an association in the central zone to provide a weekend day in October or November 1990, for California Cup Day and that the board shall cause the designated association to cooperate fully in the promotion of California Cup Day. After 1990, it is the further intent of the Legislature that the board cause an association in this state seeking a license to make a suitable weekend day available which will maximize the exposure of California Cup Day.

(c) The Legislature further finds and declares that the thoroughbred industry in this state will be enhanced by the California Horse Racing Board causing, to the extent practical, all satellite wagering facilities and operating associations in the state to simulcast and accept wagering on the races carded on California Cup Day.

SEC. 11. Section 5.5 of this bill incorporates amendments to Section 19616 of the Business and Professions Code proposed by both this bill and AB 82. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 19616 of the Business and Professions Code, and (3) this bill is enacted after AB 82, in which case Section 5 of this bill shall not become operative.

CHAPTER 1020

An act to amend Section 24400 of the Health and Safety Code, relating to excavations.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 24400 of the Health and Safety Code is amended to read:

24400. (a) Every person owning land in fee simple or in possession thereof under lease or contract of sale who knowingly permits the existence on the premises of any abandoned mining shaft, pit, well, septic tank, cesspool, or other abandoned excavation dangerous to persons legally on the premises, or to minors under the age of 12 years, who fails to cover, fill, or fence securely that dangerous abandoned excavation and keep it so protected, is guilty of a misdemeanor.

(b) Every person owning land in fee simple or in possession thereof under lease or contract of sale who knowingly permits the existence on the premises of any permanently inactive well, cathodic protection well, or monitoring well which constitutes a known or probable preferential pathway for the movement of pollutants, contaminants, or poor quality water, from above ground to below ground, or vertical movement of pollutants, contaminants, or poor quality water below ground, and that movement poses a threat to the quality of the waters of the state, shall be guilty of a misdemeanor.

(c) For purposes of this section:

(1) "Monitoring well" means the type of well defined by Section 13712 of the Water Code.

(2) "Cathodic protection well" means the type of well defined by Section 13711 of the Water Code.

(3) "Water well" means the type of well defined by Section 13710 of the Water Code.

(d) A "permanently inactive well" is a well which has not been used for a period of one year, unless the person owning land in fee simple or in possession thereof under lease or contract of sale demonstrates an intent for future use for water supply, ground water recharge, drainage, or ground water level control, heating or cooling, cathodic protection, ground water monitoring, or related uses. A well owner shall provide evidence to the county health officer of an intent for future use of an inactive well by maintaining the well in a way that the following requirements are met:

(1) The well shall not allow impairment of the quality of water within the well and ground water encountered by the well.

(2) The top of the well or well casing shall be provided with a cover, that is secured by a lock or by other means to prevent its

removal without the use of equipment or tools, to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes in the well. The cover shall be watertight where the top of the well casing or other surface openings to the well are below ground level, such as in a vault or below known levels of flooding. The cover shall be watertight if the well is inactive for more than five consecutive years. A pump motor, angle drive, or other surface feature of a well, when in compliance with the above provisions, shall suffice as a cover.

(3) The well shall be marked so as to be easily visible and located, and labeled so as to be easily identified as a well.

(4) The area surrounding the well shall be kept clear of brush, debris, and waste materials.

(e) At a minimum, permanently inactive wells shall be destroyed in accordance with standards developed by the Department of Water Resources pursuant to Section 13800 of the Water Code and adopted by the State Water Resources Control Board or local agencies in accordance with Section 13801 of the Water Code. Minimum standards recommended by the department and adopted by the state board or local agencies for the abandonment or destruction of ground water monitoring wells or class 1 hazardous injection wells shall not be construed to limit, abridge, or supersede the powers or duties of the State Department of Health Services, in accordance with Section 13801 of the Water Code.

(f) Nothing in this section is a limitation on the power of a city, county, or city and county to adopt and enforce additional penal provisions regarding the types of wells and other excavations described in subdivisions (a) and (b).

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.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1021

An act to amend Sections 1812.201, 1812.203, 1812.206, 1812.209, 1812.210, 1812.214, and 1812.221 of the Civil Code, relating to marketing plans.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1812.201 of the Civil Code is amended to read:

1812.201. For the purposes of this title, the following definitions shall be used:

(a) "Seller assisted marketing plan" means any sale or lease or offer to sell or lease any product, equipment, supplies or services which requires a total initial payment exceeding five hundred dollars ($500), but requires an initial cash payment of less than fifty thousand dollars ($50,000), which will aid a purchaser or will be used by or on behalf of the purchaser in connection with or incident to beginning, maintaining, or operating a business when the seller assisted marketing plan seller has advertised or in other manner solicited the purchase or lease of the seller assisted marketing plan and done any of the following acts:

(1) Represented that such purchaser will earn, is likely to earn, or can earn an amount in excess of the initial payment paid by the purchaser for participation in the seller assisted marketing plan;

(2) Represented that there is a market for the product, equipment, supplies, or services, or any product marketed by the user of the product, equipment supplies or services sold or leased or offered for sale or lease to the purchaser by the seller, or anything, be it tangible or intangible, made, produced, fabricated, grown, bred, modified, or developed by the purchaser using, in whole or in part, the product, supplies, equipment or services which were sold or leased or offered for sale or lease to the purchaser by the seller assisted marketing plan seller; or

(3) Represented that the seller will buy back or is likely to buy back any product made, produced, fabricated, grown or bred by the purchaser using, in whole or in part, the product, supplies, equipment or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller assisted marketing plan seller.

(b) A "seller assisted marketing plan" shall not include:

(1) A security defined in the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which has been qualified for sale by the California Department of Corporations, or is exempt under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title

4 of the Corporations Code from the necessity to qualify.

(2) A franchise defined by the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) which is registered with the California Department of Corporations or is exempt under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code from the necessity of registering.

(3) Any transaction in which either the seller or purchaser or the lessor or lessee is licensed pursuant to and the transaction is governed by the Real Estate Law, Division 4 (commencing with Section 10000) of the Business and Professions Code.

(4) A license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products, or services to the general public under the retailer's trademark, trade name or service mark if all of the following criteria are satisfied:

(A) The general merchandise retailer has been doing business in this state continually for five years prior to the granting of the license.

(B) The general merchandise retailer sells diverse kinds of goods, equipment, supplies, products, or services.

(C) The general merchandise retailer also sells the same goods, equipment, supplies, products or services directly to the general public.

(D) During the previous 12 months the general merchandise retailer's direct sales of the same goods, equipment, supplies, products or services to the public accounts for at least 50 percent of its yearly sales of these goods, equipment, supplies, products or services made under the retailer's trademark trade name or service mark.

(5) A newspaper distribution system distributing newspapers as defined in Section 6362 of the Revenue and Taxation Code.

(6) A sale or lease to an existing or beginning business enterprise which also sells or leases equipment, products, supplies or performs services which are not supplied by the seller, which the purchaser does not utilize with the equipment, products, supplies or services of the seller, and the equipment products, supplies or services not supplied by the seller account for more than 25 percent of the purchaser's gross sales.

(7) The sale in the entirety of an "ongoing business." An "ongoing business" is one which for at least six months previous to the sale: (i) has been operated from a given specific location, (ii) has been open for business to the general public and (iii) has had all equipment and supplies necessary for operating the business located at the given specific location. The sale shall be of the entire "ongoing business" and not merely a portion of the ongoing business.

(8) A sale or lease or offer to sell or lease to a purchaser: (i) who has for a period of at least six months previously bought products, supplies, services or equipment which were sold under the same trademark or trade name or which were produced by the seller; and (ii) who has received on resale of such product, supplies, services or

equipment an amount which is at least equal to the amount of the initial payment.

(9) The renewal or extension of an existing seller assisted marketing plan contract.

(c) "Person" includes an individual, corporation, partnership, joint venture or any business entity.

(d) "Seller" is a person who sells or leases or offers to sell or lease a seller assisted marketing plan and:

(1) Has sold or leased or represents or implies that the seller has sold or leased, whether in California or elsewhere, at least five seller assisted marketing plans within 24 months prior to a solicitation; or

(2) Intends or represents or implies that the seller intends to sell or lease, whether in California or elsewhere, at least five seller assisted marketing plans within 12 months following a solicitation.

For purposes of this title, the seller is the person to whom the purchaser becomes contractually obligated. A "seller" does not include a licensed real estate broker or salesman who engages in the sale or lease of a "business opportunity" as such term is used in Sections 10000 to 10030, inclusive, of the Business and Professions Code, or elsewhere in Chapter 1 (commencing with Section 10000), Chapter 2 (commencing with Section 10050), or Chapter 6 (commencing with Section 10450) of Part 1 of Division 4 of the Business and Professions Code.

(e) "Purchaser" means a person who is solicited to become obligated or does become obligated on a seller assisted marketing plan contract.

(f) "Equipment" includes machines, all electrical devices, video or audio devices, molds, display racks, vending machines, coin operated game machines, machines which dispense products and display units of all kinds.

(g) "Supplies" includes any and all materials used to produce, grow, breed, fabricate, modify, develop or make any product or item.

(h) "Product" includes any tangible chattel, including food or living animals, which the purchaser intends to:

(1) Sell or lease.

(2) Use to perform a service.

(3) Resell or attempt to resell to the seller assisted marketing plan seller.

(4) Provide or attempt to provide to the seller assisted marketing plan seller or to any other person whom the seller suggests the purchaser contact so that the seller assisted marketing plan seller or such other person may assist, either directly or indirectly, the purchaser in distributing, selling, leasing, or otherwise disposing of the product.

(i) "Services" includes any assistance, guidance, direction, work, labor or services provided by the seller to initiate or maintain or assist in the initiation or maintenance of a business.

(j) "Seller assisted marketing plan contract" or "contract" means any contract or agreement which obligates a purchaser to a seller.

(k) "Initial payment" means the total amount a purchaser is obligated to pay under the terms of the seller assisted marketing plan contract prior to or at the time of delivery of the equipment, supplies, products or services or within six months of the purchaser commencing operation of the seller assisted marketing plan. If the contract sets forth a specific total sale price for purchase of the seller assisted marketing plan which total price is to be paid partially as a downpayment and then in specific monthly payments, the "initial payment" means the entire total sale price.

(*l*) "Initial cash payment" or "downpayment" means that portion of the initial payment which the purchaser is obligated to pay to the seller prior to or at the time of delivery of equipment, supplies, products, or services. It does not include any amount financed by or for which financing is to be obtained by the seller, or financing which the seller assists in obtaining.

(m) "Buy-back" or "secured investment" means any representation which implies in any manner that the purchaser's initial payment is protected from loss. Such terms include a representation or implication: (1) that the seller may repurchase either all or part of what it sold to the purchaser; or (2) that the seller may at some future time pay the purchaser the difference between what has been earned and the initial payment; or (3) that the seller may in the ordinary course buy from the purchaser items made, produced, fabricated, grown, bred, modified, or developed by the purchaser using, in whole or in part, the product, supplies, equipment, or services which were initially sold or leased to the purchaser by the seller; or (4) that the seller or a person to whom the seller will refer the purchaser may in the ordinary course sell, lease, or distribute the items the purchaser has for sale or lease.

SEC. 2. Section 1812.203 of the Civil Code is amended to read:

1812.203. (a) The seller of any seller assisted marketing plan shall pay a fee in the amount of one hundred dollars ($100) and file with the Attorney General a copy of the disclosure statements required under Sections 1812.205 and 1812.206, as well as a list of the names and resident addresses of those individuals who sell the seller assisted marketing plan on behalf of the seller, at least 30 days prior to placing any advertisement or making any other representations to prospective purchasers. The filing shall not be deemed to have occurred until a notice of filing has been issued by the Attorney General. The disclosure statements on file, except for the list of salespersons, shall be updated through a new filing and payment of a fee in the amount of thirty dollars ($30), whenever material changes occur during the year following the filing and shall submit all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and residences of all current salespersons and all salespersons who have acted on behalf of the company since the previous filing. The renewal filing fee shall be one hundred dollars ($100). If an update is not filed at least annually, the filing shall be deemed to have lapsed and the seller shall be prohibited from

placing any seller assisted marketing plan advertisements or making any other representations to prospective purchasers of seller assisted marketing plans.

(b) The Attorney General may send by certified mail to the address set forth in the seller assisted marketing plan filing an intent to issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if he or she finds the following:

(1) That there has been a failure to comply with any of the provisions of this title.

(2) That the offer or sale of the seller assisted marketing plan would constitute a misrepresentation to, or deceit of or fraud on the purchaser.

(3) That any person identified in the filing has been convicted of an offense under paragraph (1) of subdivision (b) of Section 1812.206, or is subject to an order or has had a civil judgment entered against him or her as described in paragraphs (2) and (3) of subdivision (b) of Section 1812.206, and the involvement of that person in the sale or management of the seller assisted marketing plan creates an unreasonable risk to prospective purchasers.

(c) The notice referred shall include facts supporting a suspension or revocation. If the seller assisted marketing plan does not submit to the Attorney General, under penalties of perjury signed by an owner or officer of the seller assisted marketing plan, within 10 days of receipt of the intent to issue a stop order, a refutation of each and every supporting fact set forth in the notice, and each such fact not refuted shall be deemed, for purposes of issuance of the order, an admission that the fact is true. If, in the opinion of the Attorney General, and based upon supporting facts not refuted by the seller assisted marketing plan, the plan is offered to the public without compliance with the provisions of this title, the Attorney General may order the seller to desist and refrain from the further sale or attempted sale of the seller assisted marketing plan unless and until a notice of filing has been issued pursuant to this section. Until that time, the registration shall be void. The order shall be in effect until and unless the seller assisted marketing plan files a proceeding in superior court pursuant to Section 1094.5 of the Code of Civil Procedure or seeks other judicial relief and serves a copy of the proceeding upon the Attorney General.

SEC. 3. Section 1812.206 of the Civil Code is amended to read:

1812.206. At least 48 hours prior to the execution of a seller assisted marketing plan contract or agreement or at least 48 hours prior to the receipt of any consideration, whichever occurs first, the seller or his or her representative shall provide to the prospective purchaser in writing a document entitled "SELLER ASSISTED MARKETING PLAN INFORMATION SHEET." The seller may combine the information required under this section with the information required under Section 1812.205 and, if done, shall utilize the single title "DISCLOSURES REQUIRED BY

CALIFORNIA LAW," and the title page required by Section 1812.205. If a combined document is used, it shall be given at the time required by Section 1812.205, provided that such time meets the 48-hour test of this section. The information sheet required by this section shall contain the following:

(a) The name of and the office held by the seller's officers, directors, trustees and general or limited partners, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities.

(b) A statement whether any person identified in subdivision (a):

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved an alleged violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged a violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, action affecting any vocational license.

The statements required by paragraphs (1), (2) and (3) of this subdivision shall set forth the court, the docket number of the matter, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that brought the action resulting in the conviction or judgment.

(4) Has at any time during the previous seven fiscal years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other person, as defined in subdivision (b) of Section 1812.201, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the individual held such position. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, the court which exercised jurisdiction, and the docket number of the matter shall be set forth.

(c) The length of time the seller:

(1) Has sold seller assisted marketing plans.

(2) Has sold the specific seller assisted marketing plan being offered to the purchaser.

(d) If the seller is required to secure a bond or establish a trust account pursuant to the requirements of Section 1812.204, the information sheet shall state either:

(1) "Seller has secured a bond issued by

_____,

(name and address of surety company)

a surety company admitted to do business in this state. Before signing a contract to purchase this seller assisted marketing plan, you should check with the surety company to determine the bond's current status," or

(2) "Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with the Attorney General to determine the current status of the trust account."

(e) A copy of a recent, not more than 12 months old, financial statement of the seller, together with a statement of any material changes in the financial condition of the seller from the date thereof. Such financial statement shall either be audited or be under penalty of perjury signed by one of the seller's officers, directors, trustees or general or limited partners. The declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate; the date of signature and the location where signed shall also be indicated Provided, however, that where a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the above information may be submitted in the same manner for the parent if the corresponding financial statement of the seller is also provided and the parent absolutely and irrevocably has agreed to guarantee all obligations of the seller.

(f) An unexecuted copy of the entire seller assisted marketing plan contract.

SEC. 4. Section 1812.209 of the Civil Code is amended to read:

1812.209. Every seller assisted marketing plan contract shall set forth in at least 10-point type or equivalent size if handwritten, all of the following:

(a) The terms and conditions of payment including the initial payment, additional payments, and downpayment required. If the contract provides for the seller to receive more than 20 percent of the initial payment before delivery to the purchaser of the equipment, supplies or products or services to be furnished under the terms of the contract, the contract shall clearly set forth for the escrow account established pursuant to subdivision (b) of Section 1812.210 and the name and address of the escrow account holder, as well as the institution, branch, and account number of the escrow account. If the contract provides for payment of any amount in excess of 20 percent of the initial payment prior to delivery of the equipment, supplies or products or services to be furnished under the terms of the contract, the contract shall set forth that payment of the amount in excess of 20 percent shall be by separate instrument made payable to the escrow account.

(b) Immediately above the place at which the purchaser signs the

contract the following notification, in boldface type, of the purchaser's right to cancel the contract:

"You have three business days in which you may cancel this contract for any reason by mailing or delivering written notice to the seller assisted marketing plan seller. The three business days shall expire on

_____

(last date to mail or deliver notice)
and notice of cancellation should be mailed or delivered to

_____.

(seller assisted marketing plan seller's name
and business street address)

If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the seller directly, it must be delivered to him by the end of his normal business day on the above date. Within five business days of receipt of the notice of cancellation, the seller shall return to the purchaser all sums paid by the purchaser to the seller pursuant to this contract. Within five business days after receipt of all such sums, the purchaser shall make available at his address or at the place at which they were caused to be located, all equipment, products and supplies provided to the purchaser pursuant to this contract. Upon demand of the seller, such equipment, products and supplies shall be made available at the time the purchaser receives full repayment by cash, money order or certified check."

(c) A full and detailed description of the acts or services the seller will undertake to perform for the purchaser.

(d) The seller's principal business address and the name and the address of its agent, other than the Secretary of State, in the State of California authorized to receive service of process.

(e) The business form of the seller, whether corporate, partnership or otherwise.

(f) The delivery date or, when the contract provides for a staggered delivery of items to the purchaser, the approximate delivery date of those products, equipment or supplies the seller is to deliver to the purchaser to enable the purchaser to begin or maintain his business and whether the products, equipment or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

(g) A complete description of the nature of the "buy-back", "protection", or "security" arrangement, if the seller has represented orally or in writing when selling or leasing, soliciting or offering a seller assisted marketing plan that there is a "buy-back" or that the initial payment or any part of it is "protected" or "secured."

(h) A statement which accurately sets forth a purchaser's right to void the contract under the circumstances and in the manner set forth in subdivisions (a) and (b) of Section 1812.215.

(i) The name of the supplier and the address of such supplier of the products, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to begin or maintain his business.

SEC. 5. Section 1812.210 of the Civil Code is amended to read:

1812.210. (a) No seller assisted marketing plan contract shall require or entail the execution of any note or series of notes by the purchaser which, when separately negotiated, will cut off as to third parties any right of action or defense which the purchaser may have against the seller.

(b) If the contract referred to in Section 1812.209 provides for a downpayment to be paid to the seller, the downpayment shall not exceed 20 percent of the initial payment amount. In no event shall the contract payment schedule provide for the seller to receive more than 20 percent of the initial payment before delivery to the purchaser, or to the place at which they are to be located, the equipment, supplies or products, unless all sums in excess of 20 percent are placed in an escrow account as provided for in subdivision (c) of Section 1812.214. Funds placed in an escrow account shall not be released until the purchaser notifies the escrow holder in writing of the delivery of such equipment, supplies or products within the time limits set forth in the seller assisted marketing plan contract. Notification of delivery by the purchaser to the escrow holder shall not be unreasonably withheld.

SEC. 6. Section 1812.214 of the Civil Code is amended to read:

1812.214. (a) Every seller of seller-assisted marketing plans other than a California corporation shall file with the Secretary of State an irrevocable consent appointing the Secretary of State or successor in office to act as the seller's attorney to receive service or any lawful process in any noncriminal suit, action or proceeding against the seller or the seller's successor, executor or administrator, which may arise under this title. When service is made upon the Secretary of State, it shall have the same force and validity as if served personally on the seller. Service may be made by leaving a copy of the process in the office of the Secretary of State, but it shall not be effective unless:

(1) The plaintiff forthwith sends by first-class mail a notice of the service upon the Secretary of State and a copy of the process to the defendant or respondent at the last address on file with the Secretary of State; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

(b) If, pursuant to subdivision (c) of Section 1812.204, a seller must obtain a surety bond or establish a trust account, the following procedures apply:

(1) If a bond is obtained, a copy of it shall be filed with the office

of the Secretary of State; if a trust account is established, notification of the depository, the trustee and the account number shall be filed with the office of the Attorney General.

(2) The bond or trust account required shall be in favor of the State of California for the benefit of any person who is damaged by any violation of this title or by the seller's breach of a contract subject to this title or of any obligation arising therefrom. The trust account shall also be in favor of any person damaged by such practices.

(3) Any person claiming against the trust account for a violation of this title may maintain an action at law against the seller and the trustee. The surety or trustee shall be liable only for actual damages and not the punitive damages permitted under Section 1812.218. The aggregate liability of the trustee to all persons damaged by a seller's violation of this title shall in no event exceed the amount of the trust account.

(4) The bond or the trust account shall be in an amount equal to the total amount of the "initial payment" section of all seller-assisted marketing plan contracts the seller has entered into during the previous year or three hundred thousand dollars ($300,000), whichever is less, but in no case shall the amount be less than fifty thousand dollars ($50,000). The amount required shall be adjusted twice a year, no later than the tenth day of the first month of the seller's fiscal year and no later than the tenth day of the seventh month of the seller's fiscal year. A seller need only establish a bond or trust account in the amount of fifty thousand dollars ($50,000) at the commencement of business and during the first six months the seller is in business. By the tenth day of the seller's seventh month in business, the amount of the bond or trust account shall be established as provided for herein as if the seller had been in business for a year.

(c) If, pursuant to subdivision (b) of Section 1812.210, a seller utilizes an escrow account to receive those portions of the downpayment in excess of 20 percent of the initial payment before delivery to the purchaser of the equipment, supplies or products or services to be furnished under the terms of the contract, the following procedures shall apply:

(1) The holder of the escrow account shall be independent of the seller, and the seller shall not have any authority to direct disbursements from the escrow account by the holder except upon written notification by the purchaser to the holder of the escrow account of the delivery of the equipment, supplies, or products as required by and within the time limits set forth in the seller assisted marketing plan contract.

(2) The name and address of the escrow account holder, the name of the institution, the branch and account number of the escrow account shall be reported to the Attorney General by the seller.

(3) Any person claiming against the escrow account for a violation of this title may maintain an action at law against the seller and the escrow account holder. The escrow account holder shall be liable

only for actual damages and not the punitive damages permitted under Section 1812.218. The aggregate liability of the escrow account holder to all persons damaged by a seller's violation of this title shall in no event exceed the amount of the escrow account.

SEC. 7. Section 1812.221 of the Civil Code is amended to read:

1812.221. (a) When a deposit has been made in lieu of bond pursuant to paragraph (1) of subdivision (b) of Section 1812.214 and Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of the provisions of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Attorney General of a money judgment entered by a court together with evidence that the claimant is a person described in paragraph (2) of subdivision (b) of Section 1812.214.

(b) When a person has completely established the claim with the Attorney General, the Attorney General shall forthwith review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(c) When the first claim against a particular deposit account has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Attorney General. Subsequent claims which are approved by the Attorney General within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Forthwith upon the expiration of the 240-day period, the Attorney General shall pay all approved claims from that 240-day period in full unless there are insufficient funds in the deposit account in which case each approved claim shall be paid a proportionate amount to exhaust the deposit account.

(d) When the Attorney General approves the first claim against a particular deposit account after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (c) shall apply with respect to the amount remaining in the deposit account.

(e) After a deposit account is exhausted, no further claims shall be paid by the Attorney General. Claimants who have had their claims paid in full or in part pursuant to subdivisions (c) and (d) shall not be required to make a contribution back to the deposit account for the benefit of other claimants.

(f) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the seller, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the seller by the Attorney General.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1022

An act to amend Section 584 of, to amend and renumber Section 497 of, to add Section 123 to, and to repeal and add Section 496 of, the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 123 is added to the Business and Professions Code, to read:

123. It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law.

In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars ($10,000) and the costs of litigation.

SEC. 2. Section 496 of the Business and Professions Code is repealed.

SEC. 3. Section 496 is added to the Business and Professions Code, to read:

496. A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations.

SEC. 4. Section 497 of the Business and Professions Code is amended and renumbered to read:

123.5. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

SEC. 5. Section 584 of the Business and Professions Code is amended to read:

584. No person shall violate the security of any examination, as defined in subdivision (a) of Section 123, or impersonate, attempt to impersonate, or solicit the impersonation of, another in any examination for a license, certificate, or registration to practice as provided in this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or under any other law providing for the regulation of any other system or method of treating the sick or afflicted in this state.

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 1023

An act to add Section 23194 to the Vehicle Code, relating to driving offenses.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 23194 is added to the Vehicle Code, to read:

23194. (a) If any person is convicted of a violation of Section 23152 and a minor under 14 years of age was a passenger in the vehicle at the time of the offense, the court shall impose the following penalties in addition to any other penalty prescribed in this article:

(1) If the person is convicted of a violation of Section 23152 punishable under Section 23160, the punishment prescribed in this article shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted, no part of which shall be stayed.

(2) If a person is convicted of a violation of Section 23152 punishable under Section 23165, the punishment prescribed in this article shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(3) If a person is convicted of a violation of Section 23152 punishable under Section 23170, the punishment prescribed in this article shall be enhanced by an imprisonment of 30 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(4) If a person is convicted of a violation of Section 23152 which is punished as a misdemeanor under Section 23175, the punishment prescribed in this article shall be enhanced by an imprisonment of 90 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(b) The driving of a vehicle in which a minor under 14 years of age was a passenger shall be pled and proven.

(c) No punishment enhancement shall be imposed pursuant to this section if the person is also convicted of a violation of Section 273a of the Penal Code arising out of the same facts and incident.

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

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1024

An act to amend Section 11379.6 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 11379.6 of the Health and Safety Code is amended to read:

11379.6. (a) Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment in the state prison for three, five, or seven years and by a fine not exceeding fifty thousand dollars ($50,000).

(b) Except as otherwise provided by law, every person who offers to perform an act which is punishable under subdivision (a) shall be punished by imprisonment in the state prison for three, four, or five years.

(c) All fines collected pursuant to subdivision (a) shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account, as established by Section 5 of Chapter 1295 of the Statutes of 1987. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by the county.

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

CHAPTER 1025

An act to add Chapter 2.5 (commencing with Section 4000) to Division 2 of the Public Utilities Code, relating to carriers.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Chapter 2.5 (commencing with Section 4000) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 2.5. PRIVATE CARRIERS

Article 1. General Provisions and Definitions

4000. This chapter may be cited as the Private Carriers' Registration Act

4001. (a) For purposes of this chapter, "private carrier" means a not-for-hire motor carrier, as defined in Section 408 of the Vehicle Code, but does not include persons providing transportation services specified in subdivision (k) or (*l*) of Section 5353.

(b) For purposes of this chapter, "department" means the Department of the California Highway Patrol.

4002. The Department of Motor Vehicles and the State Board of Equalization shall furnish, upon request, whatever information from their records may be required to assist the commission and department in the effective enforcement of this chapter.

Article 2. Registration

4005. (a) Except as provided in Section 4008, no private carrier shall operate a motor vehicle on any public highway in this state without first having registered the operation with the commission. The commission shall grant registration upon the filing of the application and the payment of the fee as required by this article, subject to the private carrier's compliance with this chapter.

(b) This section shall become operative on June 30, 1990.

4006. A fee of twenty-five dollars ($25) shall be paid to the commission for the filing of the initial registration, and an annual renewal fee of twenty dollars ($20) shall also be paid. The fees required to be paid by carriers of property pursuant to this section shall be deposited in the Transportation Rate Fund. The fees required to be paid by carriers of passengers pursuant to this section shall be deposited in the Public Utilities Commission Transportation Reimbursement Account in the General Fund.

4007. (a) When the department issues a carrier identification number pursuant to Section 34507.5 of the Vehicle Code, it shall

inform the carrier concerning the provisions of this chapter and the requirement that the carrier register with the Public Utilities Commission.

(b) The department shall periodically, but not less frequently than quarterly, transmit to the commission a list of the persons, firms, and corporations to whom it has issued a carrier identification number. Upon receipt of the list, the commission shall notify the carriers of the registration requirements and of the penalties for failure to register.

4008. The State of California and its agencies and political subdivisions are exempt from the registration requirements of this chapter.

Article 3. Insurance

4010. Registration shall not be granted to any private carrier until there is filed with and accepted by the commission, in such form as it may prescribe, a currently effective certificate or certificates of insurance or a surety bond or bonds evidencing bodily injury and property damage.

Article 4. Identification

4015. A private carrier shall display the carrier identification number, as required by Section 34507.5 of the Vehicle Code, on the vehicles operated pursuant to the registration granted under this chapter.

Article 5. Fines and Penalties

4020. The commission shall periodically, but not less frequently than quarterly, transmit to the department a list of persons, firms, and corporations which have received a carrier identification number from the department, but which have not registered with the commission. The department may use this list in its normal enforcement activities, including terminal inspections and roadside enforcement, as prima facie evidence of a failure to register.

4021. (a) Any person or corporation who violates any provision of this chapter is guilty of an infraction, and is punishable by a fine of not more than two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than three months, or both.

(b) This section shall become operative on January 1, 1991.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1026

An act to amend Sections 31100, 31101, 31103, 31111, 31115, and 31500 of the Corporations Code, relating to franchises.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 31100 of the Corporations Code is amended to read:

31100. There shall be exempted from any or all of the provisions of Chapter 2 (commencing with Section 31110) any other transaction which the commissioner by rule exempts as not being comprehended within the purposes of this law and the registration of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of investors.

SEC 2. Section 31101 of the Corporations Code is amended to read:

31101. There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) of this part the offer and sale of a franchise if the franchisor complies with each of the following minimum net worth, experience, disclosure, and notice filing requirements:

(a) Net worth. The franchisor and, when necessary, a corporation owning at least 80 percent of the franchisor (parent) meet one of the following net worth requirements, according to financial statements for the fiscal year just ended. The franchisor and the parent, when necessary, may rely upon the immediately preceding fiscal year's audited financial statement for 15 months from that fiscal year end date.

(1) The franchisor has a net worth on a consolidated basis of not less than five million dollars ($5,000,000), according to its audited financial statement.

(2) The franchisor has a net worth of not less than one million dollars ($1,000,000) and its parent has a net worth of five million dollars ($5,000,000), according to the audited financial statements of the franchisor and its parent, respectively.

(3) The franchisor has a net worth of one million dollars ($1,000,000), according to its unaudited financial statement, and the parent has a net worth on a consolidated basis of not less than five million dollars ($5,000,000), according to its audited financial

statement, and the parent absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement should the franchisor become unable to perform its duties and obligations.

(b) Experience. The franchisor or a corporation owning at least 80 percent of the franchisor (parent) complies with one or more of the following conditions throughout the five-year period immediately preceding the offer and sale of the franchise, or complies with one of the following conditions during part of the period and one or more of the following conditions during the balance of the period:

(1) The franchisor has had at least 25 franchisees conducting business which is the subject of the franchise.

(2) The franchisor has conducted business which is the subject of the franchise.

(3) The parent has had at least 25 franchisees conducting business which is the subject of the franchise.

(4) The parent has conducted business which is the subject of the franchise.

(c) Disclosure. (1) Except as provided in subparagraph (2), the franchisor discloses in writing to each prospective franchisee, at least 10 business days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 10 business days prior to the receipt of any consideration, the following information:

(A) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.

(B) The franchisor's principal business address and the name and address of its agent in the State of California authorized to receive service of process.

(C) The business form of the franchisor, whether corporate, partnership, or otherwise.

(D) The business experience of the franchisor, including the length of time the franchisor (i) has conducted a business of the type to be operated by the franchisees, (ii) has granted franchises for such business, and (iii) has granted franchises in other lines of business.

(E) A copy of the typical franchise contract or agreement proposed for use or in use in this state.

(F) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

(G) A statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

(H) A statement of the conditions under which the franchise

agreement may be terminated or renewal refused, or repurchased at the option of the franchisor.

(I) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or his or her designee services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business, together with a description thereof.

(J) A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by him or her to his or her customers.

(K) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his or her agent or affiliate.

(L) A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee or subfranchisor in whole or in part.

(M) If any statement of estimated or projected franchisee earnings is used, a statement of such estimation or projection and the data upon which it is based.

(N) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.

(O) A copy of the financial statement or statements required by subdivision (a).

(P) A copy of the unconditional guaranty, if applicable, required by paragraph (3) of subdivision (a).

(2) In the case of a material modification of an existing franchise, the franchisor discloses in writing to each franchisee information concerning the specific sections of the franchise agreement proposed to be modified and such additional information as may be required by rule or order of the commissioner. Any agreement by such franchisee to such material modifications shall not be binding upon the franchisee if the franchisee, within 10 business days after the receipt of such writing identifying the material modification, notifies the franchisor in writing that the agreement to such modification is rescinded. A writing identifying the material modification is received when delivered to the franchisee. A written notice by the franchisee rescinding an agreement to a material modification is effective when delivered to the franchisor or when deposited in the mail, postage prepaid, and addressed to the franchisor in accordance with any notice provisions in the franchise agreement, or when delivered or mailed to the person designated in the franchise agreement for the receipt of notices on behalf of the franchisor.

(d) Notice filing. The franchisor has filed with the commissioner a notice of exemption and paid the fee required by subdivision (f) of Section 31500 prior to an offer or sale of a franchise in this state during any calendar year in which one or more franchises are sold, excluding any material modification.

SEC. 3. Section 31103 of the Corporations Code is amended to read:

31103. This division shall not be applicable to any transaction relating to a bank credit card plan. "Bank credit card plan" means a credit card plan in which the issuers of credit cards, as defined in subdivision (a) of Section 1747.02 of the Civil Code are only: banks regulated by or under the supervision of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency of the United States, or the Superintendent of Banks of this state; or, persons controlling these banks, provided that the assets of such a bank or banks represent a majority of the assets on a consolidated basis of any holding company system of which the card issuers may be a party; or, persons controlled by these banks.

SEC. 4. Section 31111 of the Corporations Code is amended to read:

31111. (a) The application for registration of an offer shall be filed with the commissioner upon the Uniform Franchise Registration Application, as identified, modified, and supplemented by rule of the commissioner.

(b) An authorization for the commissioner to examine the registrant's financial records of the sale of the franchise pursuant to Section 7473 of the Government Code shall be filed with the application.

SEC. 5. Section 31115 of the Corporations Code is amended to read:

31115. The commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the commissioner finds:

(a) That there has been a failure to comply with any of the provisions of this law or the rules of the commissioner pertaining thereto.

(b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of the purchasers, or that, in the case of a franchise other than a subfranchise, a major inducement to prospective franchisees is fees or other compensation from participation in the sale of additional franchises.

(c) That the applicant has failed to comply with any rule or order of the commissioner issued pursuant to Section 31113.

(d) That any person identified in the application has been convicted of an offense under subdivision (e) of Section 31111, or is subject to an order, or has had a civil judgment entered against him as described in subdivision (e) of Section 31111, and the involvement of such person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees.

SEC. 6. Section 31500 of the Corporations Code is amended to read:

31500. (a) The commissioner shall charge and collect the fees fixed by this section. All fees and charges collected under this section shall be transmitted to the Treasurer at least weekly, accompanied

by a detailed statement thereof and shall be credited to the General Fund.

(b) The fee for filing an application for registration of the offer of franchises under Section 31111 is six hundred seventy-five dollars ($675).

(c) The fee for filing an application for renewal of a registration under Section 31121 is four hundred fifty dollars ($450).

(d) The fee for filing an amendment to the application filed under Section 31111 or 31121 is fifty dollars ($50).

(e) The fee for filing an application for material modification under Section 31125 is fifty dollars ($50), whether or not it accompanies an application under Section 31111 or 31121.

(f) The fee for filing the initial notice of exemption under Section 31101 is four hundred fifty dollars ($450) and the fee for filing each consecutive subsequent notice of exemption under these provisions is one hundred fifty dollars ($150).

(g) The fee for filing an application for approval of a written notice of violation under Section 31303 or 31304 is six hundred seventy-five dollars ($675).

SEC. 7. (a) The Legislature hereby finds and declares that during the past few years there has been a continuing deficit in the budget of the Department of Corporations with respect to administering the Franchise Investment Law.

(b) It is the intent of the Legislature in amending Section 31500 of the Corporations Code by increasing the fees charged and collected under the Franchise Investment Law to address the need to fully fund the cost to the Department of Corporations of administering the Franchise Investment Law and to appropriate those additional revenues to the department that are necessary to fully pay all costs of administration.

CHAPTER 1027

An act to repeal Sections 6357.1, 6357.2, 7204.5, 7204.6, 7264, and 7264.1 of, and to repeal and add Section 8101.5 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 6357.1 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 6357.2 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 7204.5 of the Revenue and Taxation Code is

repealed.

SEC. 4. Section 7204.6 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 7264 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 7264.1 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 8101.5 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 8101.5 is added to the Revenue and Taxation Code, to read:

8101.5. No refund of any tax shall be granted on motor vehicle fuel used in propelling an aircraft in this state.

SEC. 9. 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.

CHAPTER 1028

An act to amend Section 117.9 of the Code of Civil Procedure, relating to small claims court, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 117.9 of the Code of Civil Procedure is amended to read:

117.9. (a) If the judgment or order be against the defendant or cross defendant, he or she shall pay the same forthwith or at any time and upon such terms and conditions as the judge shall prescribe.

(b) At the option of the judgment debtor, payment of the judgment of a small claims court may be made directly to the judgment creditor or to the court in which the judgment was entered.

(c) If payment is made directly to the court in which the judgment was entered, the court shall remit payment to the judgment creditor as follows:

(1) By declaration and motion of the judgment debtor, and upon receipt of payment of the judgment and any accrued interest plus any required fee authorized by this subdivision, the clerk shall enter satisfaction of judgment. Pursuant to subdivision (a) of Section 1013, the clerk shall notify the judgment creditor, at his or her last known address, that the judgment debtor has satisfied the judgment by

making payment. The notification shall explain the procedures for the creditor to obtain from the court the amount paid in satisfaction of the judgment.

(2) The board of supervisors shall set a fee, not to exceed the actual costs of administering this subdivision, up to a maximum of twenty-five dollars ($25), which shall be paid by the judgment debtor.

(3) The Judicial Council shall provide by January 1, 1990, an appropriate declaration form to fulfill the purposes of this subdivision.

(4) Where payment is made by any means other than money order, certified or cashier's check, or cash, entry of satisfaction of judgment shall be delayed for a period of 30 days.

(5) If partial payment of the judgment has been made to the judgment creditor, and the requirements of subdivision (e) have been satisfied, the clerk shall enter satisfaction of the judgment upon receipt of the balance owing on the judgment, plus any accrued interest and the required fee.

(6) Payments that are unclaimed shall escheat to the local agency pursuant to Sections 50050 to 50056, inclusive, of the Government Code.

(d) If payment is made directly to the judgment creditor or his or her assignee of record, immediately upon receipt of payment of the judgment, the judgment creditor or the assignee of record shall file with the court an acknowledgment of satisfaction of judgment. Any judgment creditor or assignee of record who, after payment in full of the judgment, and after written demand by the judgment debtor fails without just cause for a period of 15 days to execute, and file an acknowledgment of satisfaction of judgment with the court is liable to the judgment debtor or his or her grantees or heirs for all damages sustained by reason of such failure and, in addition, the sum of fifty dollars ($50).

(e) A canceled check or money order which was written subsequent to the judgment by the judgment debtor for the full or partial amount of the judgment, made payable to and endorsed by the judgment creditor, or a cash receipt written subsequent to the judgment for the full or partial amount thereof and signed by the judgment creditor, shall constitute a rebuttable presumption of satisfaction of judgment when filed with the clerk of the small claims court together with a statement signed by the judgment debtor under penalty of perjury stating that: (1) the judgment debtor has paid the full or a portion of the judgment and costs; (2) the judgment creditor has been requested to file an acknowledgment of satisfaction of judgment and refuses to do so or the present address of the judgment creditor is unknown; and (3) the documents attached constitute evidence of receipt of this payment. In the event a rebuttable presumption of satisfaction of judgment is created pursuant to this section, a satisfaction of judgment shall be entered.

SEC. 2. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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:

Certain provisions of former Civil Code of Procedure, Section 117.9 authorized payment of a small claims court judgment to the sheriff, marshal, or court constable. Because these provisions were automatically repealed as of January 1, 1988, there is currently no regular method by which a judgment debtor can pay off a judgment, obtain a satisfaction of judgment and procure a release of related judgment liens, if the judgment creditor cannot be located. In order to reduce the resulting disruption to the courts and small claims judgment debtors, and to facilitate payment of small claims court judgments through the provision of an alternative judgment payment procedure, it is necessary that this act go into immediate effect.

CHAPTER 1029

An act to amend Section 17921.3 of the Health and Safety Code, relating to building standards.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 17921.3 of the Health and Safety Code is amended to read:

17921.3. (a) After January 1, 1983, all new buildings constructed in this state shall use water closets and associated flushometer valves, if any, which are water-conservation water closets as defined by American National Standards Institute Standard A112.19.2, and urinals and associated flushometer valves, if any, that use less than an average of 1½ gallons per flush. Blowout water closets and associated flushometer valves are exempt from the requirements of this section. All water closets, urinals, and associated flushometer valves installed in new structures after January 1, 1983, shall be approved by the department as meeting adequate standards of safety and sanitation. These requirements shall only be applicable to new additions to, or renovations of, existing buildings if compliance with the

requirements of this section will not require substantial modification of the existing plumbing system. In satisfaction of the requirements of this section and subject to the provisions of Section 18930, the department shall permit the installation of tank-type water closets equipped with devices which are found by the department to meet applicable performance standards. The department shall periodically publish a list of acceptable water closets, urinals, flushometer valves, and devices to reduce water consumption.

(b) After January 1, 1992, all new buildings constructed in this state shall use water closets and associated flushometer valves, if any, which use no more than 1.6 gallons per flush and which meet performance standards established by the American National Standards Institute Standard A112.19.2, and urinals and associated flushometer valves, if any, which use no more than one gallon per flush and which meet performance standards established by the American National Standards Institute Standard A112.19.2.

(c) A local enforcement agency may allow the use of standard flush toilets, or urinals when, in the opinion of the local agency, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system.

(d) This section shall not apply in any local jurisdiction, area, or region of the state subject to waste discharge requirements imposed pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code when the local enforcement agency determines that the waste water discharges would exceed such waste discharge requirements if this section was made applicable.

(e) Subject to the provisions of Section 18930, the requirements prescribed by this section may be suspended for a specified period of time by a regulation adopted by the department when the department finds that there is an inadequate supply, including a choice of styles or colors for the consumer, of water closets or urinals specified in this section to meet the needs of new construction, or such water closets and urinals are not available at reasonable prices as compared to water closets and urinals not complying with the requirements 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1030

An act to amend Sections 2688 and 2689 of the Business and Professions Code, relating to physical therapy, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 2688 of the Business and Professions Code is amended to read:

2688. The amount of fees provided in connection with licenses or approvals for the practice of physical therapy is as follows:

(a) The application fee for a physical therapist's license shall be fixed by the examining committee at not more than fifty dollars ($50). The application fee for an applicant under Section 2653 shall be fixed by the examining committee at not more than one hundred dollars ($100).

(b) The examination and reexamination fees for the physical therapist examination and the physical therapist assistant examination shall be the actual cost to the examining committee of the purchase and grading of each written examination, plus the actual cost to the examining committee of administering each examination.

(c) The initial license fee for a physical therapist license shall be fixed by the examining committee at not more than fifty dollars ($50).

(d) The renewal fee shall be fixed by the examining committee at not more than fifty dollars ($50).

(e) A fee to be set by the examining committee of not more than fifty dollars ($50) shall be charged for each application for approval as a physical therapist assistant and the approval which may be granted.

(f) A fee to be set by the examining committee of not more than fifty dollars ($50) shall be charged for renewal of each approval as a physical therapist assistant.

(g) The delinquency fee shall be 50 percent of the renewal fee in effect, but not more than twenty-five dollars ($25).

(h) The duplicate wall certificate fee shall not exceed twenty dollars ($20). The duplicate renewal receipt fee shall not exceed twenty dollars ($20).

(i) The endorsement or letter of good standing fee is thirty dollars ($30).

SEC. 2. Section 2689 of the Business and Professions Code is amended to read:

2689. (a) The committee may establish by regulation suitable application and renewal fees of not more than two hundred dollars

($200), for persons certified to perform electromyographical testing pursuant to Section 2620.5, based upon the cost of operating the certification program. The application fee shall be paid by the applicant at the time the application is filed and the renewal fee shall be paid as provided in Section 2683.

(b) The committee shall charge an examination and reexamination fee of five hundred dollars ($500) to applicants who are examined and who have been found to otherwise meet the committee's standards for certification.

CHAPTER 1031

An act to add Section 70142.11 to the Government Code, relating to courts.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 70142.11 is added to the Government Code, to read:

70142.11. (a) In lieu of the court commissioner authorized pursuant to Section 70141, in Solano County, the judges of the superior court, by majority vote, may appoint two court commissioners and may provide that the commissioners, in addition to the powers and duties specified in Section 259 of the Code of Civil Procedure, may perform the duties of a probate commissioner specified in Section 69897 and, if appointed by the presiding judge of the juvenile court, shall perform the duties of a juvenile court referee as specified in Section 247 of the Welfare and Institutions Code.

(b) Any commissioner appointed pursuant to this section shall have been admitted to practice law in California for not less than five years, shall hold office at the pleasure of the superior court, and shall not engage in the private practice of law.

(c) The salary of the commissioners for all duties performed pursuant to this section shall be set by the board of supervisors, not to exceed the annual salary of a judge of a superior court. The commissioners shall be members of the Solano County Retirement System and shall receive vacation, sick leave, and fringe benefits identical to those provided to Solano County administrative management employees.

(d) The commissioner positions shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for these positions shall not be considered as a part of "court operations" for Solano County for purposes of Sections 77003 and 77204.

SEC. 2. The Legislature declares that it and Solano County have jointly agreed that the court commissioner positions established by this act shall be funded by Solano County solely out of county funds.

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 programs specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the Califonia Constitution.

CHAPTER 1032

An act to amend Sections 25174.1, 25174.2, 25174.6, 25174.7, 25205.2, 25205.6, 25205.7, 25205.8, 25313.5, 25317.5, 25318, 25318.5, 25334, 25342, 25345, 25345.3, 25347.2, 25347.6, 25347.7, 25358.3, and 25400 of, and to repeal Section 25174.3 of, the Health and Safety Code, to amend Sections 43053, 43151, 43152.6, 43152.10, 43551, and 43552 of, and to add Section 43054 to, the Revenue and Taxation Code, to amend Sections 13391, 13391.5, 13392.5, 13392.6, and 13396 of, and to repeal and add Section 13393 of, the Water Code, to amend Section 54 of Chapter 269 of the Statutes of 1989, and to amend and supplement the Budget Act of 1989 by amending Items 4260-001-455, 4260-011-014, 4260-011-455, and 4260-492 of Section 2.00 thereof, relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 25174.1 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25174.1. (a) Each person who disposes of hazardous waste, or who annually submits more than 500 pounds of hazardous waste for disposal in the state or outside of the state, or who submits hazardous waste for treatment at a location outside of the state, shall pay a fee directly to the State Board of Equalization for disposal of hazardous waste to land. For purposes of this chapter, the fee imposed by this section shall be known as the disposal fee.

(b) 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.

(c) The State Board of Equalization shall deposit the fees collected pursuant to this section in the Hazardous Substance Account in the General Fund.

SEC. 2. Section 25174.2 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25174.2. (a) The State Board of Equalization shall set the base rate for the hazardous wastes specified in Section 25174.6 which are disposed of or submitted for disposal in the state or outside of the state, or is submitted for treatment at a location outside of the state on and after July 1, 1989, at fifty-two dollars and fifty cents ($52.50) per ton for disposal of hazardous waste to land.

(b) The base rate specified in subdivision (a) shall apply to persons subject to the fee specified in Section 25174.1. This base rate is the base rate for the 1989–90, 1990–91, 1991–92, 1992–93, and 1993–94 fiscal years. Beginning in fiscal year 1994–95, and for each fiscal year therafter, the State Board of Equalization shall adjust the base rate annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the United States Department of Labor or a successor agency of the federal government. 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 25174.1.

SEC. 3. Section 25174.3 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is repealed.

SEC. 4. Section 25174.6 of the Health and Safety Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

25174.6. (a) The fee provided pursuant to Section 25174.1 shall be determined as a percentage of the base rate, as adjusted by the State Board of Equalization, pursuant to Section 25174.2. 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 disposal, in the state at each specific offsite 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 disposal, in the state, at each specific offsite 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 disposed of, or submitted for disposal, in the state.

(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 disposed of, or submitted for disposal, in the state.

(5) One hundred percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, which is not otherwise subject to the fees specified in paragraph (1), (2), (3), (4), (7), or (8) of this subdivision.

(6) The rates specified in this paragraph apply for each ton, or fraction thereof, of hazardous waste generated in this state which is disposed of, or submitted for disposal outside of the state or which is a hazardous waste residual of any treatment which occurs outside of the state other than incineration, dechlorination, or any treatment described in paragraph (8) and which is disposed of, or submitted for disposal, outside of the state. The rate shall be as follows:

(A) Thirty-five percent of the base rate for the 1989–90 fiscal year.

(B) Forty percent of the base rate for the 1990–91 fiscal year.

(C) Forty-five percent of the base rate after the 1990–91 fiscal year if a new hazardous waste disposal facility is permitted pursuant to Section 25200, or 40 percent of the base rate if no new facility is permitted.

(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 or dechlorination.

(8) Five percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state or outside of the state, that is solid hazardous waste residue resulting from any treatment method which results in free liquid removal, removal of volatile organic constituents, and a minimum waste volume reduction of 50 percent, and which has been approved by the department pursuant to Section 25179.6.

(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.

SEC. 5. Section 25174.7 of the Health and Safety Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1, 25174.6, and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a state or local agency, or its contractor, removes or remedies a release of hazardous waste caused by another person. This paragraph applies to all acts performed by a state or local agency, or its contractor, on or after July 1, 1984.

(2) Hazardous wastes generated or disposed of by state or local agencies operating a household hazardous waste collection program.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 2426 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(b) This section does not prevent the department from

recovering an amount equal to the full cost of the fees specified in Sections 25174.1 and 25174.6 from any person responsible for a release of hazardous waste which has been removed or remedied by a state or local agency, or its contractor. This section does not limit the department's remedies pursuant to any other provision of law.

(c) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is exempt from the fees imposed pursuant to Sections 25174.1, 25205.5, and 25345, in connection with the removal of the tank.

SEC. 6. Section 25205.2 of the Health and Safety Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

25205.2. (a) Except as provided in subdivision (c), in addition to the fees specified in Section 25174.1, 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 or in any fiscal year in which the facility has completed all activities necessary for the facility to be closed in accordance with the approved closure plan, including, but not limited to, submittal of a certification that these activities are completed to the department.

SEC. 7. Section 25205.6 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of two digit SIC codes, as defined in subdivision (o) of Section 25501, as established by the United States Department of Commerce, that consists of corporations which use, generate, store, or conduct activities in this state related to hazardous materials, as defined in subdivision (j) of Section 25501, including, but not limited to, hazardous waste.

(b) Each corporation identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at one hundred dollars ($100) for those corporations with 50 or more employees but less than 100 employees, five hundred dollars ($500) for corporations with 100 or more, but less than 500 employees, and one thousand dollars ($1,000) for corporations with 500 employees or more.

(c) The fee imposed pursuant to this section shall be paid by each corporation which is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Hazardous Waste Control Account. The revenues shall be available, upon appropriation by the Legislature, to cover the costs of implementing this chapter.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed more than 500 hours during the previous calendar year.

SEC. 8. Section 25205.7 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit by regulation governed by this chapter or the regulations adopted pursuant to this chapter, which shall be due and payable upon the facility's notification to the department of its intent to operate in this manner. Except as provided in subdivision (i), the board shall not assess a fee pursuant to this section for an application for a hazardous waste facilities permit for a hazardous waste facility which has been previously operating pursuant to a grant of interim status pursuant to Section 25200.5. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (i), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or notification to the department.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator for which the permit was required on or before July 1, 1989, shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility. A person submitting a hazardous waste facilities permit application for any other incinerator shall pay a fee in accordance with subdivision (e). If the application was submitted before July 1, 1989, the fees specified in this subdivision shall not apply, and the fees specified in subdivision (e) shall instead apply.

(e) A person submitting a hazardous waste facilities permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter, and eight thousand dollars ($8,000) for all other variances. If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(h) A person notifying the department that a facility intends to conform with the requirements for a permit by regulation shall pay one thousand dollars ($1,000).

(i) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(j) (1) A person requesting a permit modification shall pay a fee equal to 70 percent of the fee for a new hazardous waste facilities permit for that facility, or 50 percent of the fee for a new permit for a land disposal facility or an incinerator, if the department's regulations require public notice and public comment before that

modification may go into effect.

(2) Except as provided in paragraph (3), a person requesting any other permit modification not subject to paragraph (1) shall pay a fee of one thousand five hundred dollars ($1,500).

(3) A facility which applies for a new hazardous waste facilities permit, and which has been previously operating pursuant to a grant of interim status, or a facility which applies to renew a hazardous waste facilities permit, shall pay the fee specified in paragraph (1) if the applicant requests any modification for which, if the facility was permitted, the department's regulations would require public notice and public comment before the modification could go into effect.

(k) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(*l*) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(m) The fees assessed pursuant to this section do not apply to any variance issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility.

SEC. 9. Section 25205.8 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25205.8. (a) The board shall assess a fee of seven thousand five hundred dollars ($7,500) upon a person requesting the department to classify a waste as hazardous or nonhazardous. The board shall assess a fee of one thousand dollars ($1,000) for each additional classification request for the same stream of waste requested by the same person. The department shall notify the board at the time the request for classification is made. The fee shall be assessed by the board for request pending at the time the act adding this section goes into effect. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account.

(b) The amount stated in this section shall be a base rate for the 1989–90 fiscal year. Thereafter, the department shall adjust the base

rate annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government.

(c) The fees assessed pursuant to this section do not apply to any waste classification request made for use by a research, development, and demonstration facility, as defined in subdivision (k) of Section 25205.7.

SEC. 10. Section 25313.5 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25313.5. "Extra-large site" means a hazardous substance release site which the department estimates will cost more than five million dollars ($5,000,000) for completion of a remedial investigation and a feasibility study, or more than twenty million dollars ($20,000,000) for the full implementation of all removal and remedial actions, except operation and maintenance.

SEC. 11. Section 25317.5 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25317.5. "Large site" means a hazardous substance release site which the department estimates will cost more than one million two hundred fifty thousand dollars ($1,250,000), but less than five million dollars ($5,000,000), for completion of a remedial investigation and a feasibility study, or more than five million dollars ($5,000,000), but less than twenty million dollars ($20,000,000), for the full implementation of all removal and remedial actions, except operation and maintenance.

SEC. 12. Section 25318 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25318. "Medium site" means a hazardous substance release site which the department estimates will cost more than two hundred fifty thousand dollars ($250,000), but less than one million two hundred fifty thousand dollars ($1,250,000), for completion of a remedial investigation and a feasibility study, or more than one million dollars ($1,000,000), but less than five million dollars ($5,000,000), for full implementation of all removal and remedial actions, except operation and maintenance.

SEC. 13. Section 25318.5 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25318.5. (a) "Operation and maintenance" means those activities initiated or continued following completion of a remedial or removal action that are deemed necessary by the department to protect the public health and environment and achieve or maintain the abatement goals established by the final remedial action plan.

(b) A "small operation and maintenance activity" means an activity or group of activities conducted at a site with an annual operation cost, exclusive of original construction cost, of less than five hundred thousand dollars ($500,000).

(c) A "medium operation and maintenance activity" means an activity or group of activities being conducted at a site with an annual

operation cost, exclusive of original construction cost, of at least five hundred thousand dollars ($500,000), but less than one million dollars ($1,000,000).

(d) A "large operation and maintenance activity" means an activity or group of activities being conducted at a site with an annual operation cost, exclusive of original construction cost, of at least one million dollars ($1,000,000), but less than five million dollars ($5,000,000).

(e) An "extra-large operation and maintenance activity" means an activity or group of activities being conducted at a site with an annual operational cost, exclusive of original construction cost, of at least five million dollars ($5,000,000).

SEC. 14. Section 25334 of the Health and Safety Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

25334. There is within the state account, the Hazardous Substance Clearing Account, which shall be used to pay the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385). Notwithstanding Section 25351, all of the following moneys shall be deposited in the Hazardous Substance Clearing Account for the payment of the principal of, and interest on, bonds:

(a) Transfers from the Superfund Bond Trust Fund made pursuant to Section 25385.8.

(b) Amounts received pursuant to Sections 25356.4 and 25360, as specified in those sections, if the expenditures for removal or remedial actions were paid from the proceeds of the bonds sold pursuant to Article 7.5 (commencing with Section 25385).

(c) Federal moneys received pursuant to the federal act which are designated to be used for removal or remedial actions paid for by proceeds from the bonds issued pursuant to Article 7.5 (commencing with Section 25385).

(d) Any moneys appropriated by the Legislature for the payment of the principal of, and interest on, these bonds.

(e) Any moneys derived from the premiums and accrued interest on these bonds.

SEC. 15. Section 25342 of the Health and Safety Code is amended to read:

25342. Every person who submitted for disposal or who disposed of in the state or outside of the state, or who submitted for treatment at a location outside of the state, more than 500 pounds of hazardous waste in the state during the preceding calendar year shall report to the board the following information on forms prescribed by the board:

(a) The total amount of hazardous waste, as defined by Section 25117, the federal regulation of which has been suspended under the Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.) by act of Congress, which that person has disposed of, or submitted for disposal, in the state or outside of the state, plus the total amount of hazardous waste, which that person has transferred to a surface

impoundment for purposes of reducing the water content of the waste and material by evaporation, plus the total amount of hazardous waste disposed of into an injection well or landfarm, as defined in subdivision (g) of Section 25345, exclusive of that waste specified in subdivisions (d) and (e).

(b) The total amount of hazardous waste disposed of, or submitted for disposal, in the state or outside of the state, by that person, exclusive of that waste specified in subdivisions (a), (c), (d), and (e).

(c) The total amount of extremely hazardous waste disposed of, or submitted for disposal, in the state or outside of the state, by that person, exclusive of that waste specified in subdivisions (a), (b), (d), and (e).

(d) The total amount of hazardous or extremely hazardous waste that person has disposed of, or submitted for disposal, in the state or outside of the state, from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from mining of uranium ore.

(e) The total amount of hazardous waste that person has disposed of, or submitted for disposal, in the state that is a solid hazardous waste residue resulting from incineration or dechlorination.

(f) Persons submitting hazardous waste for treatment at a location outside of the state shall report, according to the categories set forth in subdivisions (a) to (d), inclusive, the total amount of hazardous waste residue resulting from that treatment which requires disposal.

SEC. 16. Section 25345 of the Health and Safety Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

25345. (a) There is hereby imposed a tax, payable annually, and to be collected by the board, upon each ton or fraction thereof, of waste and material specified in Section 25342, for which the base rate is fifty-two dollars and fifty cents ($52.50) per ton. The base rate for a calendar year is the rate applied to waste and material specified in Section 25342 for each calendar year.

(b) The base rate specified in subdivision (a) shall apply to the 1989 to 1993, inclusive, calendar years. Commencing with calendar year 1994, and each year thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the United States government.

(c) The tax imposed upon each person who submitted for disposal, or who disposed of, more than 500 pounds of hazardous waste in the state, that is reported pursuant to Section 25342 shall be assessed according to the following formula:

$$\text{Tax} = (\text{base tax rate}) \times (0.15P_1 + P_2 + 2P_3 + 0.01P_4 + 0.05P_5)$$

where:

(1) "Base tax rate" equals the figure determined pursuant to subdivision (b).

(2) P_1 is the amount in tons of waste and material specified by the person pursuant to subdivision (a) of Section 25342.

(3) P_2 is the amount in tons of waste specified by the person pursuant to subdivision (b) of Section 25342.

(4) P_3 is the total amount in tons of waste specified by the person pursuant to subdivision (c) of Section 25342.

(5) P_4 is the total amount in tons of waste specified by the person pursuant to subdivision (d) of Section 25342.

(6) P_5 is the total amount in tons of waste specified by the person pursuant to subdivision (e) of Section 25342.

(d) The tax specified in this subdivision is imposed upon each person who submits for transportation to a location outside of the state more than 500 pounds of hazardous waste in each calendar year that is reported pursuant to Section 25342. The tax per ton, or fraction thereof, of hazardous waste so reported is as follows:

(1) Thirty-five percent of the base rate for the 1989–90 fiscal year.

(2) Forty percent of the base rate for the 1990–91 fiscal year.

Forty-five percent of the base rate after the 1990–91 fiscal year if a new hazardous waste disposal facility is permitted pursuant to Section 25200, or 40 percent of the base rate if no new facility is permitted.

(e) On or before March 1 of each year, each person subject to Section 25342 shall file an annual return and pay the proper amount of tax due. The tax under this chapter shall not be imposed again on hazardous waste or extremely hazardous waste if the waste, or any portion thereof, is removed subsequently to another place for disposal and if the person has paid the tax for the waste in accordance with this section before the removal thereof.

(f) Notwithstanding any other provision of this section, hazardous wastes disposed of into an injection well during the 1981 calendar year shall be subject to a tax rate that does not exceed 26.4 percent of the base tax rate, as determined in subdivision (a), as it read on January 1, 1984, per ton or fraction thereof.

(g) For purposes of this article, the following definitions apply:

(1) "Injection well" means a bored, drilled, or driven shaft, whose depth is greater than the largest surface dimension, and which is used to inject hazardous waste into an underground formation. Injection well does not mean any well located in class I or a class II–I disposal site, as defined in Sections 2510 and 2511 of Title 23 of the California Administrative Code, on September 25, 1981.

(2) "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(3) "Landfarm" means a waste management technique, conducted within a hazardous waste facility which has received a hazardous waste facilities permit or has obtained interim status pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5, or pursuant to Section 6925 of Title 42 of the United States Code.

This waste management technique consists of applying oily wastes, biodegradable wastes, or both wastes onto land and incorporating them into the surface of the soil and, by controlling critical parameters of alkalinity and acidity, moisture content, and soil texture, enhancing the aerobic biodegradation of the waste into carbon dioxide, water, and humus. Landfarming is a managed process which changes the physical, chemical, or biological composition of hydrocarbon wastes, and it does not include any other land disposal practices, including, but not limited to, landfilling or codisposal.

SEC. 17. Section 25345.3 of the Health and Safety Code is amended to read:

25345.3. (a) Any person, or the person's contractor, which removes or remedies a release, by another person, of hazardous waste is not subject to the requirements of Sections 25342 and 25345 with respect to that removal or remedial action.

(b) Except as provided in subdivision (c), the person responsible for a release of hazardous waste, which has been removed or remedied by a state or local agency, or its contractor, shall submit to the board the information required by Section 25342 for the hazardous waste which was released and shall also pay the tax provided in Section 25345.

(c) On and after July 1, 1984, persons responsible for a release of hazardous waste, which has been removed or remedied before September 30, 1990, pursuant to a remedial action plan issued pursuant to Section 25356.1, are not subject to the requirements of Sections 25342 and 25345, and the hazardous waste so removed is not subject to the fee specified in Section 25174.1, with respect to that removal or remedial action, if the original release did not result from willful misconduct by the responsible persons.

SEC. 18. Section 25347.2 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25347.2. The Director of Finance shall schedule in the annual Budget Act the projects proposed in any fiscal year, which will incur direct costs for removal and remedial actions at hazardous substance release sites.

SEC. 19. Section 25347.6 of the Health and Safety Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

25347.6. (a) On and after July 1, 1989, the State Board of Equalization shall assess a fee upon a potentially responsible party for the costs incurred by the department in connection with the oversight of any removal or remedial action taken by that party pursuant to Section 25355.5 or any action taken by that party pursuant to an order issued pursuant to subdivision (a) of Section 25358.3. The fee is in addition to the costs incurred for the removal or remediation which are not oversight costs, and shall be recovered pursuant to Section 25360. The fees shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the state account.

(b) A potentially responsible party shall pay the fee imposed pursuant to this section prior to the commencement of the action for which the oversight occurs. The amounts of the fee specified in this section are base rates for the 1989–90 fiscal year. Thereafter, the State Board of Equalization shall adjust the fee annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index issued by the Department of Labor or a successor agency of the United States government.

(c) A potentially responsible party shall pay a fee of five thousand dollars ($5,000) to pay for the costs of those actions deemed necessary by the department to accurately estimate the size and complexity of a hazardous substance release site to establish the fee imposed pursuant to subdivisions (d) to (j), inclusive.

(d) A potentially responsible party shall pay a fee for a preliminary endangerment assessment of seven thousand five hundred dollars ($7,500).

(e) A potentially responsible party shall pay a fee for oversight of a removal action of fourteen thousand five hundred dollars ($14,500) for a small removal action, thirty-seven thousand dollars ($37,000) for a medium removal action, seventy-three thousand five hundred dollars ($73,500) for a large removal action, and one hundred forty-seven thousand dollars ($147,000) for an extra-large removal action.

(f) A potentially responsible party shall pay a fee for oversight of a remedial investigation and a feasibility study of twenty-one thousand five hundred dollars ($21,500) for a small site, forty-three thousand dollars ($43,000) for a medium site, eighty-five thousand five hundred dollars ($85,500) for a large site, and two hundred thousand dollars ($200,000) for an extra-large site.

(g) A potentially responsible party shall pay a fee for oversight of a remedial action plan of four thousand five hundred dollars ($4,500) for a small site, nine thousand dollars ($9,000) for a medium site, eighteen thousand dollars ($18,000) for a large site, and thirty-eight thousand dollars ($38,000) for an extra-large site.

(h) A potentially responsible party shall pay a fee for oversight of a remedial design of seven thousand five hundred dollars ($7,500) for a small site, fourteen thousand five hundred dollars ($14,500) for a medium site, twenty-nine thousand dollars ($29,000) for a large site, and eighty thousand dollars ($80,000) for an extra-large site.

(i) A potentially responsible party shall pay a fee for the oversight of a final remedial action of ten thousand dollars ($10,000) for a small site, twenty thousand dollars ($20,000) for a medium site, forty thousand dollars ($40,000) for a large site, and one hundred six thousand dollars ($106,000) for an extra-large site.

(j) A potentially responsible party shall pay a fee per year for oversight and monitoring of ongoing operation and maintenance activities of six thousand dollars ($6,000) for a small operation and maintenance activity, twelve thousand dollars ($12,000) for a medium operation and maintenance activity, twenty-four thousand

dollars ($24,000) for a large operation and maintenance activity, and thirty-four thousand dollars ($34,000) for an extra-large operation and maintenance activity.

(k) (1) Fees for any oversight activity being performed on July 1, 1989, or any subsequent date, shall be assessed pursuant to this section and Section 25347.7, even if the activity began prior to July 1, 1989. If the activity began prior to July 1, 1989, the fees shall be payable within 60 days after the effective date of the act adding this section. This section shall not apply to activities for which work has been completed prior to July 1, 1989.

(2) If there is a conflict between this subdivision and Section 25347.7 and the provisions of any agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 25355.5 prior to the effective date of the act adding this section, the agreement shall prevail, unless the agreement is modified as allowed by its terms or by mutual consent of all parties.

(3) Any order or agreement entered into for removal or remedial action may be modified by consent of all parties to assess the fees listed in this section in place of any provisions for charges or cost recovery contained in the order of agreement.

(*l*) Notwithstanding this section, a potentially responsible party shall pay the State Board of Equalization a fee equal to the actual costs of the department's costs of oversight, in advance of the oversight for removal or remedial activities which is done, pursuant to an agreement, if the site is not listed pursuant to Section 25356, except the potentially responsible party is not required to pay for the costs of any activities necessary and incidental to entering the agreement, which shall be reimbursed pursuant to the agreement.

(m) (1) The department may reclassify a site as to size, as warranted by new information supplied by the department, but this reclassification shall not result in a change in the amount of fees for oversight of any activity which has been completed or is underway.

(2) If a site may be classified as two sizes pursuant to Sections 25313.5, 25317.5, 25318, and 25326.6, it shall be classified as the larger of those sizes.

(n) Notwithstanding this section, the department may waive the fees imposed by this section for any hazardous substance release site owned and operated by an agency of the federal government, if the department has entered into an agreement with that agency for the payment of fees in an amount different from the amounts specified in this section.

SEC. 20. Section 25347.7 of the Health and Safety Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

25347.7. (a) A potentially responsible party is liable for reimbursing the state account or the Hazardous Substance Cleanup Fund for all expenditures associated with the identification, characterization, and remediation of hazardous substance release sites, including interest and administrative costs, pursuant to Section 25360, for any of these activities which occur before July 1, 1989. The

department shall prorate the fees charged by the department pursuant to Section 25347.6 for an activity or phase of activity initiated, but not completed, prior to July 1, 1989, pursuant to this section.

(b) The department shall divide the fee for an activity or phase of activity specified in Section 25347.6 by the number of months estimated by the department to be required to conduct the activity or phase of activity to establish a monthly fee quotient. The department may apply the monthly fee quotient in either of the following ways to establish the prorated fee:

(1) The department may subtract that portion of an activity or phase of activity completed prior to July 1, 1989, from the total number of months estimated by the department to be required to conduct the activity or phase of activity and then multiply the remainder by the monthly fee quotient to establish the prorated fee.

(2) The department may estimate the number of months required to complete an activity or phase of activity and multiply that figure by the monthly fee quotient to establish the prorated fee.

(c) For purposes of making the estimates as are necessary to prorate fees, the department may use the following time periods as guidelines to establish the time periods necessary to complete the various activities and phases of activity specified in Section 25347.6 for which fees are assessed:

(1) The time period required to estimate site size for fee assessment purposes is three months.

(2) The time period required to conduct preliminary endangerment assessments is three months.

(3) The time period required to conduct removal actions is four months for small actions, six months for medium actions, 12 months for large actions, and 24 months for extra-large actions.

(4) The time period required to conduct remedial investigations and feasibility studies is nine months for small sites, 17 months for medium sites, 33 months for large sites, and 60 months for extra-large sites.

(5) The time period required to prepare remedial action plans is three months for small sites, three months for medium sites, six months for large sites, and nine months for extra-large sites.

(6) The time period required to prepare remedial design is two months for small sites, three months for medium sites, six months for large sites, and 12 months for extra-large sites.

(7) The time period required to conduct final remedial actions is deemed to be four months for small sites, eight months for medium sites, 20 months for large sites, and 40 months for extra-large sites.

(8) Ongoing operation and maintenance activities are deemed to be conducted 12 months per year.

SEC. 21. Section 25358.3 of the Health and Safety Code, as amended by Chapter 269 of the Statute of 1989, is amended to read:

25358.3. (a) Whenever the director determines that there may be an imminent or substantial endangerment to the public health or

welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any or all of the following:

(1) Order any responsible party or parties to take appropriate removal or remedial action necessary to protect the public health and safety and the environment. No order under this section shall be made to an owner of real property solely on the basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

(2) Take or contract for any necessary removal or remedial action.

(3) Request the Attorney General to secure the relief as may be necessary to abate the danger or threat. The superior court of the county in which the threat or danger occurs shall have jurisdiction to grant the relief which the public interest and equities of the case may require to protect public health and welfare and the environment.

(b) When the director determines that a release of a hazardous substance has occurred or is about to occur, the director may do any or all of the following:

(1) Undertake those investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances involved and the extent of danger to the public health or environment.

(2) Undertake those planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations which are necessary or appropriate to plan and direct response actions, to recover the cost of those actions, and to enforce this chapter.

(c) Whenever there is a release or threatened release of a hazardous substance into the environment, the director may take or contract for any necessary removal or remedial action and may take or contract for any actions authorized by subdivision (b), in compliance with the provisions of this chapter, including, but not limited to, subdivision (b) of Section 25355.

(d) Any person bidding for a contract specified in subdivision (c) shall submit a disclosure statement, as specified by Section 25112.5, except for a federal, state, or local agency. The director may prohibit a person from bidding on such a contract if the director makes any of the following determinations:

(1) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has engaged in activities resulting in any federal or state conviction which are significantly related to the fitness of the bidder to perform the bidder's duties or activities under the contract. For purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department may take pursuant to this subdivision relating to the department's refusal to permit a person to bid on the contract may be based upon a conviction for

which any of the following has occurred:

(A) The time for appeal has elapsed.

(B) The judgment of conviction has been affirmed on appeal.

(C) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the 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.

(2) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this chapter or Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of this division, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sec. 1801 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) The director determines, in writing, that the bidder has had a license, permit, or registration for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous substances revoked or suspended.

SEC. 22. 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 or property damage caused by an act or omission 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 act taken or omission was performed in bad faith or in a grossly negligent manner.

(c) For the purposes of this section, it shall be presumed that the act or omission 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, the following definitions apply:

(1) "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.

(2) "Imminent peril" includes a peril which, if not mitigated, threatens the public health or welfare, or the environment.

(3) "Person authorized by a public agency" includes a person from whom services are contracted by a public agency.

(4) "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.

(5) "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.

(e) 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.

(f) 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. 23. Section 43053 of the Revenue and Taxation Code, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

43053. The fees imposed pursuant to Sections 25205.2, 25205.5, 25205.6, 25205.7, and 25205.8, of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 24. Section 43054 is added to the Revenue and Taxation Code, to read:

43054. The fees imposed pursuant to Section 25347.6 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 25. Section 43151 of the Revenue and Taxation Code is amended to read:

43151. The fee imposed pursuant to Section 25174.1 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. 26. Section 43152.6 of the Revenue and Taxation Code is amended to read:

43152.6. The fee imposed pursuant to Section 25205.2 of the Health and Safety Code which is collected and administered under Section 43053 of this code is due and payable to the board in two equal installments, on or before November 1 and April 1 of each fiscal year.

SEC. 27. Section 43152.10 of the Revenue and Taxation Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

43152 10. The fees imposed pursuant to Sections 25205.7, 25205.8, and 25347.6 of the Health and Safety Code, which are collected and administered under Sections 43053 and 43054, are due and payable within 30 days after the date of assessment and the feepayer shall deliver a remittance of the amount of the assessed fee to the office

of the board within that 30-day period.

SEC. 28. 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 Section 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. 29. Section 43552 of the Revenue and Taxation Code is amended to read:

43552. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Sections 43051, 43052, and 43054 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 Substance Account.

SEC. 30. Section 13391 of the Water Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

13391. (a) The state board shall formulate and adopt a water quality control plan for enclosed bays and estuaries, which shall be known as the California Enclosed Bays and Estuaries Plan, in accordance with the procedures established by this division for adopting water quality control plans.

(b) As part of its formulation and adoption of the California Enclosed Bays and Estuaries Plan, the state board shall review and update the Water Quality Control Policy for Enclosed Bays and Estuaries of California, as adopted in 1974 pursuant to Article 3 (commencing with Section 13140) of Chapter 3, and incorporate the results of that review and update in the California Enclosed Bays and Estuaries Plan.

(c) State and regional offices, departments, boards and agencies shall fully implement the California Enclosed Bays and Estuaries Plan. Pending adoption of the California Enclosed Bays and Estuaries Plan by the state board, state and regional offices, departments, boards and agencies shall fully implement the Water Quality Control Policy for Enclosed Bays and Estuaries of California.

(d) Each regional board shall review and, if necessary, revise waste discharge requirements that are inconsistent with those policies and principles.

SEC. 31. Section 13391.5 of the Water Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

13391.5. The definitions set forth in this section govern the construction of this chapter.

(a) "Enclosed bays" means indentations along the coast which enclose an area of oceanic water within distinct headlands or harbor works. "Enclosed bays" include all bays where the narrowest

distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. "Enclosed bays" include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. For the purposes of identifying, characterizing, and ranking toxic hot spots pursuant to this chapter, Monterey Bay and Santa Monica Bay shall also be considered to be enclosed bays.

(b) "Estuaries" means waters, including coastal lagoons, located at the mouths of streams which serve as mixing zones for fresh and ocean waters. Coastal lagoons and mouths of streams which are temporarily separated from the ocean by sandbars shall be considered as estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and sea water. Estuarine waters include, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay Rivers.

(c) "Health risk assessment" means an analysis which evaluates and quantifies the potential human exposure to a pollutant that bioaccumulates or may bioaccumulate in edible fish, shellfish, or wildlife. "Health risk assessment" shall include an analysis of both individual and population wide health risks associated with anticipated levels of human exposure, including potential synergistic effects of toxic pollutants and impacts on sensitive populations.

(d) "Sediment quality objective" means that level of a constituent in sediment which is established with an adequate margin of safety, for the reasonable protection of the beneficial uses of water or the prevention of nuisances.

(e) "Toxic hot spots" means locations in enclosed bays, estuaries, or any adjacent waters in the "contiguous zone" or the "ocean," as defined in Section 502 of the Clean Water Act (33 U.S.C. Sec. 1362), the pollution or contamination of which affects the interests of the state, and where hazardous substances have accumulated in the water or sediment to levels which (1) may pose a substantial present or potential hazard to aquatic life, wildlife, fisheries, or human health, or (2) may adversely affect the beneficial uses of the bay, estuary, or ocean waters as defined in water quality control plans, or (3) exceeds adopted water quality or sediment quality objectives. For purposes of this chapter, "hazardous substances" shall have the same meaning as in subdivision (d) of Section 25281 of the Health and Safety Code.

SEC. 32. Section 13392.5 of the Water Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

13392.5. (a) Each regional board which has regulatory authority for one or more enclosed bays or estuaries shall, by January 1, 1992,

develop for each enclosed bay or estuary, a consolidated data base which identifies and describes all known and suspected toxic hot spots. Each regional board shall, in consultation with the state board, also develop an ongoing monitoring and surveillance program that includes, but is not limited to, the following components:

(1) Establishment of a monitoring and surveillance task force that includes representation from agencies, including, but not limited to, the State Department of Health Services and the Department of Fish and Game, that routinely monitor water quality, sediment, and aquatic life.

(2) Suggested guidelines to promote standardized analytical methodologies and consistency in data reporting.

(3) Identification of additional monitoring and analyses that are needed to develop a complete toxic hot spot assessment for each enclosed bay and estuary.

(b) Each regional board shall make available to state and local agencies and the public all information contained in the consolidated data base, as well as the results of new monitoring and surveillance data.

SEC. 33. Section 13392.6 of the Water Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

13392.6. (a) On or before July 1, 1991, the state board shall adopt and submit to the Legislature a workplan for the adoption of sediment quality objectives for toxic pollutants that have been identified in known or suspected toxic hot spots and for toxic pollutants that have been identified by the state board or a regional board as a pollutant of concern. The workplan shall include priorities and a schedule for development and adoption of sediment quality objectives, identification of additional resource needs, and identification of staff or funding needs. The state board is not prohibited from adopting sediment quality objectives in the workplan for a constituent for which the workplan identifies additional research needs.

(b) In preparing the workplan pursuant to subdivision (a), the state board shall conduct public hearings and workshops and shall consult with persons associated with municipal discharges, industrial discharges, other public agencies, research scientists, commercial and sport fishing interests, marine interests, organizations for the protection of natural resources and the environment, and the general public.

SEC. 34. Section 13393 of the Water Code, as added by Chapter 269 of the Statutes of 1989, is repealed.

SEC. 35. Section 13393 is added to the Water Code, to read:

13393. The state board shall adopt sediment quality objectives pursuant to the workplan submitted pursuant to Section 13392.6. The state board shall adopt the sediment quality objectives pursuant to the procedures established by this division for adopting or amending water quality control plans. The sediment quality objectives shall be based on scientific information, including, but not limited to,

chemical monitoring, bioassays or established modeling procedures, and shall provide adequate protection for the most sensitive aquatic organisms. The state board shall base the sediment quality objectives on a health risk assessment if there is a potential for exposure of humans to pollutants through the food chain to edible fish, shellfish, or wildlife.

SEC. 36. Section 13396 of the Water Code, as added by Chapter 269 of the Statutes of 1989, is amended to read:

13396. No person shall dredge or otherwise disturb a toxic hot spot site that has been identified and ranked by a regional board without first obtaining certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) or waste discharge requirements. The state board and any regional board to which the state board has delegated authority to issue certification shall not waive certification for any discharge resulting from the dredging or disturbance unless waste discharge requirements have been issued. If the state board or a regional board does not issue waste discharge requirements or a certification within the period provided for certification under Section 401 of the Clean Water Act. The certification shall be deemed denied without prejudice. On or after January 1, 1993, the state and regional boards shall not grant approval for a dredging project that involves the removal or disturbance of sediment which contains pollutants at or above the sediment quality objectives established pursuant to Section 13393 unless the board determines all of the following:

(a) The polluted sediment will be removed in a manner that prevents or minimizes water quality degradation.

(b) Polluted dredge spoils will not be deposited in a location that may cause significant adverse effects to aquatic life, fish, shellfish, or wildlife or may harm the beneficial uses of the receiving waters, or does not create maximum benefit to the people of the state.

(c) The project or activity will not cause significant adverse impacts upon a federal sanctuary, recreational area, or other waters of significant national importance.

SEC. 37. Section 54 of Chapter 269 of the Statutes of 1989 is amended to read:

Sec. 54. (a) The sum of three million nine hundred thousand dollars ($3,900,000) is hereby appropriated from the Hazardous Substance Account in the General Fund to the State Water Resources Control Board for the operation of the underground tank pilot project pursuant to Section 25297.1 of the Health and Safety Code.

(b) The sum of five million dollars ($5,000,000) is hereby appropriated from the Hazardous Waste Control Account in the General Fund to the State Water Resources Control Board to implement Chapter 5.6 (commencing with Section 13390) of Division 7 of the Water Code.

SEC. 38. Item 4260-001-455 of Section 2.00 of the Budget Act of 1989 is amended to read:

4260-001-455—For support of Department of Health Services, for payment to Item 4260-001-001, payable from the Hazardous Substance Account, General Fund 5,567,000

Provisions: 1 The limitations of Item 9840-001-494 shall not apply to any deficiency expenditure authorization for the Department of Health Services payable from the Hazardous Substance Account, General Fund

2 Upon the request of the department and the approval of the Director of the Department of Finance, the Controller shall transfer between Item 4260-001-455 and Item 4260-011-455 those funds necessary to ensure that sufficient funds are available for the programs approved by this act

SEC. 39. Item 4260-011-014 of Section 2.00 of the Budget Act of 1989, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

4260-011-014—For support of Department of Health Services (Toxic Substances Control Division) 35,458,000

Schedule:

(a) 12.10-Site Mitigation		75,302,000
(1) General Program	28,016,000	
(2) Direct Site Clean-up	15,375,000	
(3) Responsible Party	3,400	
(4) Federal Special Projects	28,511,000	
(b) 12.20-Permitting		14,360,000
(c) 12.30-Surveillance and Enforcement		14,576,000
(d) 12.40-Alternative Technology		13,288,000
(e) 12.50.001-Program Direction and Support		17,905,000
(f) 12.50.002-Distributed Program Direction and Support		-17,905,000
(g) Amount payable from Hazardous Waste Management Plan (Item 4260-011-428)		-1,015,000
(h) Amount payable from Hazardous Substance Account (Item 4260-011-455)		43,391,000
(i) Amount payable from Federal Trust Fund (Item 4260-011-890) ..		-6,012,000
(j) Amount payable from Hazardous Substance Account (Item 4260-020-455)		-3,400,000

(k) Amount payable from Federal Trust Fund (Item 4260-021-890) .. -28,250,000

Provisions:

1. Notwithstanding subdivision (a) of Section 25353 of the Health and Safety Code, funds from the Hazardous Substance Account appropriated by this act may be used by the department to provide for state oversight of the abatement of hazardous waste sites located on property owned and operated by the federal government including federal military installations.
2. If a responsible party, or parties, pay(s) the department in advance for the state's costs incurred in monitoring responsible-party cleanups, funds budgeted in the Hazardous Substance Account shall not be spent unless the Legislature is provided 30 days' advance notice.
3. The limitations of Item 9840-001-494 shall not apply to any deficiency expenditure authorization for the Department of Health Services payable from the Hazardous Waste Control Account, General Fund.
4. Notwithstanding provision (b) of Section 1 of Chapter 1624, Statutes of 1988, the amount of money equal to the state's share of the responsibility shall not be transferred from the General Fund to the Special Account for Capital Outlay.
5. At least 30 days prior to the department's submittal to the Office of Administrative Law of proposed regulations regarding a permit-by-rule approach to permitting facilities which handle state-only wastes, a copy of the proposed regulations shall be submitted for review to the Assembly Committee on Environmental Safety and Toxic Materials, the Assembly Ways and Means Committee, the Senate Committee on Toxics and Public Safety Management, and the Senate Committee on Budget and Fiscal Review.

SEC. 40. Item 4260-011-455 of Section 2.00 of the Budget Act of 1989, as amended by Chapter 269 of the Statutes of 1989, is amended to read:

4260-011-455—For support of Department of Health Services (Toxic Substances Control Division), for payment to Item 4260-011-014, payable from the Hazardous Substance Account, General Fund 43,391,000

Provisions.

1. The limitations of Item 9840-001-494 shall not apply to any deficiency expenditure authorization for the Department of Health Services payable from the Hazardous Substance Account.

SEC. 41. Item 4260-492 of Section 2.00 of the Budget Act of 1989 is amended to read:

4260-492—Reappropriation, Department of Health Services. The balance of the appropriation provided in the following citation is reappropriated for the purposes provided in Schedules (a), (c), and (d) of Section 7 of Chapter 1439, Statutes of 1985, and shall be available for encumbrance and expenditure until June 30, 1990:
710--Hazardous Substance Cleanup Fund
For support, as appropriated by Items 4260-011-710 and 4260-012-710 of the Budget Act of 1987 and Items 4260-011-710 and 4260-012-710 of the Budget Act of 1988.

SEC. 42. The sum of one million three hundred fifty thousand dollars ($1,350,000) is hereby appropriated from the Hazardous Waste Control Account in the General Fund to the Department of Finance, for allocation to the State Board of Equalization not sooner than 30 days after notification in writing of the necessity of this allocation to the Chairperson of the Ways and Means Committee of the Assembly, the Chairperson of the Budget and Fiscal Review Committee of the Senate, and the Chairperson of the Joint Legislative Budget Committee. The State Board of Equalization may expend this appropriation, upon allocation, to implement changes in the Health and Safety Code and the Revenue and Taxation Code concerning hazardous waste fees made by Chapter 269 of the Statutes of 1989.

SEC. 43. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 44. 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 to provide funding for the state's hazardous

waste control program in order to protect public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1033

An act to amend Sections 922.4 and 922.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 922.4 of the Insurance Code is amended to read:

922.4. Credit in accounting and financial statements on account of reinsurance ceded to a nonadmitted reinsurer other than an alien reinsurer shall be allowed only:

(a) Where it is demonstrated by the ceding insurer to the satisfaction of the commissioner that the reinsurer maintains the standards and meets the financial requirements applicable to an admitted insurer and that it will submit itself to the jurisdiction of the courts of this state, or a court of competent jurisdiction in any state of the United States and designate the commissioner or a designated attorney in this state as its agent for service of process in this state in any action, suit, or proceeding instituted by or on behalf of the ceding insurer for any matter arising out of the reinsurance, or

(b) To the extent of deposits by, or funds withheld from, the reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for those purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer. With respect to credit life insurance and credit disability insurance, the deposits or funds shall be deposited in a bank located in California, notwithstanding the fact that the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims, unearned premium, and all other policy and contract liabilities and reserve obligations to be made by a foreign reinsurer in connection with its liability under a specific reinsurance agreement. The clean and irrevocable letter of credit shall be issued and maintained under arrangements satisfactory to the commissioner as constituting

security to the ceding insurer substantially equal to that of a deposit under subdivision (b), and that it shall be (1) issued or confirmed by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner, (2) issued by a California state chartered bank which is insured by the Federal Deposit Insurance Corporation and meets the conditions established by the commissioner, or (3) issued or confirmed by a United States office of a foreign banking corporation that is (A) licensed under the laws of the United States or any state thereof, (B) regulated, supervised, and examined by an agency of the United States or a state agency having regulatory authority with respect to banks and trust companies, (C) designated by the Securities Valuation Office of the National Association of Insurance Commissioners as meeting its credit standards for issuing or confirming letters of credit, and (D) of a financial standing that is satisfactory to the Commissioner. For purposes of this subdivision, a confirming bank undertakes the identical terms and obligations of the issuer including those set forth herein. The changes enacted to this subdivision at the 1982 Regular Session shall apply only to life insurers.

As used in this section, the terms "deposits" and "funds" include securities authorized as general investments by Article 3 (commencing with Section 1170) of Chapter 2, but not to exceed current market value.

SEC. 2. Section 922.5 of the Insurance Code is amended to read:

922.5. Credit in accounting and financial statement permitted by this code on account of reinsurance ceded to an alien reinsurer other than one which complies with Article 2 (commencing with Section 1580) of Chapter 4 and includes in the statements required by that article all reserves and liabilities arising out of that reinsurance shall be allowed only:

(a) To the extent of the amount of deposits by, and funds withheld from, the alien reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for those purposes in a bank which is a member of the Federal Reserve System, if withdrawals from the trust cannot be made without the consent of the ceding insurer, or

(b) Where the alien reinsurer maintains sufficient assets in the United States for the protection of policyholders in the United States and operates its business in a manner which satisfies the commissioner that it maintains standard and financial condition reasonably comparable to those required of admitted insurers and that it is able to pay losses in the United States and that it will submit itself to the jurisdiction of the courts of this state, or a court of competent jurisdiction in any state of the United States and designate the commissioner or a designated attorney in this state as its agent for service of process in this state in any action, suit, or

proceeding instituted by or on behalf of the ceding insurer for any matter arising out of the reinsurance.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims, unearned premium, and all other policy and contract liabilities and reserve obligations to be made by an alien reinsurer in connection with its liability under a specific reinsurance agreement The clean and irrevocable letter of credit shall be issued and maintained under arrangements satisfactory to the commissioner as constituting security to the ceding insurer substantially equal to that of a deposit under subdivision (a), and that it shall be (1) issued or confirmed by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner, (2) issued by a California state chartered bank which is insured by the Federal Deposit Insurance Corporation and meets the conditions established by the commissioner, or (3) issued by or confirmed a United States office of a foreign banking corporation that is (A) licensed under the laws of the United States or any state thereof, (B) regulated, supervised, and examined by an agency of the United States or a state agency having regulatory authority with respect to banks and trust companies, (C) designated by the Securities Valuation office of the National Association of Insurance Commissioners as meeting its credit standards for issuing or confirming letters of credit, and (D) of a financial standing satisfactory to the commissioner. For purposes of this subdivision, a confirming bank undertakes the identical terms and obligations of the issuer including those set forth herein. The changes enacted to this subdivision at the 1982 Regular Session shall apply only to life insurers

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CHAPTER 1034

An act to amend Section 243.4 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 243.4 of the Penal Code is amended to read:

243.4. (a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year

or in the state prison for two, three, or four years.

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(c) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. Such an act is punishable by imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

(d) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or both. As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

(e) As used in subdivisions (a), (b), and (c), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(f) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(g) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1035

An act to amend Section 22825.3 of the Government Code, relating to public employees' health benefits.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 22825.3 of the Government Code is amended to read:

22825.3. (a) Notwithstanding Sections 22825, 22825.1, and 22825.2, state employees who become state members of the Public Employees' Retirement System after January 1, 1989, and who are members in state bargaining units for which a memorandum of understanding to become subject to this section has been agreed to by the state employer and the recognized employee organization shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Section 22825.1, unless these employees are credited with 10 years of state service as defined by this section, at the time of retirement.

(b) Notwithstanding Sections 22825, 22825.1, and 22825.2, a state employee who became a state member of the Public Employees' Retirement System after January 1, 1990, and is either (1) excepted from the definition of state employee in subdivision (c) of Section 3513; or (2) a supervisory employee as defined in Section 3522.1; or (3) employed by the executive branch of government who is not a member of the state civil service, shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Section 22825.1, unless the employee is credited with 10 years of state service as defined by this section, at the time of retirement.

(c) The percentage of employer contribution payable for postretirement health benefits for an employee subject to this section shall be based on the member's completed years of credited state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

(d) This section shall apply only to state employees who retire for service.

(e) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(f) For the purposes of this section, "state service" shall mean service rendered as an employee or an appointed or elected officer of the state for compensation.

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

CHAPTER 1036

An act to add Section 1602 to, and to add Article 4.1 (commencing with Section 1591) to Chapter 6 of Part 1 of Division 1 of, the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Article 4.1 (commencing with Section 1591) is added to Chapter 6 of Part 1 of Division 1 of the Unemployment Insurance Code, to read:

Article 4.1. Building Fund

1591. (a) There is in the State Treasury the Employment Development Department Building Fund. There shall be deposited

in, or transferred to, the fund the following:

(1) All money received from the sale or lease of real property, the purchase, acquisition, or construction of which was made by an appropriation to the Employment Development Department for that specific purpose, which was amortized with federal funds paid out of the Unemployment Administration Fund.

(2) All interest earned by the fund.

(b) Money in the fund shall only be expended pursuant to appropriations by the Legislature.

1592. The Employment Development Department Building Fund shall be used for the acquisition, construction, or renovation of department facilities, necessary for the director to administer this code and laws relating thereto.

SEC. 2. Section 1602 is added to the Unemployment Insurance Code, to read:

1602. The department shall comply with all federal regulations with regard to the sale of property in which the federal government has an equity.

SEC. 3. (a) The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current fair market value and upon any terms and conditions and subject to any reservations and exceptions as the director determines are in the best interest of the state, all or any part of the following property:

Parcel 1. Approximately 1.46 acres improved with a structure, known as 1525 South Broadway, in the City of Los Angeles.

(b) The sale of the parcel described in subdivision (a) is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 (commencing with Section 21000) 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 parcels described in subdivision (a) 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 into the Employment Development Department Building 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.

(f) The sale of the parcel described in subdivision (a) shall be contingent upon an assurance by the Employment Development Department that it will continue to provide services to residents of the area.

CHAPTER 1037

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

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature hereby finds and declares that, in school districts in many rural areas of this state, the size of substitute teacher pools to serve the public schools has diminished by more than 50 percent over the last few years. As a result, these school districts do not have enough substitute teachers to cover authorized absences by full-time teachers, and release time for teachers to attend in-service programs required by the state is granted sparingly, if at all.

SEC. 2. (a) The Commission on Teacher Credentialing shall conduct a study of a representative sampling of rural school districts of this state. The study shall be conducted in coordination with a representative of, and the resources of, the county office of education of each county containing the school districts comprising the representative sampling of school districts. The commission shall conduct the study to do the following:

(1) Determine the causes for the difficulty experienced by certain rural school districts in maintaining access to an adequate number of substitute teachers

(2) Recommend strategies, both state and local, to expand the supply of substitute teachers, particularly those strategies that have been found to be effective in other districts.

(b) The study described under subdivision (a) shall be submitted to the Legislature no later than October 1, 1990.

SEC. 3. The sum of thirty thousand dollars ($30,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the 1989–90 fiscal year for the purposes of conducting the study described in Section 2 of this act.

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

CHAPTER 1038

An act to add Chapter 14 (commencing with Section 11300) to Part 7 of the Education Code, relating to education.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The instructional technologies provide California with excellent opportunities to accomplish important long-range educational objectives efficiently. These opportunities include all of the following:

(1) Expanded access to higher education for individuals who currently do not participate because of geographical isolation or language barriers.

(2) The development and implementation of an expanded and enriched high school curriculum utilizing faculty members of various schools, colleges, and universities working together through a collaborative effort, particularly for advanced mathematics, science, and language courses that many high schools do not have the resources to offer.

(3) The development and implementation of in-service training programs for teachers and staff at all levels of public education in kindergarten and grades 1 to 12, inclusive, through a partnership utilizing outstanding public school teachers and faculty at colleges and universities.

(4) Meeting the challenges of changing demographics in the pupil population, including the needs for remediation, greater English literacy, and preparedness for postsecondary education.

(b) High school graduates from rural counties are significantly less likely than high school graduates statewide to be eligible for admission to a four-year college or university. A primary reason for the differing rates of eligibility to California's colleges and universities is that many small rural high schools are isolated and do not have enough pupils to support advanced or specialty courses offered by larger or less isolated schools, and some schools are not able to supply the resources or qualified staff necessary to offer courses in certain areas, including, but not limited to, science, foreign language, or mathematics.

(c) The state, in order to meet the educational needs of all of its public school pupils and their teachers, needs to consider the efficiency, impact, and expansion of distance education technology.

"Distance learning," for the purposes of Chapter 14 (commencing with Section 11300) of Part 7 of the Education Code, means interactive instruction in which the instructor and student are separated by distance yet interact through the aid of computer and

communications technology. "Distance learning" may also include, for the purposes of that chapter, video or audio instruction in which the primary mode of communication between instructor and student is through a communications medium such as instructional television or video, and any other instruction that relies on computer or communications technology to reach students at distant locations. California's educational institutions need to combine their efforts to explore the most efficient ways to expand the use of distance learning technologies to reach all pupils and teachers who may benefit from them.

(d) The Commission for the Review of the Master Plan of Higher Education concluded in 1987 that the new instructional technologies have the exciting potential for revolutionizing the educational process. The commission recommended that the governing boards of educational institutions establish appropriate infrastructures in their systems and on their campuses so that the new instructional technologies are effectively integrated in the support of the fundamental institutional missions, and also recommended that the California State University have the principal responsibility for research on the impact of the new technologies on the learning process.

(e) California has no formal state policy on the use of distance learning. Because of this, no policies are in place for the appropriation of funding, coordination among service providers and users, or guidelines for faculty and administration.

SEC. 2. Chapter 14 (commencing with Section 11300) is added to Part 7 of the Education Code, to read:

CHAPTER 14. THE CALIFORNIA DISTANCE LEARNING POLICY

11300. The California Postsecondary Education Commission shall develop a state policy on the use of distance learning technology in education, to be considered and, if appropriate, adopted by the Legislature. Further, in developing the policy, the California Postsecondary Education Commission shall address issues of funding and management of intersegmental distance learning efforts, course credit transfer, qualifications and credentialing of instructors and onsite personnel, ensuing course quality, and other policy issues associated with distance education, as well as, compile research on the effectiveness and cost-effectiveness of distance instruction at various levels of education.

The policy shall be developed to recognize the several existing distance learning networks, to enhance their coordination and direction, and to provide statewide incentives to continue to build partnerships that further distance learning as a cost-effective means to address resource equity and quality issues in education. In formulation of the policy, the California Postsecondary Education Commission shall specifically draw upon the experience and findings of the various campuses of the California State University that

currently offer courses via distance education, including California State University, Bakersfield, California State University, Chico, the California Polytechnic University, Pomona, as well as, draw upon the experience and findings of other current providers of distance education programming.

11301. (a) In developing the policy, the California Postsecondary Education Commission shall propose a strategy to provide, through a cost-effective distance learning delivery system, the following five types of educational services:

(1) Curriculum enhancement to meet the needs of high-risk pupils who would otherwise be likely to drop out of traditional classroom programs.

(2) Expanded course offerings, in subjects that include, but are not limited to, foreign languages, science, and mathematics, to rural and inner-city secondary schools that are unable to provide the college preparatory and enrichment courses that their pupils require and that other schools provide.

(3) Expanded course offerings at rural community colleges and off-campus centers to better serve students in remote parts of the state. These expanded offerings should include university level courses to better serve community college students who are considering a university-level education but do not have the financial resources to transfer.

(4) Staff development courses for elementary and secondary school teachers who might otherwise be unable to participate in these training opportunities.

(5) Curriculum enhancement through the increased communication capability of schools, colleges, and universities providing the opportunity for institutions to receive varied types of supplementary educational programs, conduct exchanges with business, industry, and government, participate in live lectures and conferences on special topics, and increase cooperation and communication among educational institutions.

(b) In developing the policy, the California Postsecondary Education Commission shall identify existing sources of interactive distance learning instructional and staff development programming that can be utilized immediately by schools and colleges, and propose a strategy to utilize existing technologies to deliver instruction over distance, and link together school and college classrooms in rural and inner-city areas in the state.

11302. (a) In preparing the policy statement, the California Postsecondary Education Commission shall consult with an advisory committee composed of representatives from public schools, a county office of education, the State Department of Education, the California State University, the California Community Colleges, the University of California, the independent accredited universities and colleges, the governing board of a school district, the Educational Technology Committee, and private sector providers of communication networks and programming.

(b) The commission shall submit the policy statement to the legislative policy committees and the Governor on or before May 1, 1990.

(c) Following the development of the policy statement, it is the intent of the Legislature that educational institutions consider the preparation of a budget proposal to establish a comprehensive distance learning project within California.

CHAPTER 1039

An act to add Title 7.7 (commencing with Section 67410) to the Government Code, and to add Section 164.57 to the Streets and Highways Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989.]

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

SECTION 1. (a) The Legislature hereby makes the following findings and declarations:

(1) In recent years, in all the rapidly growing areas of California, it is becoming increasingly clear that long-term transportation needs will not be fully serviced by an ever-expanding freeway system because of the increasing financial and environmental costs of such an expansion, critical air quality considerations, and, because of our delayed, but expected problems, paying for and finding fossil fuel.

(2) California is beginning to redevelop its many older urban areas at much greater densities that can no longer be serviced by the existing local street and road and state freeway systems.

(3) As all of these facts are beginning to impact our increasingly traffic-gridlocked urban areas, we must begin to consider development of a fundamentally different transportation system that is characterized by a higher capacity to move people in an efficient, rational, and safe manner.

(4) If a new system can be developed, politically agreed upon, and financed, it must be built on rights-of-way adequate in size and location to do the job.

(5) Because of the already highly developed nature of our urban areas, adequate rights-of-way for future mass transit development are becoming scarcer, if available at any cost.

(6) Certain critical private railroad and other rights-of-way may soon be available for sale and could be lost to the public domain forever for potential use for commuter transit corridors.

(b) The Legislature further finds and declares that it is essential that the state, in cooperation with impacted local governments, the

federal government, and the private sector, begin immediately to plan and implement a program of rights-of-way preservation for a future commuter rail and intercity rail transit system in California.

(c) It is the intent of the Legislature that this system of rights-of-way be planned at the earliest possible time and that this plan provide for the development of a passenger-oriented, efficient, and rational system that provides for a safe, quick, and easy transit trip.

(d) It is the further intent of the Legislature that current users or owners of rights-of-way and public entities negotiate in good faith for the acquisition of rights-of-way included in inventories adopted by the California Transportation Commission pursuant to Title 7.7 (commencing with Section 67410) of the Government Code.

(e) It is the further intent of the Legislature that the California Transportation Commission give as much consideration to projects which have long-term benefits to the transportation system as it does to projects in which transportation improvements would occur in the short term in allocating transportation funds.

SEC. 2. Title 7.7 (commencing with Section 67410) is added to the Government Code, to read:

TITLE 7.7. CALIFORNIA COMMUTER AND INTERCITY TRANSIT RIGHT-OF-WAY PRESERVATION ACT

CHAPTER 1. GENERAL PROVISIONS

67410. This title shall be known and may be cited as the California Commuter and Intercity Transit Right-of-Way Preservation Act.

67421. As used in this title, unless the context requires otherwise:

(a) "Acquisition," and any form of that word, means the method by which a public agency obtains the right to use a right-of-way for passenger rail purposes, including, but not limited to, purchase, lease, lease with option to purchase, and joint use of a right-of-way.

(b) "Commission" means the California Transportation Commission.

(c) "Commuter rail service" means any commuter passenger rail or urban rail transit service, as defined in Section 164.50 of the Streets and Highways Code, and may include exclusive busways.

(d) "Department" means the Department of Transportation.

(e) "Intercity rail service" has the same meaning as intercity rail, as defined in subdivision (d) of Section 164.55 of the Streets and Highways Code.

CHAPTER 2. RAIL RIGHT-OF-WAY INVENTORIES

67460. The department shall prepare and submit to the commission an Intercity Rail Right-of-Way Inventory, by April 30, 1990, for the state consisting of all of the following:

(a) A detailed survey considering all existing plans, data bases,

technical information, patronage studies, and other relevent data that is available from federal, state, local, or private entities on potential intercity rail routes. In identifying potential railroad right-of-way acquisitions, the department shall give priority consideration to intercity rail corridors identified in subdivision (e) of Section 164.55 of the Streets and Highways Code. In particular, the survey shall include actual intercity rail experiences of other states and foreign countries. In assembling material for the survey, the department shall attempt to avoid recreating work already accomplished and available from other sources.

(b) A statewide survey of all potentially available and suitable rights-of-way for intercity rail development. The survey shall include rights-of-way owned by railroad corporations which may or may not be for sale at the present time, and shall give full consideration to the potential for passenger service on railroads which are not expected to be for sale, including the leasing of operating space and other operating arrangements on currently operated railroads.

(c) The department shall submit an updated inventory to the commission by April of each even-numbered year, beginning in 1992.

67461. A transportation planning agency, county transportation authority, county transportation commission, and the San Diego Metropolitan Transit Development Board may each prepare, adopt, and submit to the commission by April 30, 1990, a Commuter and Intercity Rail Right-of-Way Inventory for the area under its jurisdiction, consisting of all of the following:

(a) A detailed survey considering all existing plans, data bases, technical information, patronage studies, and other relevant data that is available from federal, state, local, or private entities on potential commuter and intercity rail routes. In identifying potential railroad right-of-way acquisitions, priority consideration shall be given to rail corridors identified in Sections 164.51 and 164.52, and subdivision (e) of Section 164.55 of the Streets and Highways Code. In particular, the survey shall include actual commuter and intercity rail experiences of other states and foreign countries. In assembling material for the survey, a local agency shall attempt to avoid recreating work already accomplished and available from other sources.

(b) A survey of all potentially available and suitable rights-of-way for commuter and intercity rail development. The survey shall include rights-of-way owned by railroad corporations which may or may not be for sale at the present time, and shall give full consideration to the potential for passenger service on railroads which are not expected to be for sale, including the leasing of operating space and other operating arrangements on currently operated railroads.

(c) The transportation planning agency, county transportation authority, county transportation commission, or the San Diego Metropolitan Transit Development Board may submit an update of its inventory to the commission by April 30 of each even-numbered

year. The updated inventory shall conform to the requirements specified for the initial inventory.

67462. In preparing the Commuter and Intercity Rail Right-of-Way Inventory, the commission shall solicit and consider recommendations from transportation planning agencies. The inventory shall be consistent with the adopted regional transportation plans.

67463. (a) The commission, in consultation with the department and the Public Utilities Commission, shall prepare a draft statewide inventory encompassing all of the potential acquisitions included in each inventory submitted pursuant to Sections 67460 and 67461.

67464. The commission shall, by July 31, 1990, prepare a draft inventory and shall hold at least one public hearing on its draft inventory not later than August 15, 1990.

67465. The commission shall adopt the Commuter and Intercity Rail Right-of-Way Inventory not later than September 30, 1990, and shall submit the inventory to the Governor and the Legislature.

67466. The commission shall review and revise its inventory biennially, beginning in 1993. The revised inventory shall be adopted in accordance with the procedures prescribed by this chapter for the adoption of the initial inventory.

67467. Within 30 days of approval of each state transportation improvement program, pursuant to Section 14527, the commission shall submit a report to the Legislature indicating which projects included in the inventory were adopted in the state transportation improvement program and the status of those projects which were not adopted.

SEC. 3. Section 164.57 is added to the Streets and Highways Code, to read:

164.57. In developing guidelines for the commuter rail, urban rail transit, and intercity rail programs pursuant to Sections 164.50 and 164.55, the department shall consider, but not be limited to, all of the following:

(a) The reasonable financial and technical phasing of right-of-way preservation, consistent with a demonstrated commitment to development of recommended rail services within 10 years of completion of right-of-way acquisition in the form of financial, planning, or operating assistance, or other contributions to fund the difference between operating costs and revenues, and other appropriate resources needed to support or encourage implementation of rail systems.

(b) The development of institutional structures that provide direct responsibility, authority, and accountability needed to fully finance, implement, and operate the rail services in an efficient, rational manner.

(c) The full integration of a proposed rail service with existing rail services and other transportation systems operated by public entities, so that the new service complements existing transportation systems in the state.

SEC. 4. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund to the Department of Transportation for purposes of Section 67460 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 that the statewide inventory of rail rights-of-way required by this act may be commenced at the earliest possible time in order to assist in the prevention of the unnecessary loss of key rights-of-way, it is necessary that this act take effect immediately.

CHAPTER 1040

An act to amend Sections 32000, 32301, 32310, 32320, 32321, 32323, 32325, 32330, 32352, 32402, 32724, and 32811 of, to amend the headings of Division 15.5 (commencing with Section 32000) of, Article 2 (commencing with Section 32100) of Chapter 1 of Division 15.5 of, and Article 2 (commencing with Section 32810) of Chapter 7 of Division 15.5 of, to add Sections 32332, 32352.5, and 32820.5 to, to repeal and add Sections 32101 and 32326 of, to repeal and add Chapter 5 (commencing with Section 32600) of Division 15.5 of, to repeal Sections 32100 and 32353 of, and to repeal Article 5 (commencing with Section 32340) of Chapter 2 of Division 15.5 of, Article 7 (commencing with Section 32360) of Chapter 2 of Division 15.5 of, Article 2 (commencing with Section 32410) of Chapter 3 of Division 15.5 of, Article 4 (commencing with Section 32430) of Chapter 3 of Division 15.5 of, Article 5 (commencing with Section 32440) of Chapter 3 of Division 15.5 of, Chapter 4 (commencing with Section 32500) of Division 15.5 of, and Article 1 (commencing with Section 32800) of Chapter 7 of Division 15.5 of, the Financial Code, relating to state assistance funds, and making an appropriation therefor.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. The heading of Division 15.5 (commencing with Section 32000) of the Financial Code is amended to read:

DIVISION 15.5. STATE ASSISTANCE FUND FOR ENTERPRISE, BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION

SEC. 2. Section 32000 of the Financial Code is amended to read:

32000. This division shall be known and may be cited as the "State Assistance Fund for Enterprise Act of 1989."

SEC. 3. The heading of Article 2 (commencing with Section 32100) of Chapter 1 of Division 15.5 of the Financial Code is amended to read:

Article 2. Legislative Purposes

SEC. 3.5. Section 32100 of the Financial Code is repealed.

SEC. 4. Section 32101 of the Financial Code is repealed.

SEC. 5. Section 32101 is added to the Financial Code, to read:

32101. The purposes of this division are the following:

(a) To enhance the availability of financial assistance for small business in California.

(b) To increase the cost effectiveness and efficiency of financial assistance to small businesses provided by the state.

(c) To provide maximum utilization of available federal assistance programs, including, but not limited to, the Small Business Administration's loan guarantee program.

(d) To reduce duplication and overlap in the provisions of financing assistance to small businesses through increased coordination and direction of state assistance programs.

(e) To provide the maximum degree of leverage of the limited state resources available to assist small business, consistent with sound business practices and fiduciary responsibility.

(f) To increase the competitiveness of California's small businesses in the world economy and the creation of jobs.

SEC. 6. Section 32301 of the Financial Code is amended to read:

32301. Except as otherwise provided in this division:

(a) The Nonprofit Corporation Law shall apply to the corporation. However, whenever any provision of the Nonprofit Corporation Law conflicts with any provision of this division, the provision of the Nonprofit Corporation Law shall not apply and the provision of this division shall apply.

(b) The Business and Industrial Development Corporation Law (Division 15 (commencing with Section 31000)) shall apply to this corporation. However, whenever any provision of the Business and Industrial Development Corporation Law conflicts with any provision of this division, the provision of the Business and Industrial Development Corporation Law shall not apply and the provision of this division shall apply.

(c) The Small Business Development Corporation Law (Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code) shall apply to the corporation, except that, to the extent of any conflict between those provisions and this division, the provisions of this division shall prevail.

(d) Whenever a conflict exists between any of the following acts, the conflict shall be resolved by applying the conflicting provision

contained in the act in order of preference as listed in this subdivision, and the applicable provision shall prevail over the other conflicting provisons:

(1) The Business and Industrial Development Corporations Law (Division 15 (commencing with Section 31000)).

(2) The Small Business Development Corporation Law (Ch. 1 (commencing with Section 14000), Pt. 5, Div. 3, Corp. C.).

(3) The Nonprofit Corporation Law (Div. 2 (commencing with Section 5000) Pt. 1, Corp. C.).

SEC. 6.5. Section 32310 of the Financial Code is amended to read:

32310. The name of this corporation shall be: State Assistance Fund for Enterprise, Business and Industrial Development Corporation.

SEC. 6.7. Section 32320 of the Financial Code is amended to read:

32320. Except as provided in Section 32352.5, the board of directors of the corporation shall consist of seven members, three official and four public directors.

SEC. 7. Section 32321 of the Financial Code is amended to read:

32321. (a) The official members of the board shall be:

(1) The Secretary of the Business, Transportation and Housing Agency, or his or her designee.

(2) One member of the Energy Commission, selected and appointed by the members of the Energy Commission.

(3) The chairperson of the Small Business Development Board or his or her designee.

(b) The public members of the board shall be:

(1) One member selected and appointed by the Senate Rules Committee.

(2) One member selected and appointed by the Speaker of the Assembly.

(3) Two members selected and appointed by the Governor as follows:

(A) One member with a minimum three years' experience as an owner, partner, officer, or employee of a California-based small business.

(B) One member with a minimum three years' experience as an officer or employee of a financial institution.

SEC. 8. Section 32323 of the Financial Code is amended to read:

32323. (a) The directors selected and appointed by the Governor, Rules Committee, and Speaker shall meet the requirements of subdivision (d) of Section 31152.

(b) The directors shall hold office until the directors of the State Assistance Fund for Enterprise, Business and Industrial Development Corporation take office.

SEC. 8.5. Section 32325 of the Financial Code is amended to read:

32325. In addition to the official and public directors provided for in Section 32321, the board may select not more than three private directors to assist the board in managing the corporation, subject to the following:

(a) Private directors shall serve on the board in an advisory and voluntary capacity.

(b) Each private director shall be knowledgeable about providing financing to business firms in this state.

(c) At the discretion of the board, private directors shall be eligible to receive compensation, subject to the limitations contained in subdivision (b) of Section 32324.

(d) Private directors shall be nonvoting members of the board.

SEC. 9. Section 32326 of the Financial Code is repealed.

SEC. 9.5. Section 32326 is added to the Financial Code, to read:

32326. The board of directors of the corporation shall establish a loan committee, which shall review, rank, and approve or disapprove applications for loans under this division in accordance with procedures and criteria adopted by the board of directors. The loan committee shall consist of persons appointed by, and who shall serve at the pleasure of, the board of directors of the corporation.

SEC. 10. Section 32330 of the Financial Code is amended to read:

32330. The management of the corporation shall be conducted by the board of directors, subject to the following limitations:

(a) All action taken by the board of directors shall require the approval of a majority of the board present at a meeting at which there is a quorum or by unanimous written consent of all directors.

(b) The board of directors shall file revised articles of incorporation with the Secretary of State no later than January 30, 1990.

(c) The board of directors shall apply for a revised license as a California Business and Industrial Development Corporation by March 1, 1990.

SEC. 10.2. Section 32332 is added to the Financial Code, to read:

32332. The corporation shall adopt bylaws, which shall include provisions governing the election of officers; the establishment and functions of committees; eligibility criteria for loan applications and application procedures; procedures for the deposit and sale of government guaranteed securities; and the establishment of loan loss reserves.

SEC. 11. Article 5 (commencing with Section 32340) of Chapter 2 of Division 15.5 of the Financial Code is repealed.

SEC. 12. Section 32352 of the Financial Code is amended to read:

32352. The corporation shall (a) be empowered to do and perform all acts contemplated for a business and industrial development corporation, and (b) upon approval of the Small Business Development Board, perform acts contemplated for a small business development corporation, pursuant to Part 5 (commencing with Section 14000) of the Corporations Code.

Notwithstanding any other provision of law, upon approval by the Small Business Development Board of the corporation's application to become a small business development corporation pursuant to this section, the sum of seven hundred fifty thousand dollars ($750,000) shall be transferred from the State Enterprise Loan Fund for deposit

in the Small Business Expansion Fund created pursuant to Section 14029 of the Corporations Code for immediate transfer to a loan fund established pursuant to Section 14045 of the Corporations Code. Upon suspension of the corporation as a small business development corporation, the funds shall be transferred to the Small Business Expansion Fund pursuant to Section 14025 of the Corporations Code.

SEC. 12.5. Section 32352.5 is added to the Financial Code, to read:

32352.5. (a) If the corporation becomes a small business development corporation pursuant to Section 32352, the official and public members of the board of directors shall, within 30 days thereafter, appoint three additional directors to the board, who shall be residents of the region to be served by the corporation when acting as a small business development corporation.

(b) For purposes of this section, the three regional directors appointed pursuant to subdivision (a) shall serve at the pleasure of the official and public members of the board as full voting members of the board with respect to carrying out its responsibilities when operating as a small business development corporation, but shall have no official responsibilities with respect to the operation of the corporation as a business and industrial development corporation.

SEC. 13. Section 32353 of the Financial Code is repealed

SEC. 14. Article 7 (commencing with Section 32360) of Chapter 2 of Division 15.5 of the Financial Code is repealed.

SEC. 15. Section 32402 of the Financial Code is amended to read:

32402. In addition to other accounts the board may establish, the financial accounts of the corporation shall include:

(a) A general operating account.

(b) A general reserve account.

(c) An enterprise loan fund.

(d) A government guaranteed securities trust fund.

SEC. 16. Article 2 (commencing with Section 32410) of Chapter 3 of Division 15.5 of the Financial Code is repealed.

SEC. 16.2. Article 4 (commencing with Section 32430) of Chapter 3 of Division 15.5 of the Financial Code is repealed.

SEC. 16.4. Article 5 (commencing with Section 32440) of Chapter 3 of Division 15.5 of the Financial Code is repealed.

SEC. 17. Chapter 4 (commencing with Section 32500) of Division 15.5 of the Financial Code is repealed.

SEC. 18. Chapter 5 (commencing with Section 32600) of Division 15.5 of the Financial Code is repealed.

SEC. 18.5. Chapter 5 (commencing with Section 32600) is added to Division 15.5 of the Financial Code, to read:

CHAPTER 5. LOAN OPERATIONS

32600. The finance officer shall not execute any loan which is not:

(a) Approved for guarantee by the Small Business Administration, where the minimum amount of the guarantee is not less than 80 percent of the principal amount of such loan.

(b) Approved for guarantee by an other governmental loan guarantee authority, the minimum amount of the guarantee is not less than 50 percent of the principal amount of such loan.

(c) Made pursuant to the corporation's participation with the Small Business Administration as a small business investment company or local development company.

(d) Less than 16 percent of the total financing package arranged between the corporation and another lender or lenders on behalf of the applicant.

(e) This section does not apply to loans made pursuant to Section 32724.

32601. The corporation shall not provide financing assistance on any application, except for any application submitted for review as a special project, which has not been reviewed in the manner specified by the board.

SEC. 18.7. Section 32724 of the Financial Code is amended to read:

32724. Notwithstanding any other provision of this division, loans or other financing programs undertaken by the corporation in furtherance of minority enterprises and export financing shall be funded from the enterprise loan fund, or other accounts which the corporation may establish. The board shall promulgate separate loan review procedures and criteria which shall be applicable to loans and other financing programs implemented by the corporation pursuant to this section.

SEC. 18.9. Article 1 (commencing with Section 32800) of Chapter 7 of Division 15.5 of the Financial Code is repealed.

SEC. 19. The heading of Article 2 (commencing with Section 32810) of Chapter 7 of Division 15.5 of the Financial Code is amended to read:

Article 2. State Enterprise Loan Fund

SEC. 20. Section 32811 of the Financial Code is amended to read:

32811. The name of this account shall be the "State Enterprise Loan Fund," which fund shall be continuously appropriated for the purposes of this division.

SEC. 21. Section 32820.5 is added to the Financial Code, to read:

32820.5. Upon approval of the corporation to exercise the powers of a small business development corporation pursuant to Section 32352, the corporation shall cease to be liable for payment of interest on loans made or to be made from the fund pursuant to this article.

CHAPTER 1041

An act to amend Section 11550 of, and to add Section 11370.1 to, the Health and Safety Code, relating to crimes.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 11370.1 is added to the Health and Safety Code, to read:

11370.1. (a) Notwithstanding Section 11350 or 11377 or any other provision of law, every person who unlawfully possesses one-half gram or less of a substance containing cocaine base, one gram or less of a substance containing cocaine, one gram or less of a substance containing heroin, one gram or less of a substance containing methamphetamine, one-eighth gram or less of a crystalline substance containing phencyclidine, one milliliter or less of a liquid substance containing phencyclidine, one-half gram or less of plant material containing phencyclidine, or one hard-rolled cigarette treated with phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, "immediate personal possession" includes, but is not limited to, in the interior passenger compartment of a motor vehicle.

(b) Any person who is convicted under this section shall be ineligible for diversion under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code.

SEC. 2. 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) Notwithstanding subdivision (a) or any other provision of law, any person who is unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense punishable by imprisonment in county jail for not exceeding one year or in state prison.

As used in this subdivision "immediate personal possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(d) Every person who violates subdivision (c) is punishable upon the second and each subsequent conviction by imprisonment in the state prison for two, three, or four years.

(e) 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 or with a violation of subdivision (c) shall be ineligible for diversion.

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

CHAPTER 1042

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

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 17052.18 of the Revenue and Taxation Code is amended 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, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "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.

(4) "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.

(5) "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.

(6) 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. 1.5. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) 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 September 23, 1988, 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 contributions to a full-time qualified care plan and three hundred dollars ($300) for contributions to a part-time qualified care plan made on behalf of the employee's dependent.

(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, and a dependent care center as defined by Section 21 (b) (2) (D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "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.

(6) 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. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the next four years, if necessary, until the credit has been exhausted.

(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*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 2. Section 23617.5 of the Revenue and Taxation Code is amended 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, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "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.

(4) "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.

(5) "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.

(6) 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. 2.5. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) 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 September 23, 1988, 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 contributions to a full-time qualified care plan and three hundred dollars ($300) for contributions to a part-time qualified care plan made on behalf of the employee's dependent.

(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, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor programs associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "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.

(6) 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. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) 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 the next four years, if necessary, until the credit has been exhausted

(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*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 3. The Child Development Programs Advisory Committee shall assess and analyze the impact that Sections 17052.17, 17052.18, 23617, and 23617.5, as amended by this act, of the Revenue and Taxation Code have on increasing employer-assisted child care in California. The committee shall report its findings, along with its recommendations, to the Legislature by January 1, 1991.

SEC. 4. Sections 1.5 and 2.5 of this bill incorporate amendments to Sections 17052.18 and 23617.5, respectively, of the Revenue and Taxation Code proposed by this bill and AB 951. They shall become operative only if (1) both bills are enacted and become effective before January 1, 1990, (2) each bill amends the above sections of the Revenue and Taxation Code, and (3) this bill is enacted after AB 951, in which case the above sections of the Revenue and Taxation Code, as amended by AB 951, shall remain operative only until the operative date of this bill, at which time Sections 1.5 and 2.5 of this bill shall become operative, and Sections 1 and 2 of this bill shall not become operative.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1043

An act to amend Sections 667 and 1192.7 of the Penal Code, relating to criminal law.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 667 of the Penal Code is amended to read:

667. (a) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(b) This section shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this section to apply.

(c) The Legislature may increase the length of the enhancement of sentence provided in this section by a statute passed by majority vote of each house thereof.

(d) As used in this section "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(e) Subdivision (a) shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(f) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act 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 personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (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 or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of 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; or (26) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2.1. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is

alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act 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 personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (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 or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of 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; (26) any violation of Section 487h; (27) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2.3. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily

injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act 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 personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (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 or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of 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; (26) any violation of Section 12701; (27) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2.5. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act 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 personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (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 or mayhem; (17) exploding a destructive device or any explosive with

intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of 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; (26) any violation of Section 12701; (27) any violation of Section 487h; (28) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and AB 566. It shall only become operative if (1) this bill is enacted and becomes effective January 1, 1990, (2) AB 566 is enacted and

becomes operative upon approval by the voters (3) each bill amends Section 1192.7 of the Penal Code, (4) SB 407 is not enacted or as enacted does not amend that section, and (5) this bill is enacted after AB 566, in which case Sections 2.3 and 2.5 of this bill shall not become operative. Section 1192.7 of the Penal Code, as amended by Section 2 of this bill shall remain operative only until the operative date of AB 566 at which time Section 2.1 of this bill shall become operative.

(b) Section 2.3 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and SB 407. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 1192.7 of the Penal Code, (3) AB 566 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 407 in which case Sections 2, 2.1 and 2.5 of this bill shall not become operative.

(c) Section 2.5 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by this bill, AB 566, and SB 407. It shall only become operative if (1) this bill and SB 407 are enacted and become effective January 1, 1990, (2) AB 566 is enacted and becomes operative upon approval by the voters (3) all three bills amend Section 1192.7 of the Penal Code, and (4) this bill is enacted after AB 566 and SB 407, in which case Sections 2 and 2.1 of this bill shall not become operative. Section 1192.7 of the Penal Code, as amended by Section 2.3 of this bill, shall remain operative only until the operative date of AB 566 at which time Section 2.5 of this bill shall become operative.

CHAPTER 1044

An act to amend Sections 1170.1, 1192.7, 12021, 12021.1, and 12022.5 of the Penal Code, relating to firearms.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. 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, 12022.6, 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 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act 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 personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (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 or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give heroin, cocaine, or phencyclidine (PCP) to a minor; (25) any violation of 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; (26) grand theft involving a firearm; (27) any attempt to commit a crime listed in this subdivision other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2.5. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove

the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act 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 personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (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 or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of 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; (26) grand theft involving a firearm; (27) any attempt to commit a crime listed in this subdivision

other than an assault.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 3. Section 12021 of the Penal Code, as amended by Chapter 254 of the Statutes of 1989, is amended to read:

12021. (a) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding the provisions of subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when such conviction results from certification by the juvenile court for prosecution as an adult in an 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 firearm is guilty of a felony.

(c) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment; or

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars ($1,000), or received both such punishments.

SEC. 4. Section 12021.1 of the Penal Code, as amended by

Chapter 254 of the Statutes of 1989, 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 or her possession or under his or her custody or control any firearm is guilty of a felony. 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 firearm is guilty of a felony. 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. 5. Section 12022.5 of the Penal Code, as amended by Chapter 19 of the Statutes of 1989, 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 three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its reasons for its enhancement choice on the record at the time of sentencing.

(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, or any person who personally uses an assault weapon, as specified in Section 12276 or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, 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, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun 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.

SEC. 6. 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. 7. This act shall be known as and may be cited as the McClintock Firearm Act of 1989.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and AB 19. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 1192.7 of the Penal Code, and (3) this bill is enacted after AB 19, in which case Section 2 of this bill shall not become operative.

CHAPTER 1045

An act to amend Section 760.020 of, and to add Section 764.080 to, the Code of Civil Procedure, relating to state lands.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 760.020 of the Code of Civil Procedure is amended to read:

760.020. (a) An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein.

(b) An action may be brought under this chapter by parties to an agreement entered into pursuant to Section 6307 or 6357 of the Public Resources Code to confirm the validity of the agreement.

(c) Nothing in this section shall be construed to limit the right of members of the public to bring or participate in actions challenging the validity of agreements entered into pursuant to Section 6307 or 6357 of the Public Resources Code.

SEC. 2. Section 764.080 is added to the Code of Civil Procedure, to read:

764.080. (a) In any action brought to quiet title to land that has been subject to an agreement entered into pursuant to Section 6307 or 6357 of the Public Resources Code, at the time set for trial the court shall, at the request of any party, receive evidence on the nature of the agreement. After receiving that evidence, the court shall render a statement of decision. In the case of an agreement pursuant to Section 6357, the statement of decision shall include a recitation of the underlying facts and a determination whether the agreement meets the criteria of Section 6357 and other law applicable to the validity of boundary line agreements. In the case of an agreement pursuant to Section 6307, the statement of decision shall recite the relevant facts and shall contain a determination whether the requirements of Section 6307 of the Public Resources Code, Sections 3 and 4 of Article 10 of the California Constitution, and other applicable law have been met. If the court finds the agreement to be valid, the judgment in the action shall quiet title in the parties named in the agreement in accordance with the agreement. If the judgment is entered prior to the effective date of the agreement, the judgment shall provide that, upon the effective date, title is quieted in the parties in accordance with the agreements. However, no action may be brought pursuant to this section until the State Lands Commission has approved the agreement following a public hearing. All such actions shall be set on the trial calendar within one year from the filing of a memorandum to set, unless the court extends this time for good cause.

(b) Nothing in this section shall be construed to limit the right of members of the public to bring or participate in actions challenging the validity of agreements entered into pursuant to Section 6307 or 6357 of the Public Resources Code. Any action brought by a member of the public shall be set on the trial calendar within one year from the filing of a memorandum to set, unless the court extends this time for good cause.

CHAPTER 1046

An act to amend Section 25189.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 25189.6 of the Health and Safety Code is amended to read:

25189.6 (a) Any person who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes, 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 two hundred fifty thousand dollars ($250,000) 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.

(b) Any person who knowingly, at the time the person takes the actions specified in subdivision (a), places another person in imminent danger of death or serious bodily injury, 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 two hundred fifty thousand dollars ($250,000) for each day of violation, and by imprisonment in the state prison for 3, 6, or 9 years.

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

CHAPTER 1047

An act to amend Sections 13403, 13440, 13442, 13480, 13489, and 13490 of, to add Sections 12005 and 13482 to, and to repeal and add Sections 13460, 13461, and 13462 of, the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 12005 is added to the Business and Professions Code, to read:

12005. Whenever any provision of this division makes reference to the National Bureau of Standards, that reference shall be construed to include the National Institute of Standards and Technology.

SEC. 2. Section 13403 of the Business and Professions Code is amended to read:

13403. "Octane number" or "antiknock index number," when used in this chapter, means that number assigned to a spark ignition engine fuel which designates the antiknock quality. The "octane number" or "antiknock index number" shall be determined according to the American Society for Testing and Materials method or methods designated in the latest American Society for Testing and Materials (ASTM) Standard Specification D-4814.

SEC. 2.5. Section 13440 of the Business and Professions Code is amended to read:

13440. (a) The department shall adopt specifications for gasoline or automotive spark-ignition engine fuels. In adopting specifications, the department shall adopt by reference the latest standards of the American Society for Testing and Materials standard specification for gasoline or automotive spark-ignition engine fuel, except that no specification shall be less stringent than required by any California state law.

(b) Any gasoline blend containing methanol shall also contain an alcohol cosolvent (butanol (C_4) or higher molecular weight alcohol) in an amount equal to or greater than the volume percentage of methanol except those blends previously granted a waiver by the Environmental Protection Agency.

(c) The antiknock index as defined in Section 13403 for the automotive spark-ignition engine fuel shall not be less than 87.

SEC. 3. Section 13442 of the Business and Professions Code is amended to read:

13442. It is unlawful for any person to sell, offer for sale, or cause or permit to be sold or offered for sale, or deliver or offer for delivery, any petroleum product as a fuel for internal combustion engines at any place where petroleum products are kept or stored for sale,

which does not conform to the requirements of this article, unless and until there shall be firmly attached to or painted upon each container, receptacle, pump, and inlet end of the fill pipe of each underground storage tank, from which or into which such petroleum product is drawn or poured for sale or delivery, a sign or label, plainly visible, comprising the brand, trademark, or trade name of such fuel, or the words "no brand," which words shall be in letters of gothic type with a stroke of not less than one-eighth inch in width and not less than one inch in height, and also the words "not gasoline" in red letters of gothic type with a stroke of not less than one-half inch in width and not less than three inches in height, on a white background and not less than twice the size of any other letters or words appearing on or near the label or sign.

The provisions of this article, as to the words "not gasoline," shall not apply to signs or labels used in connection with the sale or delivery of kerosene, jet or turbine fuel, diesel fuel, liquefied petroleum gas, or motor fuel comprised of a mixture of gasoline and lubricating oil properly labeled in accordance with the provisions of Article 9 (commencing with Section 13480).

SEC. 4. Section 13460 of the Business and Professions Code is repealed.

SEC. 5. Section 13460 is added to the Business and Professions Code, to read:

13460. Engine oil shall not be sold or distributed for use in an internal combustion engine unless the product conforms to the following specifications:

(a) It shall meet the engine oil requirements established by the latest revision of the Society of Automotive Engineers Standard SAE J183 for engine oil performance and engine service classification.

(b) The flashpoints for the various Society of Automotive Engineers (SAE) classifications shall not be less than the following when tested in accordance with the latest ASTM standard method of test for flash and fire points by means of the Cleveland open cup (ASTM D-92):

Viscosity Classification	Kinematic Viscosity (centistoke) by ASTM D445 at 100°C	Minimum Flash Degrees Fahrenheit
SAE 5W		305
SAE 10W		335
SAE 20W		345
SAE 20		345
SAE 30		355
SAE 40		375
SAE 50		400
SAE 60		435
Grade 70	26.1 to less than 31.7	470

(c) It shall be free from water and suspended matter when tested by means of centrifuge, in accordance with the standard test ASTM D-2273.

(d) Any engine oil that is represented to meet SAE engine oil performance and engine service classification SA must have a neutralization number as measured by ASTM method D-974 of 0.20 maximum.

(e) Any engine oil represented as "energy conserving" shall meet the requirements established by the latest revision of the Society of Automotive Engineers Recommended Practice SAE J-1423.

SEC. 6. Section 13461 of the Business and Professions Code is repealed.

SEC. 7. Section 13461 is added to the Business and Professions Code, to read:

13461. Lubricating oil shall not be sold or distributed for use in lubricating manual transmissions, gears, or axles unless the product conforms to the following specifications:

(a) It meets the service requirements contained in the latest revision of the SAE Information Report on axle and manual transmission lubricants SAE J308.

(b) The viscosity grade classification number shall be the same as the latest published Society of Automotive Engineers Standard SAE J306 when tested in accordance with the latest method published by the American Society for Testing and Materials (ASTM).

(c) It shall be free from water and suspended matter when tested by means of centrifuge, in accordance with the standard test ASTM D-2273.

SEC. 8. Section 13462 of the Business and Professions Code is repealed.

SEC. 9. Section 13462 is added to the Business and Professions Code, to read:

13462. Any manufacturer or packager of any product subject to this article and sold in this state shall provide, upon request to duly authorized representatives of the department, documentation of any claim made upon their products' label.

SEC. 10. Section 13480 of the Business and Professions Code is amended to read:

13480. (a) It is unlawful for any person to sell any petroleum product referred to in this chapter at any place where petroleum products are kept or stored for sale, unless there is affixed to each container, receptacle, pump, dispenser, and inlet end of the fill pipe of each underground storage tank, from which or into which such product, is drawn or poured out for sale or delivery, a sign or label plainly visible consisting of the name of the product, the brand, trademark, or trade name of the product, and in the case of gasoline, diesel fuel, other motor fuel, and kerosene, the grade or brand name designation.

(b) When the product is oil, as defined by Section 13401, each sign or label shall also have in letters or numerals, plainly visible, the

viscosity grade classification as determined in accordance with the Society of Automotive Engineers (SAE) latest standard for engine oil viscosity classification SAE J300 or manual transmission and axle lubricants viscosity classification SAE J306, as applicable, and shall be preceded by the letters "SAE".

(c) When the product is automotive spark-ignition engine fuel, except M-85 and M-100 methanol fuel, there shall be conspicuously displayed on the dispensing device at least one sign or label showing the minimum octane number or antiknock index, as defined in Section 13403, of the product sold therefrom.

(d) When the product is a motor fuel which contains at least 1 percent by volume ethanol (ethyl alcohol) or methanol (methyl alcohol), or a combination thereof, there shall be conspicuously displayed on the dispensing device at least one sign or label correctly stating the applicable one of the following statements:

(1) "Contains alcohol (ethanol)."

(2) "Contains alcohol (methanol)."

(3) "Contains alcohol (ethanol and methanol)."

Devices dispensing M-85 or M-100 methanol fuel shall be exempt from the requirements of this subdivision if the dispenser is labeled pursuant to subdivisions (a) and (f) using the word "methanol" as the product name and M-85 or M-100, as applicable, as grade designations.

(e) When the product is a motor fuel consisting of a mixture or premixture of gasoline and oil, there shall be conspicuously displayed on the dispensing device at least one sign or label stating the ratio of gasoline to motor oil.

(f) All signs or labels required by this section for retail motor fuel dispensers and containers of more than one gallon capacity shall be in letters and numerals not less than one-half inch (12.70 mm) in height. On containers of one gallon or less, the signs or labels shall be in letters and numerals not less than one-fourth inch (6.35 mm) in height and one-sixteenth inch (1.59 mm) in width.

(g) The provisions of this section pertaining to octane numbers or antiknock index and motor oil SAE viscosity number grade shall not apply to products sold for aviation purposes.

(h) The provisions of this section shall apply, with respect to thinners or solvents, only to the sale, delivery, or offer for sale of the products through service stations, garages, and other retail outlets.

SEC. 11. Section 13482 is added to the Business and Professions Code, to read:

13482. It is unlawful for any person to sell or distribute engine oil or axle and manual transmission lubricant unless the SAE/API service classification is conspicuously marked on each container. Each container of engine oil with a volume of one gallon or less shall bear a plainly visible statement indicating generally the automobile model years or condition of service for which the engine oil is suitable for gasoline engines as described in SAE J183.

SEC. 12. Section 13489 of the Business and Professions Code is

amended to read:

13489. The use of pumps or other devices which are capable of withdrawing gasoline from each of two tanks containing different qualities of the same petroleum product and dispensing them as a single combined product shall be authorized when the department determines that all of the following conditions exist:

(a) The device mechanism accurately measures the quantities of the gasoline being simultaneously withdrawn from each of the two tanks and the quantity dispensed.

(b) The device mechanism accurately and visibly records and displays the resulting combined quality, the total quantity, the price per gallon or liter for the particular quality combination being dispensed, and the total price of the quantity of gasoline dispensed at the particular sale.

(c) The device has a locking selector mechanism which prevents the changing of the proportion of the two qualities being combined during the dispensing of the desired quantity.

The provisions of this section shall not supersede any other provisions in this chapter, except that they shall supersede the provisions of Sections 13442, 13443, 13480, 13483, 13486, 13487, and 13488 to the extent necessary to authorize the operation of a blending type of pump connected to two tanks containing two different products, or two different grades of the same product, which, when blended together in different proportions, will produce gasolines of different octane rating, each blend of which shall meet the specifications for gasoline as required by this chapter.

SEC. 13. Section 13490 of the Business and Professions Code is amended to read:

13490. The use of pumps or other devices which are capable of withdrawing gasoline from one tank and motor oil, or a premixture of gasoline and motor oil in a known ratio, from another tank, and dispensing them as a single combined product, or of withdrawing gasoline alone from the tank containing gasoline and of withdrawing a premixture of gasoline and motor oil alone from the tank containing a premixture of gasoline and motor oil shall be authorized when the department determines that all the following conditions exist:

(a) The device mechanism accurately measures the quantities being simultaneously withdrawn for dispensing as a combined product from each of the two tanks when the combined product is dispensed, the quantity being dispensed from the gasoline tank when gasoline alone is dispensed, or the quantity being dispensed from the tank containing a premixture of gasoline and motor oil when the premixture alone is dispensed.

(b) The device mechanism accurately and visibly records and displays: (1) the ratio of gasoline to motor oil or premixture, the quantity of each ingredient being dispensed, the price per gallon or liter for the gasoline being dispensed, and the price per quart or liter for any motor oil or premixture being dispensed or (2) the ratio of

gasoline to motor oil or premixture and the price per gallon or liter for the product being dispensed.

(c) The device mechanism prevents the changing of the ratio of gasoline to motor oil or premixture during dispensing.

The provisions of this section shall supersede Sections 13442, 13443, 13480, 13483, 13486, 13487, and 13488 to the extent necessary to authorize the operation of the above-described blending type of pump connected to two tanks, one containing motor oil, or a premixture of motor oil and gasoline in a known ratio, and the other gasoline, provided that the motor oil shall in its separate state meet the specifications for motor oil as required by Section 13460 and that the gasoline shall in its separate state meet the specifications for gasoline as required by Section 13440.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1048

An act to amend Sections 1764 and 1764.1 of, and to add Section 1764.2 to, the Welfare and Institutions Code, relating to the Department of the Youth Authority.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1764 of the Welfare and Institutions Code is amended to read:

1764. Notwithstanding any other provision of law, any of the following information in the possession of the Youth Authority regarding persons 16 years of age or older who were committed to the Youth Authority by a court of criminal jurisdiction, or who were committed to the Department of Corrections and were subsequently transferred to the Youth Authority, shall be disclosed to any member of the public, upon request, by the director or his or her designee:

(a) The name and age of the person.

(b) The court of commitment and the offense that was the basis of commitment.

(c) The date of commitment.

(d) Any institution where the person is or was confined.

(e) The actions taken by any paroling authority regarding the person, which relate to parole dates.

(f) The date the person is scheduled to be released to the community, including release to a reentry work furlough program.

(g) The date the person was placed on parole.

(h) The date the person was discharged from the jurisdiction of the Youth Authority and the basis for the discharge.

(i) In any case where the person has escaped from any institution under the jurisdiction of the Youth Authority, a physical description of the person and the circumstances of the escape.

The provisions of this section shall not be construed to authorize the release of any information which could place any individual in personal peril; which could threaten Youth Authority security; or which is exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 2. Section 1764.1 of the Welfare and Institutions Code is amended to read:

1764.1. Notwithstanding any other provision of law, the director or his or her designee may release the information described in Section 1764 regarding a person committed to the Youth Authority by a juvenile court for an offense described in subdivision (a) of Section 676, to any member of the public who requests the information, unless the court has ordered confidentiality under subdivision (c) of Section 676.

SEC. 3. Section 1764.2 is added to the Welfare and Institutions Code, to read:

1764.2. (a) Notwithstanding any other provision of law, the director or his or her designee shall release the information described in Section 1764 regarding a person committed to the Youth Authority for an offense described in subdivision (a) of Section 676, to the victim or the next of kin of the victim of the offense, upon request, unless the court has ordered confidentiality under subdivision (c) of Section 676. The victim or the next of kin shall be identified by the court or the probation department in the offender's commitment documents before the director is required to disclose this information.

(b) The director or his or her designee shall, with respect to persons committed to the Youth Authority, including persons committed to the Department of Corrections who have been transferred to the Youth Authority, for an offense described in subdivision (a) of Section 676, inform each victim of that offense, or the victim's next of kin, of his or her right to request and receive information pursuant to subdivision (a) and Section 1767.

CHAPTER 1049

An act to amend the heading of Article 23 (commencing with Section 38651) of, and to add Article 2.5 (commencing with Section 38191) to, Chapter 5 of Part 3 of Division 15 of, to amend Section 38651 of, and to add Section 38655 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Article 2.5 (commencing with Section 38191 is added to Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code, to read:

38191. Extra light milk is a market milk product with added milk solids derived from market milk. Extra light milk shall contain not less than 0.9 percent milk fat, not more than 1.1 percent milk fat, and not less than 11 percent of milk solids not fat.

38192. Except as otherwise provided in this article, extra light milk shall meet all standards and requirements which are specified in this division for market milk.

38193. One of the following three phrases shall accompany the name "extra light milk" on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in the name: "half the fat of lowfat milk", "50 percent less fat than lowfat milk", or "1 percent milk fat". When vitamins are added, extra light milk shall be labeled in accordance with statutes and regulations applicable to vitamin addition.

SEC. 2. The heading of Article 23 (commencing with Section 38651) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 23. Flavored Milk

SEC. 3. Section 38651 of the Food and Agricultural Code is amended to read:

38651. Flavored milk is market milk to which has been added a stabilizer, sugar, syrup, or flavor made from wholesome ingredients. Flavored milk may be sold as flavored milk, flavored low-fat milk, flavored high nutrient low-fat milk, and flavored nonfat milk. Flavored milk shall be labeled with the name of the product. The principal flavor may be substituted for the word "flavored" in the name of the product as, for example, "chocolate nonfat milk" in substitution for "flavored nonfat milk." Flavored milk shall be so colored or contain ingredients that cause it to differ distinctly from milk in appearance and other characteristics.

SEC. 4. Section 38655 is added to the Food and Agricultural Code,

to read:

38655. Flavored high nutrient low-fat milk shall contain not less than 1 percent milk fat and not more than 1.2 percent milk fat, and shall otherwise meet all standards and requirements which are specified in this division for high nutrient low-fat milk, and which are specified in Section 38651.

CHAPTER 1050

An act to amend Sections 15026 and 15071 of, and to add Section 15026.1 to, the Health and Safety Code, relating to hospitals.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 15026 of the Health and Safety Code is amended to read:

15026. (a) (1) "Hospital building" includes any building not specified in subdivision (b) which is used, or designed to be used, for a health facility of a type required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) Hospital building includes a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed on or after March 7, 1973. This paragraph shall remain operative only until January 1, 1993.

(b) "Hospital building" does not include any of the following:

(1) Any building in which outpatient clinic services are provided and which is separated from a building in which hospital services are provided. If any one or more outpatient clinic service in the building provides services to inpatients, the building shall not be included as a "hospital building" if those services provided to inpatients represent no more than 25 percent of the total outpatient services provided at the building. Hospitals shall maintain on an ongoing basis, data on the patients receiving services in these buildings, including the number of patients seen, categorized by their inpatient or outpatient status. Hospitals shall submit this data annually to the State Department of Health Services.

(2) Any building used, or designed to be used, for a skilled nursing facility or intermediate care facility if the building is of single-story, wood-frame or light steel frame construction.

(3) Any building of single-story, wood-frame or light steel frame construction in which only skilled nursing or intermediate care services are provided if the building is separated from a building housing other patients of the health facility receiving higher levels of care.

(4) Any freestanding structures of a chemical dependency

recovery hospital exempted under the provisions of subdivision (c) of Section 1275.2.

(5) Any building licensed to be used as an intermediate care facility/developmentally disabled habilitative with six beds or less and any intermediate care facility/developmentally disabled habilitative of 7 to 15 beds which is a single-story, wood-frame or light steel frame building.

(6) Any building which has been used as a community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 and which was originally licensed to provide that level of care prior to March 7, 1973, if (A) the building complied with applicable building and safety standards at the time of that licensure, (B) the Director of Health Services, upon application, determines that in order to continue to properly serve the facility's existing client population, relicensure as an intermediate care facility/developmentally disabled will be required, and (C) a notice of intent to obtain a certificate of need was filed with the area health planning agency and the Office of Statewide Health Planning and Development on or before March 1, 1983. The exemption provided in this paragraph extends only to use of the building as an intermediate care facility/developmentally disabled.

(7) Any building which has been used as a community care facility pursuant to paragraph (1) or (2) of subdivision (a) of Section 1502 and which was originally licensed to provide that level of care if all of the following conditions are satisfied:

(A) The building complied with applicable building and safety standards for a community care facility at the time of that licensure.

(B) The facility conforms to the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials as a community care facility.

(C) The facility is other than single story, but no more than two stories, and the upper story is licensed for ambulatory patients only.

(D) A certificate of need was granted prior to July 1, 1983, for conversion of a community care facility to an intermediate care facility.

(E) The facility otherwise meets all nonstructural construction standards for intermediate care facilities in existence on the effective date of this act or obtains waivers from the appropriate agency.

The exemption provided in this paragraph extends only to use of the building as an intermediate care facility as defined in subdivision (d) of Section 1250 and the facility is in Health Facilities Planning Area 1420.

(8) Any building licensed as a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed prior to March 7, 1973. This paragraph shall remain operative only until January 1, 1993.

SEC. 2. Section 15026.1 is added to the Health and Safety Code, to read:

15026.1. (a) Space for the following functions shall be considered

"outpatient clinical services," when provided in a freestanding building which is separated from a hospital building where inpatient hospital services are provided: administrative space, central sterile supply; storage; morgue and autopsy facilities; employee dressing rooms and lockers; janitorial and housekeeping facilities; and laundry.

(b) The outpatient portions of the following services may also be delivered in a freestanding building and shall be considered "outpatient clinical services:" intermediate care; chronic dialysis; psychiatry; rehabilitation; occupational therapy; physical therapy; maternity; dentistry; skilled nursing; and chemical dependency.

(c) Services that duplicate basic services, as defined in subdivision (a) of Section 1250, or services that are provided as part of a basic service, but are not required for facility licensure may also be provided in a freestanding building.

(d) The statewide office shall not approve any plans that propose to locate any function listed in subdivision (a) into a freestanding building until the State Department of Health Services certifies to the office that it has received and approved a plan acceptable to the department that demonstrates how the health facility will continue to provide all basic services in the event of any emergency when the freestanding building may no longer remain functional.

(e) Services listed in subdivisions (b) and (c) are subject to the same 25 percent inpatient limitation described in Section 15026.

SEC. 3. Section 15071 of the Health and Safety Code is amended to read:

15071. Construction or alterations of buildings specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026 shall conform to the provisions of the latest edition of Title 24 of the California Code of Regulations. The statewide office shall independently review and inspect these structures. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city, county, or city and county.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures.

The statewide office shall, by July 1, 1989, set forth and implement criteria to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026, which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

SEC. 3.5. Section 15071 of the Health and Safety Code is amended to read:

15071. Construction or alterations of buildings specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026 shall conform to the provisions of the latest edition of Title 24 of the California Code of Regulations. The statewide office shall independently review and inspect these buildings. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 15026. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city, county, or city and county.

The statewide office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building which the statewide office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The statewide office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures. The statewide office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the statewide office, with the advice of the office of the State Architect and the State Fire Marshal.

The statewide office shall, by July 1, 1991, set forth and implement criteria to exempt from the plan review process or expedite those

projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 15026 which may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The statewide office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects which comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 15071 of the Health and Safety Code proposed by both this bill and SB 1293. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 15071 of the Health and Safety Code, and (3) this bill is enacted after SB 1293, in which case Section 3 of this bill shall not become operative.

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

CHAPTER 1051

An act to add and repeal Article 5 (commencing with Section 37440) to Chapter 3 of Part 22 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

I am deleting the $90,000 appropriation contained in Section 2 of Assembly Bill No. 1566.

I am concerned that the $30,000 appropriation contained in this bill from the Health Education Account of the Cigarette and Tobacco Products Surtax Fund would deplete the reserve of that fund. I believe we should maintain a prudent reserve in the fund to ensure that programs entitled to those monies receive them.

The $30,000 appropriation from the federal Drug-Free Schools and Communities Act of 1986 and the $30,000 appropriation from the federal Anti-Drug Abuse Act of 1988 would come from the share of monies set aside in those funds for distribution to the Superintendent of Public Instruction (SPI) for anti-drug education programs.

These appropriations would limit the flexibility of the SPI to allocate those monies for programs he deems important. If the SPI program proposed in this legislation is a priority he can currently fund it from this source

With this deletion, I approve Assembly Bill No 1566.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Article 5 (commencing with Section 37440) is added to Chapter 3 of Part 22 of the Education Code, to read:

Article 5. School Pilot Project: Parent Drug Alert Program

37440. It is the intent of the Legislature that the pilot Parent Drug Alert Program be used to heighten the awareness of teachers, parents, and pupils with respect to alcohol, tobacco, drugs, and the types of drug paraphernalia available, the signs and symptoms of substance abuse, and the methods of confronting substance abuse.

37441. There is hereby established a two-year pilot program in each school district that chooses to participate in the pilot project and that complies with this article.

37442. (a) The governing board of each school district participating in the pilot program shall have in its employment one full-time school nurse, with the qualifications specified in Section 44877. Each school maintained by a school district participating in the pilot program that has a full-time school nurse shall be deemed to have satisfied this section.

(b) In order to participate in the pilot program, a school district shall obtain the voluntary participation of a school nurse or school nurses and shall not be required to provide the school nurses additional compensation for participating in the pilot program. Participating school districts that already provide school nurses with additional compensation in the form of release time for duties beyond the regular schoolday shall continue to honor those contractual agreements.

(c) Each school nurse voluntarily employed pursuant to this section shall conduct substance abuse prevention programs for teachers, parents, and pupils on a regular basis, as determined by the school nurse providing voluntary service. The school nurse may use compensatory time if his or her contract with the school district permits the use of compensatory time.

(d) No governing board of a school district maintaining schools pursuant to this article and participating in the pilot program shall decrease the number of school nurses employed by the school district in order to comply with this article.

(e) Each participating school district shall provide and develop an acceptable referral list for the specific needs of the district.

(f) All instruction provided pursuant to this article shall be provided in both the English and Spanish languages or in the English language and any other language that may address the needs of the

school.

37443. The pilot project shall, with respect to substance abuse prevention, accomplish the following objectives:

(a) Educate teachers, parents, and pupils so that they are able to identify the various types of drug paraphernalia.

(b) Educate parents so that they are able to identify behavioral and self-esteem changes in their children at school, and at home, that need to be investigated.

(c) Educate parents to observe and practice communication techniques through role playing and thereby facilitate parent-child communications.

(d) Educate teachers so that they are able to identify pupils in the classroom with behavioral and self-esteem changes who need to be referred for assistance.

(e) Provide parents with the knowledge that they may contact the school nurse for information and referrals.

(f) Provide pupils with the knowledge that they may contact the school nurse for information and referrals.

(g) Provide pupils with the knowledge that they have available as a resource, the school nurse, who can assist and provide information to pupils.

37444. (a) Each school district participating in the pilot program shall report to the Superintendent of Public Instruction by January 1, 1992, concerning the effectiveness of the program in meeting the objectives outlined in Section 37443. These evaluations shall be conducted pursuant to procedures specified by the superintendent.

(b) The Superintendent of Public Instruction shall review and evaluate the program-effectiveness study and report to the Legislature and Governor by June 30, 1992. This review shall include recommendations regarding continuation of the pilot program, including the identification of ongoing funding sources for the program.

(c) The evaluation shall be based on all of the following:

(1) The number of pupils, teachers, and parents participating.

(2) The number and types of questions asked.

(3) The number and types of referrals made.

(d) The evaluation with measurable objectives shall be distributed to all parents participating and all suggestions for improving the program shall be utilized.

(e) The pilot program shall be deemed to be successful to the extent that all of the following conditions exist:

(1) A majority of school personnel, parents, and students participating in the pilot program are able to identify various types of drug paraphernalia.

(2) A majority of parents are able to, as verified by a survey, indicate that their child's self-esteem has changed in a positive manner, indicate that they practice learned communication skills with their children, and contact the school nurse for information and referral purposes.

(3) A majority of teachers, as verified by a survey, are able to identify pupils with behavioral and self-esteem changes and to refer them for further assistance.

(4) A majority of students, as verified by a survey, are able to utilize the services of the school nurse for information and referral purposes.

37445. Funds appropriated for purposes of this article shall be expended only for the orientation of the school nurses and for the cost of printed material associated with the project.

37446. The Superintendent of Public Instruction shall adopt rules and regulations to implement this article.

37447. This article shall remain in effect only until December 31, 1992, and as of that date is repealed, unless a later statute, which is enacted before December 31, 1992, deletes or extends that date.

SEC. 2. The sum of ninety thousand dollars ($90,000) is hereby appropriated to the Superintendent of Public Instruction for allocation for the School Pilot Project: Substance Abuse Prevention Program established pursuant to Article 5 (commencing with Section 37440) of Chapter 3 of Part 22 of the Education Code, as follows:

(a) Thirty thousand dollars ($30,000) from the Health Education Account of the Cigarette and Tobacco Products Surtax Fund for the portion of the program that relates to tobacco-related school health education programs for the prevention and reduction of tobacco use.

(b) Thirty thousand dollars ($30,000) from moneys received by the state under the federal Drug-Free Schools and Communities Act of 1986 (Title V, Public Law 100-297) for the portion of the program that meets the requirements set forth in federal law.

(c) Thirty thousand dollars ($30,000) from moneys that may be available under the drug abuse education prevention portion of the federal Anti-Drug Abuse Act of 1988 (Title III, Public Law 100-690) for the portion of the program that meets the requirements set forth in federal law.

CHAPTER 1052

An act to repeal Section 2 of Chapter 1462 of the Statutes of 1986, relating to acquired immune deficiency syndrome, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

I am reducing the appropriation contained in Assembly Bill No 2156

I am signing AB 2156 which I believe is the appropriate vehicle to provide additional funding from the AIDS Vaccine Research and Development Grant Fund for continued research to find a cure for AIDS. However, there are only sufficient funds available in that Fund to support an appropriation of $1,798,000. Therefore I am reducing the appropriation in Section 2 from $1,911,000 to $1,798,000 and am deleting the $50,000 appropriation in Section 3 I believe that the appropriation of $1,798,000

will provide for the continued operation of the program being administered by the Department of Health Services.

With this reduction, I approve Assembly Bill No. 2156.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 2 of Chapter 1462 of the Statutes of 1986 is repealed.

SEC. 2. The sum of one million nine hundred eleven thousand dollars ($1,911,000) is hereby appropriated from the AIDS Vaccine Research and Development Grant Fund to the State Department of Health Services for the purposes of the AIDS Vaccine Research and Development Grant Program created pursuant to Section 199.56 of the Health and Safety Code.

SEC. 3. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the AIDS Vaccine Research and Development Grant Fund to the State Department of Health Services for the purpose of reimbursing the state department for costs incurred in administering the fund.

CHAPTER 1053

An act to add Section 1522.2 to the Health and Safety Code, and to amend Section 11174.1 of the Penal Code, relating to child abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 29, 1989]

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

SECTION 1. Section 1522.2 is added to the Health and Safety Code, to read:

1522.2. If a local law enforcement agency, a probation officer, or a local department or agency that provides social services becomes aware that an employee of a community treatment facility, a day treatment facility, a group home, or a foster family agency has been arrested for child abuse, as defined in Section 11165.6 of the Penal Code, after determining that the potential for abuse is present and that the employee is free to return to the facility where children are present, the local law enforcement agency, probation officer, or local department or agency shall notify the licensee of the charge of abuse.

SEC. 2. Section 11174.1 of the Penal Code is amended to read:

11174.1. (a) The Department of Justice, in cooperation with the State Department of Social Services, shall prescribe by regulation guidelines for the investigation of child abuse, as defined in Section 11165.6, in facilities licensed to care for children, and shall ensure that the investigation is conducted in accordance with the regulations

and guidelines.

(b) For community treatment facilities, day treatment facilities, group homes, and foster family agencies, the State Department of Social Services shall prescribe the following regulations:

(1) Regulations designed to assure that all licensees and employees of community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children have had appropriate training, as determined by the State Department of Social Services, in consultation with representatives of licensees, on the provisions of this article.

(2) Regulations designed to assure the community treatment facilities, day treatment facilities, group homes, and foster family agencies licensed to care for children maintain a written protocol for the investigation and reporting of child abuse, as defined in Section 11165.6, alleged to have occurred involving a child placed in the facility.

(c) The State Department of Social Services shall provide such orientation and training as it deems necessary to assure that its officers, employees, or agents who conduct inspections of facilities licensed to care for children are knowledgeable about the reporting requirements of this article and have adequate training to identify conditions leading to, and the signs of, child abuse, as defined in Section 11165.6.

SEC. 3. The State Department of Social Services shall require that at least one hour of the 20 hours of training currently required by regulation of group home child care workers within the first 18 months of employment shall be dedicated to meeting the requirements of paragraph (1) of subdivision (b) of Section 11174.1 of the Penal Code.

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

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

In order to ensure that the children of this state are protected from abuse, it is necessary for this act to take effect immediately.

CHAPTER 1054

An act to amend Sections 626.6, 626.8, and 627.7 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

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

SECTION 1. Section 626.6 of the Penal Code is amended to read:

626.6. (a) In any case in which a person who is not a student or officer or employee of a community college, a state university, the university, or a school, and who is not required by his or her employment to be on the campus or any other facility owned, operated, or controlled by the governing board of any such community college, state university, university, or school, enters such campus or facility, and it reasonably appears to the chief administrative officer of the campus or facility or to an officer or employee designated by the chief administrative officer to maintain order on such campus or facility that such person is committing any act likely to interfere with the peaceful conduct of the activities of the campus or facility or has entered the campus or facility for the purpose of committing any such act, the chief administrative officer or officer or employee designated by him or her to maintain order on the campus or facility may direct the person to leave the campus or facility, and if the person fails to do so or if the person willfully and knowingly reenters upon the campus or facility within 7 days after being directed to leave, he or she is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction by a fine of not exceeding five hundred dollars ($500), by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

For purposes of this section, a representative of a school employee organization engaged in activities related to representation, as

provided for in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, shall be deemed a person required by his or her employment to be in a school building or on the grounds of a school.

(b) The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

(c) When a person is directed to leave pursuant to subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the campus or facility within 7 days he or she will be guilty of a crime.

SEC. 2. Section 626.8 of the Penal Code is amended to read:

626.8. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, or any specified sex offender who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, unless such person is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief administrative officer of that school, is guilty of a misdemeanor if he or she:

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

(2) Reenters or comes upon such place within 7 days of being asked to leave by a person specified in paragraph (1); or

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

The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

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

(1) Upon a first conviction by a fine of not exceeding five hundred dollars ($500), by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section

415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars ($500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(c) As used in this section:

(1) "Specified sex offender" means any person required to register pursuant to Section 290, who has been convicted of a violation of Section 220, 261, 266, 267, 272, 288, or 289, or of subdivision (c), (d), or (f) of Section 286, or of subdivision (c), (d), or (f) of Section 288a, or of an attempt to commit any of these offenses.

(2) "Lawful business" means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

(3) "Continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and his or her presence or acts interfered with the peaceful conduct of the activities of such school or disrupted the school or its pupils or school activities, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(4) In the case of a specified sex offender, "continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year the defendant came into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(5) "School" means any preschool or school having any of grades kindergarten through 12.

(d) When a person is directed to leave pursuant to paragraph (1) of subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the place within 7 days he or she will be guilty of a crime.

SEC. 3. Section 627.7 of the Penal Code is amended to read:

627.7. (a) It is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed five hundred dollars ($500), or by both, for an outsider to fail or refuse to leave the school grounds promptly after the principal, designee, or school security officer has requested the outsider to leave or to fail to remain off the school grounds for 7 days after being requested to leave, if the outsider does any of the following:

(1) Enters or remains on school grounds without having registered as required by Section 627.2.

(2) Enters or remains on school grounds after having been denied registration pursuant to subdivision (a) of Section 627.4.

(3) Enters or remains on school grounds after having registration revoked pursuant to subdivision (b) of Section 627.4.

(b) The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.

(c) When a person is directed to leave pursuant to subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the place within 7 days he or she will be guilty of a crime.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1055

An act to add Section 199.741 to the Health and Safety Code, relating to AIDS.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

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

(a) The human immunodeficiency virus (HIV) epidemic will have major fiscal implications for the entire health system, including the Medi-Cal program, and, therefore, efforts should be made to identify cost savings to the state.

(b) Money from the General Fund could potentially be saved in the AIDS home health, attendant, and hospice care pilot program by preventing the loss of private health insurance of program participants. If the loss occurs, the state will become the payer of care to pilot program participants. Between January of 1987 and May of 1988, 34 percent of pilot program participants relied on private

health insurance as their primary payer of care.

(c) The Medi-Cal program is authorized to implement the Health Insurance Premium Payment (HIPP) program, which provides for Medi-Cal to pay for health insurance premiums for Medi-Cal eligibles when it is cost-effective to do so. Based on Medi-Cal costs associated with AIDS care, as determined by the State Department of Health Services, Medi-Cal can expect to save an average of twenty thousand dollars ($20,000) per year for each HIPP program participant who has an AIDS diagnosis. Due to the fiscal catastrophic nature of AIDS, many AIDS patients may discontinue their health insurance premium payments prior to qualifying for Medi-Cal. The payment of private health insurance premiums for AIDS patients prior to their obtaining Medi-Cal eligibility may provide the Medi-Cal program with cost savings by increasing participation in the HIPP program.

SEC. 2. Section 199.741 is added to the Health and Safety Code, to read:

199.741. (a) The state department may amend the home health, hospice, and attendant care pilot projects funded pursuant to this chapter, to include, to the extent that it is cost-effective to the Medi-Cal program or the General Fund, the payment of private health insurance premiums for participants in the pilot projects prior to the participants becoming eligible for Medi-Cal.

(b) The director shall make a determination of cost effectiveness, which shall be reviewed by the Department of Finance. The director may use existing budgeted resources for services provided for pursuant to subdivision (a).

CHAPTER 1056

An act to amend Section 2813 of the Public Resources Code, relating to earthquake preparedness.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 2813 of the Public Resources Code is amended to read:

2813. The Southern California Earthquake Preparedness Project and the Bay Area Regional Earthquake Preparedness Project shall continue to June 30, 1995, in order to further comprehensive earthquake preparedness planning in southern and northern California and to help achieve a significant reduction of earthquake hazards by January 1, 2000. The Southern California Earthquake Preparedness Project area shall include the Counties of San Diego and Imperial.

CHAPTER 1057

An act to amend Section 44227.5 of the Education Code, relating to education.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 44227.5 of the Education Code is amended to read:

44227.5. (a) It is the intent of the Legislature that college and university faculty members who teach courses relating to teaching or administrative methods in programs of professional preparation that are approved by the Commission on Teacher Credentialing have direct knowledge of the way that public elementary and secondary schools function and operate.

(b) The Commission on Teacher Credentialing, in cooperation with public and private postsecondary institutions operating teacher education programs, shall develop standards and procedures which ensure that each faculty member who teaches a course relating to teaching methods in an approved program of professional preparation actively participates in public elementary or secondary schools and classrooms at least once every three academic years.

(c) The commission, in cooperation with public and private postsecondary institutions operating administrative services credential programs, shall develop standards and procedures which ensure that each faculty member who teaches a course relating to administrative methods as defined by the commission in an approved program of professional preparation actively participates in public elementary or secondary schools or classrooms at least once every three academic years.

(d) The commission shall exempt from this requirement faculty members whose primary assignments are in departments or schools other than education.

CHAPTER 1058

An act to amend Sections 313, 313.1, and 313.4 of the Penal Code, relating to minors.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature finds and declares that:

(a) Parents should carefully monitor the video recordings that their children rent or purchase.

(b) Video retailers should voluntarily adopt systems that assist parents in controlling the types of video recordings their children rent or purchase.

(c) These systems should maintain parental control by the use of, but not limited to, the following:

(1) Family membership cards that list what restrictions a parent wishes to place on their children's rental or purchase privileges.

(2) A computer data base maintained by the retailer to provide this information at the time of rental or purchase.

(3) The placement of video recordings assigned an "X" rating or which are otherwise "adult" videos in a location designated "adults only."

(4) The requirement that identification be shown where the retailer knows or has reason to know that any person seeking to rent or purchase (A) an "R" rated video is less than 17 years of age or (B) any person seeking to rent or purchase an "X" rated video is less than 18 years of age.

Nothing in this section indicates a legislative intent to abrogate the requirements set forth in Section 313.2 of the Penal Code.

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, video recording, 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. 3. 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 sells, rents, 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 shall be punished as specified in Section 313.4.

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 shall be punished as specified in Section 313.4.

(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 shall be punished as specified in Section 313.4: 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) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter. This area shall be labeled "adults only." The failure to create and label the area is an infraction, and is punishable by a fine not to exceed one hundred dollars ($100). The failure to place a video recording, regardless of its content, in this area shall not constitute an infraction. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

(f) 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.

(g) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (f) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

SEC. 4. Section 313.4 of the Penal Code is amended to read:

313.4. Every person who violates Section 313.1, other than subdivision (e), is punishable by fine of not more than two thousand dollars ($2,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. However, if the person has been previously convicted of a violation of Section 313.1, other than subdivision (e), or of any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, the person shall be punished by imprisonment in the state prison.

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

CHAPTER 1059

An act to amend Section 1203.1b of the Penal Code, relating to criminal law.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1203.1b of the Penal Code is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and granted probation, the court, taking into account any amount which the defendant is ordered to pay in fines, assessments, and restitution, shall 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 shall 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 shall 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 shall 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.

CHAPTER 1060

An act to add Section 19285.1 to the Revenue and Taxation Code, and to amend Sections 11478 and 11478.5 of the Welfare and Institutions Code, relating to parent locators.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 19285.1 is added to the Revenue and Taxation Code, to read:

19285.1. (a) The Franchise Tax Board may, upon request by the California Parent Locator Service, disclose to the California Parent Locator Service, pursuant to Sections 11478 and 11478.5 of the Welfare and Institutions Code, any taxpayer return information that may be of assistance in locating alleged abducting or absent parents,

spouses, or former spouses, in enforcing their liability for child support or the liability for spousal support, in establishing a parent and child relationship, and in locating and returning abducted children to their parents.

(b) Information disclosed to the California Parent Locator Service pursuant to subdivision (a) shall be disseminated by the California Parent Locator Service only as provided for by, and only for the purposes specified in, Sections 11478 and 11478.5 of the Welfare and Institutions Code.

SEC. 2. Section 11478 of the Welfare and Institutions Code is amended to read:

11478. All state, county, and local agencies shall cooperate in the enforcement of any child support obligation or to the extent required under the state plan under Section 11475.2 and Section 1650 of the Code of Civil Procedure, spousal support orders and in the location of parents who have abandoned, deserted, or abducted children, irrespective of whether the children are or are not receiving aid to families with dependent children, and shall, on request, supply the county department, the Department of Justice, any county probation officer, the district attorney of any county in this state, or the California Parent Locator Service with all information on hand relative to the location, income, or property of any absent parents, spouses, or former spouses, notwithstanding any other provision of law making the information confidential, and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or representation or by impersonation or other fraudulent device, obtained aid for a child under this chapter. The county department shall use the information only for the purposes of administration of aid under this chapter and shall not use it or disclose it for any other purpose. The Department of Justice, the district attorney, and the county probation officer shall use it only for the purpose of establishing a parent and child relationship, enforcing the child support liability of the absent parents, enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 and Section 1650 of the Code of Civil Procedure, or for locating parents and children abducted by them or for the prosecution of other persons mentioned in this section, or for assisting the California Parent Locator Service, parent locator services of other states, the federal parent locator service, courts, and public agencies, as authorized by Section 11478.5, and shall not use the information or disclose it, for any other purpose. The California Parent Locator Service shall use and disclose the information only as authorized by Section 11478.5.

Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 3. Section 11478.5 of the Welfare and Institutions Code is

amended to read:

11478.5. (a) There is in the Department of Justice the California Parent Locator Service which shall collect and disseminate all of the following, with respect to any parent who has deserted or abandoned any child, spouse, or former spouse, and with respect to any parent who has abducted any child:

(1) The full and true name of such parent together with any known aliases.

(2) Date and place of birth.

(3) Physical description.

(4) Social security number.

(5) Employment history and earnings.

(6) Military status and Veterans Administration or military service serial number.

(7) Last known address and date thereof.

(8) Driver's license number, driving record, and vehicle registration information.

(9) Criminal, licensing, and applicant records and information.

(10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, that may be of assistance in locating the alleged abducting or absent parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 11475.2.

(B) For purposes of this subdivision "income tax return information" means all of the following regarding the taxpayer:

(i) Assets.

(ii) Credits.

(iii) Deductions.

(iv) Exemptions.

(v) Identity.

(vi) Liabilities.

(vii) Nature, source, and amount of income.

(viii) Net worth.

(ix) Payments.

(x) Receipts.

(xi) Address.

(xii) Social security number.

(b) To effectuate the purposes of this section, the California Parent Locator Service shall, to the extent necessary, utilize the federal parent locator service, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and the same are authorized to provide that assistance and data which will enable the Department of Justice and public agencies to carry out their powers and duties to locate the parents, spouses, and former spouses, and to identify their assets, to establish a parent and child relationship, to enforce

their liability for child or spousal support of their children, for any other obligations incurred on behalf of their children, and to locate and return abducted children to their parents.

(c) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Justice, the central registry of this state and other states as defined by federal law, district attorneys, probation departments, locator services of other states, the federal parent locator service, the county department administering aid to families with dependent children, and courts or local agencies having jurisdiction in support, custody, abduction, adoption, dependency, or abandonment proceedings or actions, or reimbursement proceedings for the support of juveniles who are in out-of-home placement for the purposes set out in Section 11478 and this section.

(d) (1) Except as provided in paragraph (2), at no time shall any information received by the California Parent Locator Service be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 11478, this section, or any other provision of law.

(2) The following information may be provided to an obligee:

(A) Information regarding the location of an obligor.

(B) Information regarding the location of an obligor's employer.

(3) The following definitions shall govern the construction of this subdivision:

(A) "Employer" means a person for whom an individual performs services as an employee, as defined in Section 706.011 of the Code of Civil Procedure, and includes the United States Government and any public entity as defined in Section 811.2 of the Government Code.

(B) "Obligee" means the person to whom support has been ordered to be paid.

(C) "Obligor" means any person owing a duty of support.

(4) This subdivision shall not affect the right to discovery between parties in any action to establish, modify, or enforce child support, spousal support, or family support.

(e) The Department of Justice, in consultation with the State Department of Social Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service.

(f) This section shall be construed in a manner consistent with the other provisions of this article.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1061

An act to amend Section 5068 of the Penal Code, relating to prisoners.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. (a) The Legislature finds and declares that the maintenance of family ties and the development of familial relationships is crucial to rehabilitation efforts. It is the intent of the Legislature to facilitate the maintenance and development of family relationships by incarcerating inmates in the institution closest to the inmate's home, whenever practical and when requested by the inmate.

(b) The Legislature further finds and declares that the ability of the Department of Corrections to accommodate prisoner requests to be placed in an institution nearest the prisoner's home is limited by the number of prisons located in major metropolitan areas such as southern California. Further growth in prison population and the difficulty in siting prisons in major metropolitan areas will compound the difficulty in accommodating those requests. The Legislature further finds and declares that the increasing percentage of prisoners with short stays in prison, particularly parole violators, inhibits the ability of the Department of Corrections in accommodating prisoner's request for those placements.

SEC. 2. Section 5068 of the Penal Code is amended to read:

5068. The Director of Corrections shall cause each person who is newly committed to a state prison to be examined and studied. This includes the investigation of all pertinent circumstances of the person's life such as the existence of any strong community and family ties, the maintenance of which may aid in the person's rehabilitation, and the antecedents of the violation of law because of which he or she has been committed to prison. Any person may be reexamined to determine whether existing orders and dispositions should be modified or continued in force.

Upon the basis of the examination and study, the Director of Corrections shall classify prisoners; and when reasonable, the director shall assign a prisoner to the institution of the appropriate security level and gender population nearest the prisoner's home, unless other classification factors make such a placement

unreasonable.

As used in this section, "reasonable" includes consideration of the safety of the prisoner and the institution, the length of term, and the availability of institutional programs and housing.

As used in this section, "prisoner's home" means a place where the prisoner's spouse, parents, or children reside at the time of commitment.

When the diagnostic study of any inmate committed under subdivision (b) of Section 1168 so indicates, the director shall cause a psychiatric or psychological report to be prepared for the Community Release Board prior to the release of the inmate. The report shall be prepared by a psychiatrist or psychologist licensed to practice in this state.

Before the release of any inmate committed under subdivision (b) of Section 1168, the director shall provide the Community Release Board with a written evaluation of the prisoner.

CHAPTER 1062

An act to add Section 33204.3 to the Public Resources Code, relating to recreation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 33204.3 is added to the Public Resources Code, to read:

33204.3. (a) The Legislature finds and declares all of the following:

(1) The existing parks and open space owned by federal, state, and local agencies within the Rim of the Valley Trail Corridor, as defined in Section 33105.5, are important recreational and environmental resources for the people of California, especially residents of the San Fernando, La Cresenta, and San Gabriel Valleys, and it is in the public interest to facilitate the connection of existing parks and open-space resources and to provide for further improvement of underutilized public easements and other existing public open spaces.

(2) There is a need for overall trail and recreational access planning and coordination between the 11 local agencies, two joint powers park agencies, two state agencies, and three federal agencies with jurisdiction over lands in the Rim of the Valley Trail Corridor.

(b) The conservancy, using the voluntary cooperation of governmental jurisdictions within the corridor, shall prepare and adopt a coordinated trail development plan and recreational access program for the Rim of the Valley Trail Corridor that includes, but

is not necessarily limited to, all of the following:

(1) Identification of major hiking and equestrian trails and important secondary and feeder trails that cross jurisdictional lines, and a priority program for improving those trails.

(2) Identification of special purpose trails, where appropriate, for special population groups and special user groups, such as mountain bicycles where the special purpose trails will have no significant environmental impact.

(3) Identification of, and a priority program for implementing, those additional recreation access needs, including new or expanded trails that should be added to the Rim of the Valley Trail Corridor, and additional or upgraded facilities, parks, or open spaces that may be necessary.

(4) Identification of underused existing public open spaces and recommendations for providing better public use and enjoyment of these areas.

(c) Notwithstanding Section 33105.5, the conservancy may make minor boundary changes to the Rim of the Valley Trail Corridor solely for the purpose of implementing the plan prepared pursuant to this section. Any boundary change shall be in the form of maps and descriptions which shall be included in the plan submitted pursuant to subdivision (d) and shall be filed with the Secretary of State not later than July 31, 1990.

(d) The conservancy shall hold at least one public hearing in each city and the unincorporated area of each county within the Rim of the Valley Trail Corridor prior to the submission of the plan and program pursuant to this subdivision. The plan and program prepared under subdivision (b), and any changes to the corridor boundary, shall be coordinated with each affected jurisdiction prior to adoption by the conservancy. The plan and program shall be submitted to the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Wildlife at least 30 days prior to the approval of any acquisition or improvement under the plan or program pursuant to this division, but not later than June 30, 1990.

(e) Upon adoption by a local government of the plan and program prepared under this section, the plan and program shall be part of the plan that the local government implements for purposes of compliance with Section 33009.

SEC. 2. The planning and coordination activities undertaken by the Santa Monica Mountains Conservancy pursuant to Section 33204.3 of the Public Resources Code shall be undertaken within existing budget provisions, using the voluntary resources of local nonprofit organizations, private contributions, and the existing planning resources of the various governmental entities affected by the Rim of the Valley Trail Corridor. The conservancy shall reimburse the Department of Parks and Recreation for any reasonable costs incurred by the department as a result of this act.

SEC. 3. This act shall not become operative unless and until

legislation is enacted during the 1989–90 Regular Session which either deletes the repeal of Division 23 (commencing with Section 33000) of the Public Resources Code or extends that repeal date beyond July 1, 1990.

CHAPTER 1063

An act to amend Section 25356.1 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 25356.1 of the Health and Safety Code is amended to read:

25356.1. (a) Except as provided in subdivision (g), the department, or, if appropriate, the regional water quality control board shall prepare or approve remedial action plans for all sites listed pursuant to Section 25356

(b) A potentially responsible party may request the department or the regional water quality control board, when appropriate, to prepare or approve a remedial action plan for any site not listed pursuant to Section 25356 if the department or the State Water Resources Control Board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the state board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of any regional water quality control board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(c) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.61 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional water quality control board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the

reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or regional water quality control board shall consider the extent to which remedial action measures are available which use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions which do not use this treatment. The department or regional water quality control board shall not select remedial action measures which use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures. In evaluating the cost effectiveness of proposed alternative remedial action measures, the department or regional water quality control board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(d) A remedial action plan prepared or approved pursuant to this section shall include a statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted to, or prepared by, the department or the regional water quality control board for a particular site. The statement shall also include an evaluation of the consistency of the removal and remedial actions proposed by the plan with the federal regulations and factors specified in subdivision (c) and shall set forth the reasons for rejection of alternative removal and remedial actions. The statement shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional water quality control board shall prepare or approve a draft remedial action plan and shall do all of the following.

(1) Circulate the draft plan for at least 30 days for public

comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional water quality control board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information which is necessary to address the issues which concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(e) After complying with subdivision (d), the department or the regional water quality control board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional water quality control board shall then issue the final remedial action plan.

(f) A potentially responsible party named in the final remedial action plan issued by the department or the regional water quality control board may seek judicial review of the final remedial action plan pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final plan is issued. The filing of a petition seeking judicial review of a final remedial action plan shall not stay any removal or remedial action specified in the final plan.

For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional water quality control board, as the case may be. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(g) (1) This section does not require the department or a regional water quality control board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment.

(2) A remedial action plan is not required pursuant to subdivision (a) if all of the following apply:

(A) The department, a regional water quality control board, or a responsible party takes a removal action at a site listed pursuant to Section 25356 to prevent, minimize, or mitigate damage that may

otherwise result from a release or threatened release of a hazardous substance.

(B) The total cost of the removal action is less than four hundred thousand dollars ($400,000).

(C) The department, after appropriate testing and analysis, determines that the removal action has adequately abated conditions at the site and the site may be removed from the list established pursuant to Section 25356.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (c) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section 25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars ($2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions which are necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.

(5) Paragraphs (2) and (3) of this subdivision do not apply to a removal action paid from the Hazardous Substance Cleanup Fund.

(h) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to any action or failure to act by a regional water quality control board pursuant to this section.

CHAPTER 1064

An act relating to the Department of Justice.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. On or before April 1, 1992, the Attorney General, after collecting data from the district attorney of each county, shall report to the Legislature as to the number of prosecutions, both successful and unsuccessful, which were undertaken in this state between January 1, 1989, and December 31, 1991, in which a violation of Chapter 7.5 (commencing with Section 311) or Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1 of the Penal Code, or both chapters, were alleged in a complaint, indictment, or information.

CHAPTER 1065

An act to add Chapter 3.5 (commencing with Section 11758.50) to Part 1 of Division 10.5 of the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Chapter 3.5 (commencing with Section 11758.50) is added to Part 1 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 3.5. ALCOHOL DETOXIFICATION AND IV DRUG USER AIDS EDUCATION PILOT PROJECT

11758.50. The Legislature finds and declares all of the following:

(a) Alcohol and other drug related problems are a health issue which dramatically impact California's county programs and county budgets.

(b) Alcohol not only affects the individual involved but potentially extends to the many county programs which involve these individuals and their families.

(c) Additionally, drug abuse and especially intravenous drug abuse relates directly to the contracting and spreading of AIDS.

(d) Drug and alcohol, and their health and welfare related costs are already straining local government budgets.

(e) There are approximately 225,000 habitual needle using drug addicts and an additional 200,000 recreational intravenous drug users in the state.

(f) The relationship of intravenous drug users and the transmission of AIDS is well-documented. AIDS cases, currently estimated to cost almost one hundred thousand dollars ($100,000) from diagnosis-to-death, are catastrophic to those budgets.

11758.51. The department shall provide funding, for the 1990–91 fiscal year, for an in-home alcohol detoxification, and intravenous drug user AIDS education pilot project to be established in San Luis Obispo County. The pilot project shall be administered by the alcohol and drug program department of the county. The pilot project shall be required to be implemented only to the extent that state funds are provided. The pilot project shall terminate on July 1, 1991, except as otherwise specified by the county.

11758.52. (a) The pilot project created pursuant to this chapter shall treat drug and alcohol abusers through a county administered in-home detoxification and AIDS education program.

(b) The client contact shall be through a public health nurse who shall provide all of the following:

(1) Information and monitoring of the detoxification period.

(2) Information and educational materials on drug and alcohol abuse.

(3) Information on the contracting and transmission of AIDS via intravenous drug use.

(4) Information and contacts with drug and alcohol, and AIDS support groups.

11758.53. The pilot project shall be administered in accordance with criteria agreed upon by the department and San Luis Obispo County.

11758.54. (a) The department, in cooperation with San Luis Obispo County, shall evaluate the pilot project created pursuant to this chapter. The evaluation shall include numbers of intravenous (IV) drug users in target counties, status of HIV test results among alcoholics and IV drug users not in recovery, drug and alcohol-related jail intakes, and repeat offenses. Changes in the above data following completion of the in-home detoxification project shall be carefully scrutinized. Particular attention shall be paid to changes in incidence of HIV test results among individuals requesting testing from the San Luis Obispo County health department and repeat alcohol- and drug-related offenses as tracked by the county jail, municipal court, and Department of Motor Vehicles.

(b) Additional monitoring and outcome data shall be collected regarding clients of the in-home detoxification pilot project, which shall include each of the following:

(1) Client health status at time of intake screening.

(2) Clients' health status during detoxification.

(3) Clients' health status after detoxification.

(4) Status and results of HIV testing for those choosing the test.
(5) Numbers of detoxification referrals completed.
(6) Numbers of successful referrals to followup.
(7) Rate of subsequent rearrest.

(c) The degree of successful completion of program objectives shall also be analyzed and discussed. Analysis shall be based on results of monitoring instruments designed for the in-home detoxification project which shall include all of the following:

(1) Numbers of referrals to the in-home detoxification project initiated.
(2) Numbers of clients (both detoxification clients and family members) who successfully meet educational criteria related to AIDS education.
(3) Numbers of detoxification referrals completed.
(4) Numbers of successful referrals to followup treatment.
(5) Rate of subsequent rearrest.

(d) The department shall submit an evaluation of the pilot project to the Governor and the Legislature not later than July 1, 1992.

(e) Blood testing and test result disclosure shall be in accordance with Chapter 1.11 (commencing with Section 199.20) and Chapter 1.12 (commencing with Section 199.30) of Part 1 of Division 1.

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 required to be implemented only to the extent that state funds are provided. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1066

An act to add Section 60375.5 to the Government Code, and to add Sections 761.5, 779.5, 10009.6, 12822.6, and 16481.6 to the Public Utilities Code, relating to utilities.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) The Public Utilities Commission has authorized telephone corporations to participate in a centralized credit check system in order to share information on subscribers and their behavior with respect to the payment of their last utility bill.

(b) The purpose and goals of credit check systems are to alert public utilities to those customers and subscribers who are known

credit risks.

(c) Ascertainment of a customer's or subscriber's habits with regards to paying utility bills is greatly enhanced by the sharing of information between public utilities through appropriate credit check systems.

SEC. 2. Section 60375.5 is added to the Government Code, to read:

60375.5. The decision of a district to require a new residential applicant to deposit a sum of money with the district prior to establishing an account and furnishing service shall be based solely upon the credit worthiness of the applicant as determined by the district.

SEC. 2.5. Section 761.5 is added to the Public Utilities Code, to read:

761.5. (a) Where the commission determines that it would be cost-effective, the commission shall authorize electrical and gas corporations to participate in a centralized credit check system to share information on customers; and the electrical and gas corporations may also share information on customers with telephone corporations and publicly owned public utilities. No public utility which participates in the centralized credit check system shall utilize any information obtained through the database for its internal marketing purposes. A public utility may release pertinent information to a collection agency for the purpose of collecting an outstanding bill, but shall not otherwise release, transfer, or sell any information obtained through the centralized credit check system.

(b) Every electrical and gas corporation which participates in a centralized credit check system is subject to the Consumer Credit Reporting Agencies Act (Title 1.6 (commencing with Section 1785.1) of Part 4 of Division 3 of the Civil Code) and the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

SEC. 3. Section 779.5 is added to the Public Utilities Code, to read:

779.5. The decision of an electrical, gas, heat, telephone, or water corporation to require a new residential applicant to deposit a sum of money with the corporation prior to establishing an account and furnishing service shall be based solely upon the credit worthiness of the applicant as determined by the corporation.

SEC. 4. Section 10009.6 is added to the Public Utilities Code, to read:

10009.6. The decision of a public utility to require a new residential applicant to deposit a sum of money with the public utility prior to establishing an account and furnishing service shall be based solely upon the credit worthiness of the applicant as determined by the public utility.

SEC. 5. Section 12822.6 is added to the Public Utilities Code, to read:

12822.6. The decision of a district to require a new residential

applicant to deposit a sum of money with the district prior to establishing an account and furnishing service shall be based solely upon the credit worthiness of the applicant as determined by the district.

SEC. 6. Section 16481.6 is added to the Public Utilities Code, to read:

16481.6. The decision of a district to require a new residential applicant to deposit a sum of money with the district prior to establishing an account and furnishing service shall be based solely upon the credit worthiness of the applicant as determined by the district.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1067

An act to repeal Chapter 1939 of the Statutes of 1955, Chapter 1430 of the Statutes of 1957, and Chapter 1586 of the Statutes of 1963, relating to tidelands and submerged lands and to convey certain tidelands and submerged lands to the City of Antioch.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. (a) There is hereby granted in trust to the City of Antioch, hereafter referred to as the "trustee" all of the right, title, and interest of the State of California, held by the state by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, situated in the County of Contra Costa and described in Section 13, hereafter referred to as "trust lands." The lands shall be held by the trustee and its successors in trust for the benefit of all the people of the state for purposes of commerce, navigation, and fisheries, and for other public trust purposes, including, but not limited to, preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and recreational and visitor-oriented uses, as more particularly provided in this act.

(b) This trust grant is subject to the following express conditions:

(1) The use of the trust lands shall be in conformity with a trust lands use plan, as defined in Section 2.

(2) The trustee or its successors shall not at any time grant, convey, give, or otherwise alienate the trust lands, or any part thereof, to any person, firm, entity, or corporation for any purposes whatsoever. The trustee may lease the trust lands, or any part thereof, for limited periods, not exceeding 50 years, for purposes consistent with the trust upon which those lands are held. The trustee may collect and retain rents and other trust revenues from those leases, under rules and regulations adopted in accordance with Section 2 and consistent with Section 5.

(3) In the management, conduct, operation, and control of the trust lands, or any improvement, betterments, or structures thereon, the trustee or its successors shall make no illegal discrimination in rates, tolls, or charges for any use or service in connection herewith, nor shall the trustee discriminate against or lawfully segregate any person or group of persons on account of sex, race, color, creed, national origin, ancestry, or physical handicap for any use or service in connection herewith.

(4) The state shall have the right to use, without charge, any transportation, landing, or storage improvements, betterments, or structures constructed upon the trust lands for any vessel or other watercraft or railroad owned or operated by or under contract to the state The state's use of the facilities shall be governed by the trustee's rules and regulations.

(5) There is reserved to the people of the State of California the right to fish in the waters over the trust lands, with the right to convenient access to those waters over the trust lands for that purpose.

(6) There is excepted and reserved to the state all remains or artifacts of archaeological and historical significance and all deposits of minerals, including, but not limited to, all substances specified in Section 6407 of the Public Resources Code, in the trust lands, and the right to prospect for, mine, and remove those deposits from the lands.

(7) The trustee shall not authorize a capital outlay project, lease, or agreement for port facilities, such as marine terminals, pipelines, or other related energy facilities, on the granted lands without first requesting and receiving the approval, in writing, of the commission. Prior to approving any such capital outlay project, lease, or agreement, the commission shall consult with other governmental agencies, and no approval shall be given unless the commission determines that the project is in, and for, the best interest of the people of the state and consistent with applicable provisions of law.

SEC. 2. (a) On or before January 1, 1994, the trustee shall submit to the State Lands Commission, hereafter referred to as the "commission," a trust lands use plan indicating details of intended development, preservation, or other use of the trust lands. The trustee shall thereafter submit to the commission for approval all

changes of, amendments to, or extensions of the trust lands use plan. Any use of the trust lands shall be consistent with the trust lands use plan as approved by the commission.

(b) The commission shall review with reasonable promptness the trust lands use plan submitted by the trustee and any changes or amendments to determine that they are consistent with the public trust and the requirements of this act. Based upon its review, the commission shall either approve or disapprove the plan. If the commission disapproves the plan, the commission shall furnish the trustee with its formal recommendations, and the trustee shall submit a revised plan to the commission within 180 days. If that revised plan is determined by the commission to be inconsistent with the public trust and the requirements of this act, all right, title, and interest of the trustee in and to the trust lands and improvements thereon shall revert to the state.

(c) The trust lands use plan may consist of any plan, program, or other document which includes all of the following:

(1) A general description of the type of uses planned or proposed for the trust lands. The location of these land uses shall be shown on a map or aerial photograph.

(2) The projected statewide benefit to be derived from the planned or proposed uses of the trust lands, including, but not limited to, the financial benefit and the furtherance of those purposes set forth in Section 1.

(3) The proposed method of financing the planned or proposed uses of the trust lands, including estimated capital costs, annual operating costs, and anticipated annual trust revenues.

(4) An estimated timetable for implementation of the trust lands use plan or any phase thereof.

(5) A description of how the trustee proposes to protect and preserve natural and manmade resources in connection with the use of the trust lands.

(d) The governing body of the trustee shall submit to the commission, for its approval, procedures, rules, and regulations to govern the use or development of the trust lands. These rules and regulations shall include, but not be limited to, lease rates, the bases upon which the rates are established, lease terms and conditions, provision for renegotiation of rates and terms and assignments, and other information as may be required by the commission.

(e) All leases or agreements proposed, or entered into, by any trustee after January 1, 1990, shall be consistent with the trust lands use plan submitted by the trustee and approved by the commission.

(f) Upon request, the trustee shall submit to the commission a copy of all leases and agreements entered into, renewed, or renegotiated.

SEC. 3. (a) On or before September 30 of every succeeding fifth year, commencing on September 30, 1991, the trustee shall submit a report of its utilization of the trust lands for each immediately preceding five-calendar-year period ending with June 30 of the

calendar year in which the report is required to be submitted.

(b) The report shall include all of the following:

(1) A general description of the uses to which the trust lands have been placed during the period covered by the report.

(2) A list of the owners and holders of leases or permits granted or issued by the trustee, which list shall specify, as to each owner or holder, all of the following:

(A) The use to which the trust lands have been placed by the owner or holder.

(B) The consideration provided for in each lease or permit, and the consideration actually received by the trustee for the lease or permit granted or issued.

(C) An enumeration of the restrictions which the trustee has placed on the use of the trust lands and each area thereof for the period covered by the report.

SEC. 4. The trustee shall demonstrate good faith in carrying out its trust lands use plan and amending it when necessary in accordance with Section 2. If the commission determines that the trustee has substantially failed to improve, restore, preserve, or maintain the trust lands, as required by the trust lands use plan, in the time period set forth in paragraph (4) of subdivision (c) of Section 2, or has unreasonably delayed adopting that proposal, all right, title, and interest of the trustee in and to the trust lands and improvements thereon shall revert to the state.

SEC. 5. (a) The trustee shall establish and maintain accounting procedures, in accordance with generally accepted accounting principles, providing accurate records of all revenues received from the trust lands and trust assets and of all expenditures of those revenues. If the trustee has several trust grants of adjacent lands and operates the granted lands as a single integrated entity, separation of accounting records for each trust grant is not required. All revenues received from trust lands and trust assets, hereafter referred to as "trust revenues," shall be expended only for those uses and purposes set forth in subdivision (a) of Section 1. The purpose of this requirement is to provide for the segregation of funds derived from the use of the trust lands in order to ensure that they are only expended to enhance the lands in accordance with the trust uses and purposes upon which the trust lands are held.

(b) Trust revenues may be used to acquire appropriate uplands to benefit and enhance the trust with the prior written consent of the commission. Property acquired with these trust revenues shall be considered an asset of the trust and subject to the terms and conditions of this act.

SEC. 6. On or before October 1 of each year, the trustee shall file with the commission a detailed statement of all trust revenues and expenditures relating to its trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement. This statement shall be prepared according to generally accepted accounting principles and

may take the form of an annual audit prepared by or for the trustee.

SEC. 7. As to the expenditure of trust revenues for any single capital improvement on the trust lands involving an amount in excess of two hundred fifty thousand dollars ($250,000) in the aggregate, the trustee shall file with the commission a detailed description of the capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith.

Within 90 days after the time of that filing, the commission shall determine whether the capital improvement is in the statewide interest and benefit and is consistent with the conditions of this act. The commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of that opinion shall be delivered to the trustee with the notice of its determination. If the commission notifies the trustee that the capital improvement is not authorized, the trustee shall not disburse any trust revenues for, or in connection with, the capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction.

The trustee may bring suit against the state for the purpose of securing such an order or judgment, which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the commission and the Attorney General, and the Attorney General shall defend the state in that suit. If judgment is given against the state in the suit, no costs may be recovered.

SEC. 8. On June 30, 1992, and at the end of every third fiscal year thereafter, that portion of the trustee's trust revenues in excess of two hundred fifty thousand dollars ($250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of trust activities shall be deemed excess revenues.

However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Any reserve fund for future capital expenditure shall be for projects that are consistent with the trust lands use plan required by Section 2 and have prior commission approval under Section 7 to be deemed nonexcess revenues. Capital improvements of the trust lands made for purposes authorized by this act may be considered as expenditures for the purpose of determining excess revenues.

The excess revenues, as determined pursuant to this section, shall be allocated 85 percent to the Treasurer for deposit in the General Fund in the State Treasury and 15 percent to the trustee for expenditures consistent with this act.

SEC. 9. The commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with and that all other applicable provisions of law concerning the trust lands are being complied with in good faith.

SEC. 10. Reimbursement for any and all expenditures of nontrust revenues for management, maintenance, and improvements made to the trust shall be approved by the commission in advance of those expenditures, or the expenditures shall be deemed a gift to the trust.

SEC. 11. Whenever the commission finds that the trustee has violated, or is about to violate, the terms of its trust grant or any other principle of law relating to its obligation under the public trust, the commission shall notify the trustee of the violations.

The trustee shall have 30 days from receipt of that notice of violation to conform to the terms of its grant and the principles and laws under the public trust. If the trustee fails or refuses to so conform, the commission may bring such actions as are necessary to enforce the rights of the state and people pursuant to the public trust. The Attorney General shall represent the state and people in those actions or proceedings. If the judgment is given against the state in the action or proceeding, no costs may be recovered from the state.

SEC. 12. Section 6359 of the Public Resources Code does not apply to this act.

SEC. 13. The lands granted in Section 1 are those tidelands and submerged lands described as follows:

All that certain real property situated in the State of California, County of Contra Costa, City of Antioch, described as follows:

Beginning at the point, where the easterly line of the "Fulton Annexation," Resolution No. 2284-A passed and adopted by the City Council of the City of Antioch May 10, 1965, extended into the San Joaquin River, intersects the Ordinary High Water Mark; thence from the point of beginning, northerly along the extension of that east line into the San Joaquin River to the common boundary line between Contra Costa County and Sacramento County; thence westerly and downstream along that common county boundary line to the intersection of the centerline of New York Slough; thence westerly along that centerline of the slough to a point where the west line of the "U.S. Steel Annexation No. 84-2," Resolution No. 84-134 passed and adopted by the City Council of the City of Antioch June 26, 1984, extended northerly meets the centerline of New York Slough; thence southerly along the west line of U.S. Steel Annexation 84-2 boundary line to a point of intersection with the Ordinary High Water Mark of New York Slough; thence easterly along that Ordinary High Water Mark of New York Slough to the intersection of the Ordinary High Water Mark of the San Joaquin River; thence continuing easterly along the Ordinary High Water Mark of the San Joaquin River to the point of beginning.

SEC. 14. Chapter 1939 of the Statutes of 1955 is repealed.

SEC. 15. Chapter 1430 of the Statutes of 1957 is repealed.

SEC. 16. Chapter 1586 of the Statutes of 1963 is repealed.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program

specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1068

An act to amend Sections 42949, 44974, 44986, 67094, 67140, 67141, and 67142 of, and to add Article 3 (commencing with Section 45031) to Chapter 9 of Division 17 of, the Food and Agricultural Code, relating to agriculture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 42949 of the Food and Agricultural Code is amended to read:

42949. (a) It is unlawful for any person to alter in any respect any certificate of inspection, notice of violation, report, statement, or other document that is referred to in this division, which is issued by an enforcing officer.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than three thousand dollars ($3,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 2. Section 44974 of the Food and Agricultural Code is amended to read:

44974. (a) Any violation or threatened violation of any provision of this chapter or regulations of the director established pursuant to this chapter is unlawful and shall constitute grounds for injunctive relief and the imposition of civil penalties of not less than five hundred dollars ($500) and not exceeding five thousand dollars ($5,000) per violation. This action may be brought in a court of competent jurisdiction by the director or district attorney of a county in which a violation or threatened violation occurred. The California Avocado Commission and the Avocado Inspection Committee are also authorized to bring an action for injunctive relief on grounds provided for in this chapter. In bringing this action, the commission or committee is not required to allege facts necessary to show or which tend to show lack of an adequate remedy at law, or which show or tend to show irreparable damage or loss. Prior to commencing this action, the commission shall allow the director the opportunity to bring an action for injunctive relief following the same procedure as provided for the committee in Section 45015. Notwithstanding the director's decision on whether or not to bring

an action for injunctive relief, nothing in this section or in Section 45015 shall be construed as preventing the commission from bringing an action for injunctive relief.

(b) In addition to the requirements of subdivision (a), and except as provided in subdivision (c) and Sections 42945, 42948, 42949, and 44986, a violation of this chapter is an infraction punishable by a fine of not more than five hundred dollars ($500).

(c) It is unlawful for any person to fail to comply with the inspection or certification requirements of this chapter. A violation is a misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars (5,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

(d) Each violation or threatened violation involving a lot of avocados shall be treated as a separate violation. Any number of defendants in any number of counties may be joined in one action even though the violations or threatened violations are not the same, and jurisdiction for the action may be established in any county in which any of the violations or threatened violations occur.

SEC. 3. Section 44986 of the Food and Agricultural Code is amended to read:

44986. It is unlawful for any person to do any of the following:

(a) Use a certification stamp for certifying containers or lots of avocados for other than containers previously inspected by the director's authorized agent and designated to be stamped.

(b) Use the stamp at any time or in any manner other than provided in this chapter or contrary to the directions of the director's authorized agent authorizing the use of the stamp.

(c) Refuse to surrender, each day after use, or upon demand of the director's authorized agent, any certification stamp authorized to be used.

(d) Counterfeit or alter or use any counterfeit or altered certification stamp.

(e) A violation of this section is a misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

SEC. 4. Article 3 (commencing with Section 45031) is added to Chapter 9 of Division 17 of the Food and Agricultural Code, to read:

Article 3. Proof of Ownership

45031. Every person who is in possession of over 100 pounds of avocados which are produced in this state shall possess a record of proof of ownership of the avocados.

45032. (a) Upon probable cause to believe any avocados regulated by this chapter are in unlawful possession, proof of ownership shall be made available for inspection upon the request of the director or any peace officer. If the director has probable cause

to believe that any avocados regulated by this chapter are in unlawful possession, he or she may request a peace officer to stop the vehicle pursuant to Section 45037 for inspection.

(b) The proof of ownership record shall contain all of the following information:

(1) The name, address, telephone number, and signature of the seller or the seller's authorized representative.

(2) The name and address of the buyer or consignee if not sold.

(3) The common name "avocados" and the quantity of the avocados.

(4) The date of transaction.

45033. A bill of lading, bill of sale, certified farmers certificate, any data obtainable by electronic transmission which is accessible to a common carrier, or a similar type document shall be considered proof of ownership for purposes of this chapter.

45034. It is unlawful for any person to knowingly falsify or cause to be falsified any information in a record intended to show proof of ownership.

45035. A copy of the proof of ownership record shall be retained by the buyer and seller for a period of 60 days after sale.

45036. This article does not apply to any of the following:

(a) Avocados transported from a farm or ranch where they are produced to a commercial packing plant within this state for processing or packing.

(b) Avocados transported and accompanied by a valid permit, disposal order, or certificate issued by the director or the commissioner for any reason other than to comply with this article.

45037. Upon probable cause to believe avocados regulated by this chapter are being unlawfully transported, any peace officer may stop the transporting vehicle and request a record of proof of ownership of the avocados.

45038. Upon reasonable belief that a person is in unlawful possession of avocados regulated by this chapter, the avocados may be seized by the director or any peace officer and shall be turned over to the custody of the director. The director may hold the commodity on the premises where it was seized until disposed of pursuant to Section 45040.

45039. The director or a peace officer may investigate to ascertain the ownership of any avocados that have been held pursuant to this chapter. If the lawful owner is located, the avocados shall be released to the owner, or his or her agent. The director may require reasonable payment to cover costs incurred in the storing of the avocados, but not to exceed the value of the avocados.

45040. (a) If for any reason the avocados are not released to the rightful owner after being in the custody of the director for 48 hours or, in the case of highly perishable avocados, any shorter period of time that the director deems necessary, the director may sell the avocados by private sale at fair grower market value. All of the proceeds derived from the sale of the commodity shall be held by the

director for a period of not less than six months, during which time the lawful owner of the avocados may submit satisfactory proof of ownership and obtain possession of the proceeds. The director may require the payment by the owner of an amount sufficient to cover the costs incurred for storage and sale of the avocados, but not to exceed the sale price of the avocados. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, the director shall deposit the proceeds of the sale of the avocados with the California Avocado Commission.

(b) If any seized avocados remain unsold after being offered for sale pursuant to this article, the director may donate the avocados to a nonprofit charitable organization.

(c) If the avocados are unfit for human consumption, the director may destroy them.

45041. (a) Unless otherwise specified, a violation of this article is an infraction punishable by a fine of not more than five hundred dollars ($500).

(b) A conviction of a second or subsequent violation of this article is a misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.

(c) A violation of this article is a misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment, if the retail value of the avocados in violation is in excess of five hundred dollars ($500).

45042. This article establishes minimal requirements for the transportation, identification, disposition, and use of funds derived from the disposition of avocados seized pursuant to this article. A county may, by ordinance, impose additional requirements regarding these requirements.

SEC. 4.5. Section 67094 of the Food and Agricultural Code is amended to read:

67094. (a) In order to prevent unfair trade practices which are detrimental to California's avocado industry, including, but not limited to, deception and misinformation, the commission shall collect and disseminate to any and all interested persons, handler F.O.B., market price information based on sales which have occurred.

(b) The identity of each handler reporting information and the information reported under this section shall be kept confidential and not made public under any circumstances. Information that gives industry totals, averages, and other similar data may be disclosed by the commission.

(c) The procedure for the collection and dissemination of the information pursuant to this section shall be approved by the

director.

SEC. 5. Section 67140 of the Food and Agricultural Code is amended to read:

67140. The commission may recommend to the director the adoption of avocado quality standards or engage in any other activity authorized pursuant to the California Marketing Act of 1937 (Chapter 1 (commencing with Section 58601) of Part 2 of Division 21) that is in accordance with the procedures specified in that act, unless otherwise specified in this article.

SEC. 6. Section 67141 of the Food and Agricultural Code is amended to read:

67141. Any standards or activities adopted pursuant to this article shall be implemented by the director at the beginning of the marketing season next succeeding the date in which they were approved by the director.

SEC. 7. Section 67142 of the Food and Agricultural Code is amended to read:

67142. Any standards or activities recommended by the commission and concurred in by the director, shall not be operative until approved in the manner specified in Section 67121.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the expanded enforcement procedures authorized by this act to be effective when the current avocado crop is harvested for market, it is necessary that the act take effect immediately.

CHAPTER 1069

An act to amend Section 52580 of, and to add Section 50197.5 to, the Health and Safety Code, relating to local agencies.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 50197.5 is added to the Health and Safety Code, to read:

50197.5. Any local agency may, upon the approval of the California Debt Limit Allocation Committee pursuant to subdivision (d) of Section 8869.85 of the Government Code, by written agreement assign to any other issuer having the authority to issue qualified mortgage bonds under the laws of this state all or any part of the local agency's allocation pursuant to Sections 50189, 50190, and 50191 for the calendar year. Under the assignment, the issuer shall agree to issue mortgage credit certificates to qualifying homeowners of property located within the territory of the assigning local agency, provided however that if, after a reasonable attempt and for reasons beyond the control of the issuer, the issuer is unable to issue all of the assigned certificates to homeowners of property located within the territory of the assigning local agency, any remaining certificates may be issued to qualifying homeowners of property located within the county within which the assigning local agency is located.

SEC. 2. Section 52580 of the Health and Safety Code is amended to read:

52580. (a) The Legislature finds and declares as follows:

(1) There exists a severe shortage of affordable housing, especially for persons and families of low and moderate income, and there is an immediate need to encourage local agencies to facilitate the production of new housing through the provision of supplemental financial assistance, not only to develop new and adequate infrastructure but for the rehabilitation, maintenance, and improvement of existing public works essential to accommodate the growing housing needs of our population. Without a supply of affordable housing, this state will find it more difficult to attract and retain industry.

(2) The costs of new housing developments have been increasing, in part, because local agencies do not have a viable means to support the growing infrastructure housing needs. As a consequence, local agencies must require housing developers to assume, through new housing development fees, a significant share of the infrastructure costs, which forces the new home buyers to bear disproportionately increased costs. This not only results in decreasing the relative affordability of the state's housing supply, but also causes vitally needed housing developments to be impeded, halted, or rendered

infeasible despite the benefits to the public health, safety, and welfare.

(3) The state has the primary responsibility to assist local agencies through the creation of an incentive-oriented supplemental financing program for local infrastructure to provide the incentive to local agencies toward facilitating the production of an ample supply of affordable housing, necessary both for the well-being of our citizens and for a strong state economy.

(4) It is in the public interest and it will serve a public purpose for the Legislature to provide, through this part, a housing infrastructure incentive policy, and a concept with broad flexibility and local options, which will provide in cooperation with local agencies, greater encouragement to local agencies to expedite the process of approving needed housing developments. This will reassert the state's long-range priority commitment which reaffirms that stimulating affordable housing growth, economic prosperity, development, and environmental protection are statewide public needs which are not mutually exclusive and are each vital to the balanced growth and development of this state.

(b) The provisions of this chapter shall not be self-executing and shall not be implemented unless further enabling legislation, with clearly defined actions, determines and authorizes that the findings shall be implemented, in whole or in part.

(c) This part 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 that date deletes or extends that date.

CHAPTER 1070

An act to amend Section 805 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any licensed health care facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and

Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Any medical, psychological, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractural arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, when the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any health care facility shall file an 805 report with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary

cause or reason.

In addition to the duty to report as set forth in paragraphs (1), (2) and (3), the peer review body also has a duty to report under this section a licentiate's resignation or leave of absence from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary cause or reason.

The 805 report shall be filed within 30 days after the effective date of the denial, termination, restriction, resignation, or leave of absence or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 30 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

(c) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976. The Board of Medical Quality Assurance, the Board of Osteopathic Examiners, and the Board of Dental Examiners shall disclose reports as required by Section 805.5.

An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(d) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(e) Failure to make a report pursuant to this section is a misdemeanor punishable by a fine of not less than two hundred

dollars ($200) nor more than one thousand two hundred dollars ($1,200).

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

CHAPTER 1071

An act to amend Sections 71000, 71021, 84713, 84750, 84755, and 87356 of, and to repeal and add Section 71001 of, the Education Code, and to amend Sections 59, 60, and 70 of Chapter 973 of the Statutes of 1988, relating to community colleges.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 71000 of the Education Code is amended to read:

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of all of the following:

(a) Thirteen members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate. Of the members appointed by the Governor, two shall be current or former elected members of local community college district governing boards. The Governor shall appoint the current or former members of the governing board of a community college district for staggered six-year terms. The voting members who are current or former members of the governing board of a community college district shall first be appointed no later than January 15, 1990, and January 15, 1992, respectively.

(b) One voting student who is enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of his or her term of appointment, or until a replacement has been named. A student member shall be enrolled in a community college at least one semester prior to his or her appointment and shall meet and maintain the minimum standards of scholarship prescribed for community college students. The student member shall be appointed by the Governor for a one-year term commencing on June 1.

(c) Two voting tenured faculty members from a community college, who shall be appointed by the Governor for two-year terms. The Governor shall appoint each faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. The first voting tenured faculty member appointed to the board shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984. The first voting tenured faculty member appointed to the additional voting tenured faculty member seat on the board shall be appointed no later than January 15, 1991. Thereafter, each seat shall be designated as a voting tenured faculty member seat and shall in the future be filled by a tenured faculty member from a community college pursuant to this section and Section 71003.

SEC. 2. Section 71001 of the Education Code is repealed.

SEC. 3. Section 71001 is added to the Education Code, to read:

71001. (a) Except for the student member and the faculty members, the terms of office of the members of the board appointed by the Governor shall be as follows:

(1) To the terms expiring on January 15, 1990, the Governor shall appoint one person whose term shall expire on January 15, 1994; one current or former trustee whose term shall expire on January 15, 1996; and one other person whose term shall expire on January 15, 1996.

(2) To the terms expiring on January 15, 1991, the Governor shall appoint two persons whose terms shall expire on January 15, 1995; and two persons whose terms shall expire on January 15, 1997.

(3) To the terms expiring on January 15, 1992, the Governor shall appoint one person whose term shall expire on January 15, 1998; one current or former trustee whose term shall expire on January 15, 1998; and one person whose term shall expire on January 15, 1994.

(4) To the terms expiring on January 15, 1993, the Governor shall appoint three persons whose terms shall expire on January 15, 1999.

(5) Commencing January 15, 1993, all terms of office of the members of the board, except the terms of the student member and the faculty members appointed by the Governor, shall be six years.

(b) Each term of office shall commence at the expiration of the preceding term.

(c) A member whose term has expired may, in accordance with Section 1770 to 1780, inclusive, of the Government Code, continue to discharge the duties of the office until his or her successor is appointed by the Governor.

SEC. 4. Section 71021 of the Education Code is amended to read:

71021. All official acts of the board shall require the affirmative vote of a majority of the board, as determined by the policies of the board. The vote of all members shall be recorded.

SEC. 5. Section 84713 of the Education Code is amended to read:

84713. This article shall become inoperative on July 1, 1991, or on

the date Section 84750 is implemented by the board of governors in accordance with Section 70 of Chapter 973 of the Statutes of 1988, whichever is later.

SEC. 6. Section 84750 of the Education Code is amended to read:

84750. The board of governors, in accordance with the statewide requirements contained in subdivisions (a) to (j), inclusive, and in consultation with institutional representatives of the California Community Colleges and statewide faculty and staff organizations, so as to ensure their participation in the development and review of policy proposals, shall develop criteria and standards for the purposes of making the annual budget request for the California Community Colleges to the Governor and the Legislature, and for the purpose of allocating the state general apportionment revenues, beginning with the budget request for the 1991–92 fiscal year.

In developing the criteria and standards, the board of governors shall utilize and strongly consider the guidelines and work products of the Task Force on Community College Financing as established pursuant to Chapter 1465 of the Statutes of 1986, and shall complete the development of these criteria and standards, accompanied by the necessary procedures, processes, and formulas for utilizing its criteria and standards, by March 1, 1990, and shall submit on or before that date a report on these items to the Legislature and the Governor.

The board of governors shall develop the criteria and standards within the following statewide minimum requirements:

(a) The calculations of each community college district's revenue level for each fiscal year shall be based on the level of general apportionment revenues (state and local) the district received for the prior year plus any amount attributed to a deficit of minimum workload growth, with revenue adjustments being made for increases or decreases in workload, for program improvement as authorized by this section or by any other provision of law, for inflation, and for other purposes authorized by law.

(b) (1) For credit instruction, the funding mechanism developed pursuant to this section shall recognize the needs among the major categories of operation of community colleges, with categories established for instruction, instructional services and libraries, student services, maintenance and operations, and institutional support.

(2) The board of governors may propose to the Legislature, for enactment by statute, other cost categories when adequate data exist.

(3) Funding for noncredit classes shall be determined as follows:

(A) The preliminary amount per noncredit full-time equivalent student (FTES) for 1991–92 shall be equal to the comparable amount for 1990–91 with increases corresponding to the cost of living adjustment (COLA) specified in subdivision (e) and corresponding to any program improvement provided to the maintenance and operations category for 1991–92.

(B) Funds for maintenance and operations shall be included in

the funds derived under paragraph (4) of subdivision (c).

(C) Funds for institutional support will be derived as part of the computation under paragraph (5) of subdivison (c).

(D) From the preliminary amount described in subparagraph (A), a deduction shall be made corresponding to the amounts derived in subparagraphs (B) and (C), and the remainder shall be the funded amount per noncredit FTES for 1991–92.

(E) Changes in noncredit FTES shall result in adjustments to revenues as follows:

(i) Increases in noncredit FTES shall result in an increase in revenues in the year of the increase and at the average rate per noncredit FTES.

(ii) Decreases in noncredit FTES shall result in a revenue reduction as follows:

(I) District revenue shall be adjusted at the average rate per noncredit FTES.

(II) Revenue adjustments shall be over a three-year period beginning in the year following the initial year of decrease in noncredit FTES.

(iii) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in noncredit FTES during the three years following the initial year of decrease in noncredit FTES if there is a subsequent increase in FTES.

(4) Except as otherwise provided by statute, current categorical programs providing direct services to students, including extended opportunity programs and services, and disabled students programs and services, shall continue to be funded separately through the annual Budget Act, and shall not be assumed under budget formulas of program-based funding.

(5) District revenues shall be determined based on systemwide funding standards within the categories, and revenue adjustments shall occur based on distinct measures of workload applicable to each category.

(c) Workload measures applicable to each category shall be established with the following measures to be provided:

(1) For credit instruction, the workload measure shall be the credit FTES. Changes in credit FTES shall result in adjustments in revenues as follows:

(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the statewide average per FTES.

(B) Decreases in FTES shall result in a revenue reduction as follows:

(i) High revenue districts (those at the statewide average or higher) shall be adjusted at the statewide average per FTES.

(ii) Low revenue districts (those below the statewide average) shall be adjusted at one-half of the district's average per FTES.

(iii) Revenue adjustments shall be made over a three-year period beginning in the year following the initial year of decrease in FTES.

(C) Districts shall be entitled to restore any reductions in

apportionment revenue due to decrease in FTES during the three years following the initial year of decrease in FTES if there is a subsequent increase in FTES.

(2) For instructional services and libraries, the workload measure shall be the credit FTES. Changes in credit FTES with respect to instructional services and libraries shall result in adjustments to revenues as follows:

(A) Increases in FTES shall result in an increase in revenues in the year of the increase and at the statewide average rate per FTES.

(B) Decreases in FTES shall result in a revenue reduction as follows:

(i) High revenue districts (those at the statewide average or higher) shall be adjusted at the full amount of the statewide average per FTES.

(ii) Low revenue districts (those below the statewide average) shall be adjusted at one-half of the district's average per FTES.

(iii) Revenue adjustments shall be made over a three-year period beginning in the year following the initial year of decrease in FTES.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decreases in FTES during the three years following the initial year of decreases in FTES if there is a subsequent increase in FTES.

(3) For student services, the workload measure shall be based on the numbers of credit students enrolled (headcount).

Changes in headcount shall result in adjustments to revenues as follows:

(A) Increases in headcount shall result in an increase in revenues in the year of the increase at the statewide average per headcount.

(B) Decreases in headcount shall result in a revenue reduction as follows:

(i) High revenue districts (those at the statewide average or higher) shall be adjusted at the full amount of the statewide average per headcount.

(ii) Low revenue districts (those below the statewide average) shall be adjusted at one-half of the district's average per headcount.

(iii) Revenue adjustments shall be made over a three-year period beginning in the year following the initial year of decrease in headcount.

(C) Districts shall be entitled to restore any reductions in apportionment revenue due to decrease in headcount during the three years following the initial year of decrease in headcount if there is a subsequent increase in headcount.

(4) For maintenance and operations, the workload measure shall be based on the number of square feet of owned or leased facilities. Changes in the number of square feet shall be adjusted as follows:

(A) Increases in the number of square feet shall result in an increase in revenue in the year that the increase occurs and at the average per square foot.

(B) Decreases in the number of square feet shall result in a

decrease in revenue beginning July 1 of the first full year in which the square feet are no longer owned or leased and at the average rate per square foot.

(5) For institutional support, a single fixed percentage which shall apply to all districts shall be established based on the pattern from the most recent data. The percentage shall be obtained from statewide data by comparing expenditures for this category with the total revenue for all five categories.

(d) Funding standards, subject to the conditions and criteria of this section, shall be established by the board for the various categories of operation established pursuant to subdivision (b). In consultation as required by subdivision (e) of Section 70901, the board of governors shall annually request program improvement moneys to assist districts in meeting these standards.

(e) Annual revenue adjustments shall be made to reflect cost changes, using the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States as published by the United States Department of Commerce, and using the ratio for the fourth calendar quarter of the latest available year to the fourth calendar quarter of the prior year rounded up to the next hundredth.

(f) An adjustment for economies of scale for districts and colleges shall be provided.

(g) The statewide increase in workload of FTES and headcount shall be, at a minimum, the rate of change of the adult population as determined by the Department of Finance, and may be increased through the budget process to reflect such other factors as statewide priorities, the unemployment rate, and the number of students graduating from California high schools. The allocation of changes on a district-by-district basis shall be determined by the board of governors.

(h) For fiscal year 1991–92 or on the date Section 84750 is implemented by the board of governors in accordance with Section 70 of Chapter 973 of the Statutes of 1988, whichever is later, all districts shall receive at least the amount of revenue to which they would have been entitled pursuant to Article 1 (commencing with Section 84700) of Chapter 5 of Part 50. Thereafter, allocations shall be made pursuant to this section, as implemented by the board of governors pursuant to the annual State Budget.

(i) Except as specifically provided by statute, regulations of the board of governors for determining and allocating the state general apportionment to the community colleges shall not require district governing boards to expend the allocated revenues in specified categories of operation or according to the workload measures developed by the board of governors.

(j) As used in this section:

(1) "Criteria" means the definitions of elements of institutional practice or activity to be included in the categories of operation of community college districts.

(2) "Program improvement" means an increase in revenue which is allocated to all districts to fund standards adopted pursuant to subdivision (d). Program improvement also means an increase in revenue allocated to low revenue districts to bring them closer to the statewide average.

(3) "Standard" means the appropriate level of service in a category of operation of the community college districts.

SEC. 7. Section 84755 of the Education Code is amended to read:

84755. (a) The Legislature finds and declares that program-based funding, once implemented, will more adequately and accountably fund the costs of providing quality community college education. Given that program-based funding will not be implemented until fiscal year 1991–92, given that community colleges will be entering a period of major reform and incurrence of new state mandates commencing in January 1989, and given that community colleges will be entering this period of reform having lost purchasing power since the 1977–78 fiscal year, the Legislature recognizes the need to create a transitional funding mechanism for program improvement and mandate funding that can operate until program-based funding is implemented.

(b) For the purpose of improving the quality of community college educational programs and services, for the purpose of reimbursing state-mandated local program costs imposed by this act, and for the purposes of initially implementing specified reforms, the board of governors shall, from amounts appropriated for purposes of this section, allocate program improvement revenues to each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year. However, this amount shall be increased or decreased to provide for equalization in a manner determined by the Board of Governors, consistent with the provisions of Sections 84703 to 84705, inclusive.

Each community college district shall use its allocation to initially reimburse state-mandated local program costs, and then to implement specified reforms and make authorized program and service improvements as follows:

(1) Developing articulated programs provided for in Section 69 of Chapter 973 of the Statutes of 1988 with school districts and campuses of the University of California and California State University.

(2) Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions as required by Section 87356.

(3) Developing and administering a process for waiver of minimum qualifications as required by Section 87359.

(4) Establishing and applying local hiring criteria as required by Section 87360.

(5) Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive.

(6) Evaluating temporary employees, instituting peer review

evaluation, and widely distributing evaluation procedures as required by Section 87663.

(7) Establishing and applying new processes for tenure evaluation required by Section 87610.1.

(8) Establishing and applying the tenure denial grievance procedure required by Section 87610.1.

(9) Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458, inclusive.

(10) Publishing and distributing a report on the affirmative action success rate as required by Section 87102.

(11) Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.

(12) Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.

(13) Augmenting budgets for college libraries and learning resources.

(14) Augmenting budgets for plant maintenance and operations.

(15) Adding new courses or programs to serve community need.

(16) Making progress towards affirmative action goals and timetables established by the district.

(17) Developing and maintaining programs and services authorized by Section 78212.5.

(18) Augmenting budgets for student services in the areas of greatest need.

(19) Providing for release time for faculty and staff as deemed appropriate by community college district governing boards, to enable faculty and staff participation in implementing reforms.

(c) Except as provided by Section 87482.6, and except as necessary to reimburse the costs of new state mandates, district governing boards shall have full authority to expend program improvement allocations for any or all of the authorized purposes specified in subdivision (b).

(d) As required by the board of governors, the governing board of each community college district shall submit to the board of governors a plan for using the resources allocated pursuant to this section. The board of governors shall review each plan to ensure that proposed expenditures are consistent with the listing of authorized expenditures provided in this section, and the board of governors shall approve all plans to the full extent that expenditures are authorized by this section. To the extent that a community college district expends its program improvement allocation consistent with its plan, the board of governors shall include the district's allocation as part of the district's base budget for subsequent years.

(e) The board of governors, through the annual systemwide budget submitted pursuant to paragraph (5) of subdivision (b) of Section 70901, shall request necessary resources for the purposes of this section. It is the intent of the Legislature that the appropriation and allocation of program improvement money not otherwise provided pursuant to subdivision (b) of this section shall be

accomplished through the annual state budget process beginning with the 1989–90 fiscal year. After June 30, 1991, if Section 84750 is implemented, it is the intent of the Legislature to fund the ongoing operations of community college districts pursuant to the provisions of Section 84750.

SEC. 8. Section 87356 of the Education Code is amended to read:

87356. (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as a community college faculty member. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as a community college faculty member teaching any credit course, as any of the following:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(3) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(A) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(B) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(b) The board of governors shall adopt regulations establishing appropriate minimum qualifications for extended opportunity programs and services workers, pursuant to Section 69648.7.

(c) The board of governors shall adopt regulations establishing appropriate minimum qualifications for handicapped student programs and services workers, pursuant to Section 78440.5.

(d) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as an instructional or student services administrator. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as an instructional or student services administrator as all of the following:

(1) Possession of a master's degree.

(2) One year of formal training, internship, or leadership

experience reasonably related to the administrator's administrative assignment, which may, but need not be, concurrent with the required full-time service.

(e) The board of governors shall adopt regulations establishing appropriate minimum qualifications for apprenticeship instructors. The board of governors shall rely primarily on the advice and judgment of appropriate apprenticeship teaching faculty and labor organization representatives in the adoption of minimum qualifications. Until the board of governors adopts new requirements for apprenticeship faculty, the current regulations for apprenticeship part-time and full-time faculty shall be operative.

(f) The Legislature finds and declares that this section does not create a state-mandated local program cost because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

SEC. 9. Section 59 of Chapter 973 of the Statutes of 1988 is amended to read:

Sec. 59. The California Postsecondary Education Commission and the State Department of Education shall jointly agree on a coordinated research framework to be utilized by each agency in a review of the programs in English as a second language offered through the California Community Colleges, the University of California, the California State University, and adult education programs, and of the future educational needs in this area, and to report its recommendations for programs of effective cooperation between those institutions in this respect. The California Postsecondary Education Commission shall have responsibility for reviewing the programs of the postsecondary segments and the State Department of Education shall have responsibility for reviewing the programs offered by school districts. Both the commission and the State Department of Education shall report the results of their review to the Legislature no later than 18 months after an appropriation has been made for the costs of conducting the study. The purpose of the study provided for under this section shall be to assess the ongoing role of the California Community Colleges, in relation to the respective roles of the University of California and the California State University in conducting programs in English as a second language.

This section shall become operative only if funds are specifically appropriated for the purposes of conducting the work specified in this section.

SEC. 10. Section 60 of Chapter 973 of the Statutes of 1988 is amended to read:

Sec. 60. The Chancellor of the California Community Colleges shall conduct a study, with the participation of one or more community college districts, on the feasibility of establishing, on a pilot basis, "interdisciplinary colleges" within selected community colleges—with a special concern with the integration of vocational and academic study. The study shall include exploration of the

possibilities, through the establishment of these colleges, of the integration of work experience and study, and the provision of a more cooperative learning environment as a model for all colleges. No later than 18 months after an appropriation has been made for the study, the chancellor shall submit to the Legislature a report summarizing the findings and recommendations which result from the study conducted pursuant to this section.

This section shall become operative only if funds are specifically appropriated for the purposes of this section.

SEC. 11. Section 70 of Chapter 973 of the Statutes of 1988 is amended to read:

Sec. 70. (a) The Legislature finds and declares that the reforms enacted through this act form a mutually dependent and related set of provisions. While some few provisions could be enacted independently, other sections of this act depend upon adequate support for the programs of the community colleges. There is a direct linkage between those sections of this act which constitute the further professionalization of the faculty and the moneys required to enhance the programs of the community colleges for "transitional program improvement," as specified in Section 84755 of the Education Code.

For instance, the elimination of credentials must be accompanied by the establishment of minimum qualifications by the board of governors. Minimum qualifications in turn must be implemented by districts through the establishment of faculty service areas, competency criteria, and various waiver processes. The extension of the tenure probationary period to four years as well as the revisions to layoff procedures also depend upon the establishment of tenure denial grievance processes as well as the establishment of faculty service areas and competency criteria. Similarly, because so many of the reforms call for faculty involvement in the determination and implementation of policy, and because the quality, quantity, and composition of full-time faculty have the most immediate and direct impact on the quality of instruction, overall reform cannot succeed without sufficient members of full-time faculty with sufficient opportunities for continued staff development, and with sufficient opportunity for participation in institutional governance.

The Legislature further finds that, absent resources to reimburse the state-mandated costs of this act, new full-time faculty to replace part-time faculty, and expanded programs for staff development, the viability or success, or both, of many of the reforms in this act will be jeopardized. The Legislature recognizes that due to unanticipated fiscal conditions the State cannot immediately fund all of the reforms contained in this act. The Legislature also recognizes, however, that if minimal funding is not soon provided that it would be inappropriate to proceed with many reforms.

(b) The Legislature finds and declares that the California Community Colleges are entering a period of major reform, but require further assistance in regaining prior purchasing power in

order to fully carry out major reforms. The Legislature intends that the reform process be phased in over a reasonable and logical period of time, and that the institution of major reform be based upon the community colleges' ability to deliver enhanced quality in their programs. Pursuant to this act, the Legislature finds and declares that the transitional stage of reform process shall consist of two phases:

(1) "Phase I of transitional program improvement," as used in this section, means a period of reform during which community college programs are improved and enhanced to prepare an appropriate environment for the subsequent professionalization of faculty. In this connection, the Legislature finds and declares that it would be an unsound and wasteful policy to expend moneys to professionalize faculty without first making the program changes necessary to enable that faculty to assume a more effective role in the educational process. It is the intent of the Legislature that those changes, combined in proper sequence with the professional improvement of faculty, will improve the overall quality of education within the system. It is the intent of the Legislature that moneys appropriated during Phase I fully fund any state-mandates created pursuant to this section.

(2) "Phase II of transitional program improvement" means a period of reform following initial program improvement and professionalization of faculty. During that period, the new educational environment created under Phase I, including such reforms as innovative training programs, evaluation procedures, and minimum qualifications, may be utilized to the fullest extent in hiring new full-time faculty. The Legislature finds that this latter step is a major component of successful reform and the eventual attainment of the highest possible quality in the educational programs of the California Community Colleges. It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state-mandate created pursuant to this section.

(c) The Legislature finds and declares that the provisions of subdivisions (d) and (e) address an essential policy issue at the core of the system created by this act. The reforms with delayed operative dates pursuant to subdivisions (d) and (e) will be fiscally and substantively meaningful only if other enumerated reforms, on which the reforms with delayed operative dates depend, are adequately funded as an initial step in the process of improving the structure and quality of the California Community Colleges.

(d) Sections 15 and 16 and Sections 27 to 34, inclusive, and Sections 51 to 56, inclusive, of this act shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase I of transitional program improvement and for any applicable state mandates, as authorized in Section 84755 of the Education Code. If the board of governors so certifies, each of these sections shall be implemented on the date of

certification, or upon any operative date specified for the particular section in this act, whichever is later. For purposes of this subdivision, "adequate funding" means those moneys required to provide an increased quality of instruction and programs, and to carry out applicable mandates of this act, within the California Community Colleges. Based upon estimates provided by the board of governors and exhaustive review of the community colleges' operations by the Joint Committee for the Review of the Master Plan for Higher Education, the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000).

(e) Sections 21, and 36 to 49, inclusive, of this act shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase II of transitional program improvement and for any applicable state mandates, as authorized in Section 84755. If the board of governors so certifies, each of these sections shall be implemented on the date of certification, or upon any operative date specified for the particular section in this act, whichever is later. For purposes of this subdivision, "adequate funding" means those moneys required to provide an increased quality of instruction and programs, and to carry out applicable state mandates of this act, within the California Community Colleges. Based upon estimates provided by the board of governors and exhaustive review of the community colleges' operations by the Joint Committee for the Review of the Master Plan for Higher Education, the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000), in addition to the seventy million dollars ($70,000,000) estimated under subdivision (d).

(f) Notwithstanding this section, the board of governors, commencing January 1, 1989, may develop criteria and standards, as may be necessary to prepare for implementation of Section 84750 of the Education Code. However, the board of governors may not implement that section until the terms of this section have been met.

CHAPTER 1072

An act to amend Section 11479 of, and to add Section 11479.5 to, the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11479 of the Health and Safety Code is amended to read:

11479. Notwithstanding Sections 11473.5 and 11474, at any time after seizure by a law enforcement agency of a suspected controlled substance, that amount in excess of 10 pounds in gross weight may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. These samples shall be in addition to the 10 pounds required above. When the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10 pound sample (which may include stalks, branches, or leaves) and five representative samples consisting of leaves or buds shall be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed.

(b) Photographs have been taken which reasonably demonstrate the total amount of the suspected controlled substance to be destroyed.

(c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating that weight after dimensional measurement of the total suspected controlled substance.

(d) The chief of the law enforcement agency has determined that it is not reasonably possible to preserve the suspected controlled substance in place, or to remove the suspected controlled substance to another location. In making this determination, the difficulty of transporting and storing the suspected controlled substance to another site and the storage facilities may be taken into consideration.

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d) together with information establishing the location of the suspected controlled substance, and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending which pertain to that suspected controlled substance, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom those criminal charges might be filed.

SEC. 2. Section 11479.5 is added to the Health and Safety Code, to read:

11479.5. Notwithstanding Sections 11473.5 and 11474, at any time

after seizure by a law enforcement agency of a suspected hazardous chemical believed to have been used or intended to have been used in the unlawful manufacture of controlled substances, that amount in excess of one fluid ounce if liquid, or one avoirdupois ounce if solid, of each different type of suspected hazardous chemical and its container, may be disposed of without a court order by the seizing agency. For the purposes of this section, "hazardous chemical" means any material that is believed by the chief of the law enforcement agency to be toxic, carcinogenic, explosive, corrosive, or flammable, and that is believed by the chief of the law enforcement agency to have been used or intended to have been used in the unlawful manufacture of controlled substances.

Destruction pursuant to this section of suspected hazardous chemicals or suspected hazardous chemicals and controlled substances in combination, shall not take place until all of the following requirements are met:

(a) At least a one ounce sample is taken from each different type of suspected hazardous chemical to be destroyed.

(b) At least a one ounce sample has been taken from each container of a mixture of a suspected hazardous chemical with a suspected controlled substance.

(c) Photographs have been taken which reasonably demonstrate the total amount of suspected controlled substances and suspected hazardous chemicals to be destroyed.

(d) The gross weight or volume of the suspected hazardous chemical seized has been determined.

Subsequent to any disposal of a suspected hazardous chemical and its container pursuant to this section, the law enforcement agency involved shall maintain records concerning the details of its compliance with, and reciting the applicable information required by subdivisions (a), (b), (c), and (d), together with the information establishing the location of the suspected hazardous chemical and its container, and specifying the date and time of the disposal.

Subsequent to any destruction of a suspected controlled substance in combination with a hazardous chemical pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d).

A law enforcement agency responsible for the disposal of any hazardous chemical shall comply with the provisions of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as well as all applicable state and federal statutes and regulations.

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 properly control substances constituting a menace to

public health and safety, it is necessary that this act take effect immediately.

CHAPTER 1073

An act to add Section 678.5 to, and to add Chapter 3 (commencing with Section 13600) to Division 3 of, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature finds that many Californians are denied or are faced with barriers to receiving necessary forms of property insurance coverage. The Legislature further finds that some insurers will cancel or nonrenew policies for arbitrary reasons, and that some insurers may be committing certain unfair and deceptive practices in the business of insurance.

It is the intent of the Legislature to provide a forum where disputes between policyholders and their insurers concerning cancellation and nonrenewal of certain property insurance can be resolved without the added expense of litigation to the consumer.

SEC. 2. Section 678.5 is added to the Insurance Code, to read:

678.5. No policy specified in Section 675 that is issued, amended, or renewed on or after January 1, 1990, may be canceled, and an insurer may not refuse to renew such a policy solely on the grounds of corrosive soil conditions if the policy or renewal policy contains an existing exclusion for payment of loss for that peril.

SEC. 3. Chapter 3 (commencing with Section 13600) is added to Division 3 of the Insurance Code, to read:

CHAPTER 3. CONCILIATION

13600. The department shall provide any person who files a complaint pursuant to Section 678.5, with the option of submitting any dispute involving cancellation or nonrenewal to conciliation pursuant to the following conciliation procedures:

(a) (1) The complaint shall first be reviewed by the department. Each insurer shall designate a responsible staff member whom the department may contact to determine whether a complaint may be resolved through a conciliation process.

(2) The complainant shall pay a filing fee of thirty-five dollars ($35), which shall be returned if the complainant prevails in whole or in part in conciliation.

(b) The department staff shall attempt to resolve the dispute over the telephone. The insurer's representative shall have the authority

to bind any insurer to any agreement reached over the telephone.

(c) The insurer shall notify the department of the representative's identity in writing and immediately notify the department of any change in the designation.

(d) If the department cannot resolve the dispute by conciliation, the complaint shall be referred to the commissioner, who may, if he or she determines that there are reasonable grounds for believing that a violation of Section 678.5 has occurred, hold a hearing to determine whether a violation has occurred. In the event of a finding that a violation has occurred, the commissioner may order reinstatement of the policy.

13601. Nothing in this chapter shall preclude an insured or other aggrieved party from pursuing any available alternative remedy in lieu of conciliation or from pursuing that alternative remedy without first proceeding under this chapter, but the department shall have no jurisdiction to proceed under this chapter or resolve any dispute under this chapter during the pendency of any judicial action thereon initiated by an insured.

CHAPTER 1074

An act to amend Sections 17053.7 and 23621 of the Revenue and Taxation Code, and to amend Section 328 of the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 17053.7 of the Revenue and Taxation Code is amended to read:

17053.7. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) 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 the 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 a taxable 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 bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to the taxpayer; or

(2) Who, if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(3) Who is a dependent (as described in Section 152(a) (9) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or a fiduciary of the estate or trust.

(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 has 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 employment 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 taxable year.

(2) An election under paragraph (1) for any taxable 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 taxable 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, 1993.

SEC. 1.5. Section 17053.7 of the Revenue and Taxation Code is amended to read:

17053.7. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) 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 the 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 a taxable 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 bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to the taxpayer; or

(2) Who, if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who

bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(3) Who is a dependent (as described in Section 152(a) (9) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or a fiduciary of the estate or trust.

(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 has 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 employment 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 taxable year.

(2) An election under paragraph (1) for any taxable 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 taxable 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 either of the following:

(1) Payments defined in Section 51(c) (3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for the employer after December 31, 1993.

SEC. 2. Section 23621 of the Revenue and Taxation Code is amended 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, 1993.

SEC. 2.5. Section 23621 of the Revenue and Taxation Code is amended 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 either of the following:

(1) Payments defined in Section 51 (c) (3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for an employer after December 31, 1993.

SEC. 3. Section 328 of the Unemployment Insurance Code is amended to read:

328. (a) The department shall administer the California Jobs Tax Credit Act as provided in this section, except those functions reserved to the Franchise Tax Board by Section 17053.7 or 24330 of the Revenue and Taxation Code. The department shall develop administrative procedures and guidelines necessary to carry out the intent of the act, including, but not limited to, the means to monitor and measure its effectiveness. For the purpose of certifying individuals meeting the criteria of subdivision (b), the department may delegate its responsibilities under this act to the State Department of Social Services. Upon delegation of this responsibility, the State Department of Social Services may provide by regulation for the issuance by county welfare departments of written preliminary determinations pursuant to subdivision (a) of Section 11320.5 of the Welfare and Institutions Code.

(b) The department shall certify, upon the request of any applicant, for the purposes of Section 17053.7 or 24330 of the Revenue and Taxation Code, that any individual, at the time of his or her hiring by the applicant, is a registrant under the Greater Avenues for Independence Act of 1985 as provided in Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(c) If an individual has been certified as meeting any of the criteria in subdivision (b) and that certification is incorrect because it was based on false information provided by that individual, the certification shall be revoked, and the department shall immediately notify the applicant who requests the certification of the revocation.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 4. The Legislative Analyst shall evaluate the job tax credit allowed by Sections 17053.7 and 23621 of the Revenue and Taxation Code and make a report of that evaluation to the Legislature before May 2, 1993. The report shall include, among other things, information regarding the number of taxpayers claiming the credit, the General Fund revenue losses associated with the credit program,

the effect of the credit on the Greater Avenues for Independence Program, and whether or not the General Fund revenue loss and the administrative costs associated with the credit are more than offset by reductions in public aid expenditures and increases in income tax revenues attributable to employed GAIN participants certified for the tax credit.

SEC. 5. Sections 1.5 and 2.5 of this bill incorporate amendments to Sections 17053.7 and 23621 of the Revenue and Taxation Code proposed by this bill and AB 802. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Sections 17053.7 and 23621 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 802, in which case Sections 17053.7 and 23621 of the Revenue and Taxation Code, as amended by AB 802, shall remain operative only until the operative date of this bill, at which time Sections 1.5 and 2.5 of this bill shall become operative, and Sections 1 and 2 of this bill shall not become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 1075

An act to add Section 1722 to the Civil Code, relating to contracts.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1722 is added to the Civil Code, to read:

1722. (a) (1) Whenever a contract is entered into between a consumer and a retailer with 25 or more employees relating to the sale of merchandise which is to be delivered by the retailer or the retailer's agent to the consumer at a later date, and the parties have agreed that the presence of the consumer is required at the time of delivery, the retailer shall specify either at the time of the sale or at a later date a four-hour time period within which any delivery shall be made. Once a delivery time is established, the retailer or the retailer's agent shall deliver the merchandise to the consumer within that four-hour period.

(2) If the merchandise is not delivered within the specified four-hour period, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the retailer, the consumer may bring an action in small claims court against the retailer for lost wages, expenses actually incurred, or other actual damages not exceeding a total of five hundred dollars ($500).

(3) No action shall be considered valid if the consumer was not

present at the time, within the specified period, when the retailer or the retailer's agent attempted to make the delivery or made a diligent attempt to notify the consumer of its inability to do so because of unforeseen or unavoidable occurrences beyond its control.

(4) In any small claims action, logs and other business records maintained by the retailer or the retailer's agent in the ordinary course of business shall be prima facie evidence of the time period specified for the delivery and of the time when the merchandise was delivered, or of a diligent attempt by the retailer or the retailer's agent to notify the consumer of delay caused by unforeseen or unavoidable occurrences.

(5) It shall be a defense to the action if a diligent attempt was made to notify the consumer of the delay caused by unforeseen or unavoidable occurrences beyond the control of the retailer or the retailer's agent, or the retailer or the retailer's agent was unable to notify the consumer of the delay because of the consumer's absence or unavailability during the four-hour period, and, in either instance, the retailer or the retailer's agent makes the delivery within two hours of a newly agreed upon time or, if the consumer unreasonably declines to arrange a new delivery time.

(b) (1) Cable television companies shall inform their subscribers of their right to service connection or repair within a four-hour period, if the presence of the subscriber is required, by offering the four-hour period at the time the subscriber calls for service connection or repair, or by notifying their subscribers by mail three times a year of this service. Whenever a subscriber contracts with a cable television company for a service connection or repair, and the parties have agreed that the presence of the subscriber is required, the cable company shall specify the time for the commencement of the service connection or repair within the four-hour period if the subscriber requests.

(2) If the service connection or repair is not commenced within the specified four-hour period, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the company, the subscriber may bring an action in small claims court against the company for lost wages, expenses actually incurred or other actual damages not exceeding a total of five hundred dollars ($500).

(3) No action shall be considered valid if the subscriber was not present at the time, within the specified period, that the company attempted to make the service connection or repair.

(4) In any small claims action, logs and other business records maintained by the company or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and the time that the company or its agents attempted to make the service connection or repair, or of a diligent attempt by the company to notify the subscriber of a delay caused by unforeseen or unavoidable

occurrences.

(5) It shall be a defense to the action if a diligent attempt was made to notify the subscriber of delay caused by unforeseen or unavoidable occurrences beyond the control of the company or its agents, or the company or its agents was unable to notify the subscriber because of the subscriber's absence or unavailability during the four-hour period, and, in either instance, the cable television company commenced service or repairs within a newly agreed upon two-hour period.

(6) No action shall be considered valid against a cable television company pursuant to this section when the franchise or any local ordinance provides the subscriber with a remedy for a delay in commencement of a service connection or repair and the subscriber has elected to pursue that remedy. If a subscriber elects to pursue his or her remedies against a cable television company under this section, the franchising or state or local licensing authority shall be barred from imposing any fine, penalty, or other sanction against the company, arising out of the same incident.

(c) (1) Utilities shall inform their subscribers of their right to service connection or repair within a four-hour period, if the presence of the subscriber is required, by offering the four-hour period at the time the subscriber calls for service connection or repair, or by notifying the subscriber by mail three times a year of this service. Whenever a subscriber contracts with the utility for a service connection or repair, and the parties have agreed that the presence of the subscriber is required, the utility shall specify the time for the commencement of the service connection or repair within the four-hour period if the subscriber requests.

(2) If the service connection or repair is not commenced within the specified four-hour period, except for delays caused by unforeseen or unavoidable circumstances beyond the control of the company, the subscriber may bring an action in small claims court against the utility for lost wages, expenses actually incurred, or other actual damages not exceeding a total of five hundred dollars ($500).

(3) No action shall be considered valid if the subscriber was not present at the time, within the specified period, that the utility attempted to make the service connection or repair.

(4) In any small claims action, logs and other business records maintained by the utility or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and of the time that the utility attempted to make the service connection or repair, or of a diligent attempt by a utility to notify the subscriber of delay caused by unforeseen or unavoidable occurrences.

(5) It shall be a defense to the action if a diligent attempt was made by the utility to notify the subscriber of delay caused by unforeseen or unavoidable occurrences beyond the control of the utility, and the utility commenced service within a newly agreed upon two-hour period.

CHAPTER 1076

An act to amend Section 502 of, and to add Section 502.1 to, the Penal Code, relating to computers.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage

and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (i), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a

computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine

and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) This section applies only to public offenses committed on or after January 1, 1988. It is the intent of the Legislature that this section be given no retroactive effect and persons who commit a violation of the provisions of Section 502 in effect prior to January 1, 1988, shall be held responsible therefor.

(h) Any computer, computer system, computer program, instrument, apparatus, device, plans, instructions, or written publication used in the commission of any public offense described in subdivision (c) that is owned by the defendant may be seized under warrant or incident to a lawful arrest. Any property seized under this subdivision is subject to forfeiture pursuant to Section 502.01.

(i) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting

outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(j) No activity exempted from prosecution under paragraph (2) of subdivision (i) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(k) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

SEC. 2. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices,

including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding

one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting

outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

SEC. 3. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices,

including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding

one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) This section applies only to public offenses committed on or after January 1, 1988. It is the intent of the Legislature that this section be given no retroactive effect and persons who commit a violation of the provisions of Section 502 in effect prior to January 1, 1988, shall be held responsible therefor.

(h) Any computer, computer system, computer program, instrument, apparatus, device, plans, instructions, or written publication used in the commission of any public offense described in subdivision (c) that is owned by the defendant may be seized under warrant or incident to a lawful arrest. Any property seized under this subdivision is subject to forfeiture pursuant to Section 502.01.

(i) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network,

computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(j) No activity exempted from prosecution under paragraph (2) of subdivision (i) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(k) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(*l*) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 4. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate

with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other

fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not

exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6) or (7) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 5. Section 502.1 is added to the Penal Code, to read:

502.1. Any person convicted of a violation of paragraph (1), (2), (4), or (5) of subdivision (c) of Section 502, and any person convicted of a felony violation of paragraph (3), (6), or (7) of subdivision (c) of Section 502 may be granted probation for up to three years. A court may, as a condition of probation, prohibit any person granted probation under this section from, during the term of his or her probation, accepting employment where he or she will have access to computers not operated by his or her employer or accepting employment in any capacity where he or she has access to a computer, operated by his or her employer or otherwise, without

first providing to the court a letter, signed by an officer or partner of the prospective employer, indicating that the employer has been informed of the conviction and has received a certified copy of the record of the person's conviction.

SEC. 6. (a) Section 2 of this bill incorporates amendments to Section 502 of the Penal Code proposed by both this bill and SB 1012. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 502 of the Penal Code, and (3) AB 1859 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1012, 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 502 of the Penal Code proposed by both this bill and AB 1859. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 502 of the Penal Code, (3) SB 1012 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1859 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 502 of the Penal Code proposed by this bill, SB 1012, and AB 1859. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 502 of the Penal Code, and (3) this bill is enacted after SB 1012 and AB 1859, in which case Sections 1, 2, and 3 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 or 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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1077

An act to amend Section 205.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 205.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 411 of the Statutes of 1988, is amended to read:

205.5. (a) Property which is owned by, and which constitutes the principal place of residence of, a veteran is exempted from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000), if the veteran is blind in both eyes or has lost the use of two or more limbs as a result of injury or disease incurred in military service or that does not exceed one hundred thousand dollars ($100,000), if the veteran is totally disabled as a result of injury or disease incurred in military service. The forty thousand dollar ($40,000) exemption shall be sixty thousand dollars ($60,000), and the one hundred thousand dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible veteran whose household income as defined in Section 20504 does not exceed the amounts specified in Section 20585.

(b) For purposes of this section, "veteran" is defined as specified in subdivision (o) of Section 3 of Article XIII of the Constitution without regard to any limitation contained therein on the value of property owned by the veteran or the veteran's spouse.

(c) Property which is owned by, and which constitutes the principal place of residence of, the unmarried surviving spouse of a veteran is exempt from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000), in the case of a veteran who was blind in both eyes or had lost the use of two or more limbs, or one hundred thousand dollars ($100,000), in the case of a veteran who was totally disabled; provided, that the deceased veteran during his or her lifetime qualified in all respects for the exemption or would have qualified for the exemption under the laws effective on January 1, 1977, except that the veteran died prior to January 1, 1977; or provided that the veteran died from a disease which was service connected as determined by the Veterans Administration. The forty thousand dollar ($40,000) exemption shall be sixty thousand dollars ($60,000), and the one hundred thousand dollar ($100,000) exemption shall be one hundred fifty thousand dollars ($150,000), in the case of an eligible unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585.

(d) As used in this section, "property which is owned by a veteran" or "property which is owned by the veteran's unmarried surviving spouse" includes all of the following:

(1) Property owned by the veteran with the veteran's spouse as a joint tenancy, tenancy in common or as community property.

(2) Property owned by the veteran or the veteran's spouse as separate property.

(3) Property owned with one or more other persons to the extent of the interest owned by the veteran, the veteran's spouse, or both the veteran and the veteran's spouse.

(4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

(5) So much of the property of a corporation as constitutes the principal place of residence of a veteran or a veteran's unmarried surviving spouse when the veteran, or the veteran's spouse, or the veteran's unmarried surviving spouse is a shareholder of the corporation and the rights of shareholding entitle one to the possession of property, legal title to which is owned by the corporation. The exemption provided by this paragraph shall be shown on the local roll and shall reduce the full value of the corporate property. Notwithstanding any provision of law or articles of incorporation or bylaws of a corporation described in this paragraph, any reduction of property taxes paid by the corporation shall reflect an equal reduction in any charges by the corporation to the person who, by reason of qualifying for the exemption, made possible the reduction for the corporation.

(e) For purposes of this section, being blind in both eyes means having a visual acuity of 5/200 or less; losing the use of a limb means that the limb has been amputated or its use has been lost by reason of ankylosis, progressive muscular dystrophies, or paralysis; and being totally disabled means that the United States Veterans Administration or the military service from which such veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation.

(f) An exemption granted to a claimant in accordance with the provisions of this section shall be in lieu of the veteran's exemption provided by subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the Constitution and any other real property tax exemption to which the claimant may be entitled. No other real property tax exemption may be granted to any other person with respect to the same residence for which an exemption has been granted under the provisions of this section; provided, that if two or more veterans qualified pursuant to this section co-own a property in which they reside, each is entitled to the exemption to the extent of his or her interest.

(g) This section shall remain in effect until January 1, 1996, and on that date is repealed, unless a later enacted statute, which is

chaptered on or before that date, deletes or extends that date.

SEC. 2. Section 205.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 411 of the Statutes of 1988, is amended to read:

205.5. (a) Property which is owned by, and which constitutes the principal place of residence of, a veteran is exempted from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000), if the veteran is blind in both eyes, has lost the use of two or more limbs, or is totally disabled as a result of injury or disease incurred in military service. The exemption shall be sixty thousand dollars ($60,000) in the case of an eligible veteran whose household income as defined in Section 20504 does not exceed the amounts specified in Section 20585.

(b) For purposes of this section, "veteran" is defined as specified in subdivision (o) of Section 3 of Article XIII of the Constitution without regard to any residency requirement or limitation contained therein on the value of property owned by the veteran or the veteran's spouse.

(c) Property which is owned by, and which constitutes the principal place of residence of, the unmarried surviving spouse of a veteran is exempt from taxation on that part of the full value of the residence that does not exceed forty thousand dollars ($40,000); provided, that the deceased veteran during his or her lifetime qualified in all respects for the exemption or would have qualified for the exemption under the laws effective on January 1, 1977, except that the veteran died prior to January 1, 1977; or provided that the veteran died from a disease which was service connected as determined by the Veterans Administration. The exemption shall be sixty thousand dollars ($60,000) in the case of an eligible unmarried surviving spouse whose household income as specified in Section 20504 does not exceed the amounts specified in Section 20585.

(d) As used in this section, "property which is owned by a veteran" or "property which is owned by the veteran's unmarried surviving spouse" includes all of the following:

(1) Property owned by the veteran with the veteran's spouse as a joint tenancy, tenancy in common or as community property.

(2) Property owned by the veteran or the veteran's spouse as separate property.

(3) Property owned with one or more other persons to the extent of the interest owned by the veteran, the veteran's spouse, or both the veteran and the veteran's spouse.

(4) Property owned by the veteran's unmarried surviving spouse with one or more other persons to the extent of the interest owned by the veteran's unmarried surviving spouse.

(5) So much of the property of a corporation as constitutes the principal place of residence of a veteran or a veteran's unmarried surviving spouse when the veteran, or the veteran's spouse, or the veteran's unmarried surviving spouse is a shareholder of the corporation and the rights of shareholding entitle one to the

possession of property, legal title to which is owned by the corporation. The exemption provided by this paragraph shall be shown on the local roll and shall reduce the full value of the corporate property. Notwithstanding any provision of law or articles of incorporation or bylaws of a corporation described in this paragraph, any reduction of property taxes paid by the corporation shall reflect an equal reduction in any charges by the corporation to the person who, by reason of qualifying for the exemption, made possible the reduction for the corporation.

(e) For purposes of this section, being blind in both eyes means having a visual acuity of 5/200 or less; losing the use of a limb means that the limb has been amputated or its use has been lost by reason of ankylosis, progressive muscular dystrophies, or paralysis; and being totally disabled means that the United States Veterans Administration or the military service from which such veteran was discharged has rated the disability at 100 percent or has rated the disability compensation at 100 percent by reason of being unable to secure or follow a substantially gainful occupation.

(f) An exemption granted to a claimant in accordance with the provisions of this section shall be in lieu of the veteran's exemption provided by subdivisions (o), (p), (q), and (r) of Section 3 of Article XIII of the Constitution and any other real property tax exemption to which the claimant may be entitled. No other real property tax exemption may be granted to any other person with respect to the same residence for which an exemption has been granted under the provisions of this section; provided, that if two or more veterans qualified pursuant to this section co-own a property in which they reside, each is entitled to the exemption to the extent of his or her interest.

(g) This section shall become operative on January 1, 1996.

SEC. 3. 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. 4. (a) Section 1 of this act shall be applicable to property taxes levied for the 1990–91 fiscal year through the 1995–96 fiscal year.

(b) Section 2 of this act shall be applicable to property taxes levied for the 1996–97 fiscal year and fiscal years thereafter.

CHAPTER 1078

An act to add Section 832.2 to the Penal Code, relating to peace officer training.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 832.2 is added to the Penal Code, to read:

832.2. (a) It is the intent of the Legislature to ensure the safety of students, staff, and the public on or about California's public schools, by providing school peace officers with training that will enable them to deal with the increasingly diverse and dangerous situations they encounter.

(b) Every school peace officer, as described in Sections 39670 and 72331 of the Education Code, shall complete a course of training approved by the Commission on Peace Officer Standards and Training relating directly to the role of school peace officers. Any person employed as a school peace officer prior to the date that the Commission on Peace Officer Standards and Training approves the course of training shall complete the course of instruction within three years from the date that the Commission on Peace Officer Standards and Training approves the course of training. Any person who is not employed as a school peace officer until on or after the date that the Commission on Peace Officer Standards and Training approves the course of training shall complete the course of instruction within one year from the date his or her employment commences.

The school peace officer training course shall address guidelines and procedures for reporting offenses to other law enforcement agencies that deal with violence on campus and other school related matters, as determined by the Commission on Peace Officer Standards and Training. The Commission on Peace Officer Standards and Training shall develop and approve the course of training no later than January 1, 1991, and shall consult with school peace officers regarding the content and hourly requirement for this course.

(c) This section does not apply to any school peace officer whose employer requires its school peace officers to possess the basic certificate that is awarded by the Commission on Peace Officer Standards and Training or any school peace officer who possess the basic certificate that is awarded by the Commission on Peace Officers Standards and Training.

CHAPTER 1079

An act to add and repeal Section 1596.955 of the Health and Safety Code, relating to child day care.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature hereby finds and declares there is a need to expand child care services for older infants not yet ready for a preschool environment. These children are commonly referred to as toddlers. Further, the Legislature finds that current minimim health and safety standards do not appropriately address the needs of toddlers transitioning to preschool.

(a) Currently, children under two years of age are served in infant centers with a maximum ratio of four children to each teacher, and preschool children over two years of age are served by preschool centers with a maximum ratio of 12 children to each teacher.

(b) The fact that these two groups must be kept physically separate from each other results in the following conditions:

(1) Children nearing two years of age represent a danger to newborns with whom they share play space.

(2) Children nearing two years of age require more stimulation and a greater variety of play materials and equipment than are available in most infant centers.

(3) The needs of two-year old children, especially the majority who are not toilet trained, cannot be served by a 12 to 1 ratio.

SEC. 2. Section 1596.955 is added to the Health and Safety Code, to read:

1596.955. (a) The department shall develop guidelines and procedures to permit licensed child day care centers serving preschool age children to create a special program component for children between the ages of 18 months and 30 months. This optional toddler program shall be subject to the following basic conditions:

(1) An amended application is submitted to and approved by the department.

(2) All children in the center between 18 and 30 months are placed in the toddler program established at the center and no children shall be placed in the preschool program before the age of 30 months.

(3) Parents give permission for the placement of their children in the toddler program.

(4) A ratio of six children to each teacher is maintained for all children in attendance at the toddler program. An aide who is participating in on-the-job-training may be substituted for a teacher when directly supervised by a fully qualified teacher.

(5) The maximum group size, with two teachers, or one fully

qualified teacher and one aide, does not exceed 12 toddlers.

(6) The toddler program is conducted in areas separate from those used by older or younger children. Plans to alternate use of outdoor play space may be approved to achieve separation.

(7) All other preschool regulations are complied with.

(b) The toddler program shall be considered an extension of the preschool license, without the need for a separate license.

(c) The department shall immediately prepare proposed regulations for public hearing which would consider the foregoing basic conditions as well as any additional health and safety safeguards deemed necessary for this age group.

(d) The guidelines in subdivision (a) shall remain in force and effect only until regulations implementing this section are adopted by the department. A status report on development of the regulations shall be submitted by the department to the Legislature no later than June 1, 1990.

(e) The Senate Office of Research, in consultation with the Assembly Office of Research, shall evaluate the toddler program authorized by this section and report its evaluation to the Legislature no later than December 30, 1992. The evaluation shall include, but not be limited to, the advantages and disadvantages of a toddler program and recommendations as to whether or not the toddler program should continue to be authorized and whether the age range of 18 to 30 months should be retained or changed to some other specified age range.

(f) This section shall become inoperative on June 30, 1993, and, as of January 1, 1994, is repealed unless a later enacted statute which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 1080

An act to amend Sections 1851.5 and 2540 of, and to amend and renumber Section 1800 of, to add Sections 1800, 2620.1, and 2620.2 to, and to repeal and add Sections 1821, 1826, 1851, and 1890 of, the Probate Code, relating to conservatorships and guardianships.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 1800 of the Probate Code is amended and renumbered to read:

1800.3. If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

(a) A conservator of the person or estate of an adult, or both.

(b) A conservator of the person of a minor who is married or whose marriage has been dissolved.

SEC. 2. Section 1800 is added to the Probate Code, to read:

1800. The Legislature hereby finds and declares that the purposes of this chapter are to do the following:

(a) Protect the rights of persons who are placed under conservatorship.

(b) Provide that an assessment of the needs of the person is performed in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible.

(c) Provide that the health and psychosocial needs of the proposed conservatee are met.

(d) Provide that community-based services are used to the greatest extent to allow the conservatee to remain as independent and in the least restrictive setting as possible.

(e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interest of the conservatee.

(f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met.

(g) Provide for the proper management and protection of the conservatee's real and personal property.

SEC. 3. Section 1821 of the Probate Code is repealed.

SEC. 4. Section 1821 is added to the Probate Code, to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and, unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, shall include supplemental information submitted by the petitioner as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the conditions set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or

she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts. In the event that the petitioner does not have personal knowledge of those facts, any person having knowledge of those facts may attest to those facts in an affidavit or declaration under penalty of perjury attached to the petition.

Where any of the conditions set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information, if it would serve the interests of the conservatee. The county clerk shall make provisions for the limitation of the supplemental information exclusively to persons entitled to its receipt.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree. If no spouse of the proposed conservatee, or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee 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 conservatee 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 conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

(i) All conservators shall file a general plan with the court within 90 days of appointment detailing how the personal and financial needs of the conservatee will be met. A copy of the plan shall be provided to the court investigator, and notice of the filing of the general plan shall be given to those persons who have been given notice of the petition. The general plan may be reviewed by those persons who have been given notice of the petition and who request to view the general plan. The court may schedule a hearing on the general plan, if the court determines that a hearing would serve the best interests of the conservatee or if there are objections to the plan within 30 days after mailing of the notice of filing.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Section 416.8 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information which is required pursuant to this section.

SEC. 5. Section 1826 of the Probate Code is repealed.

SEC. 6. Section 1826 is added to the Probate Code, to read:

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally.

(b) Inform the proposed conservatee of the contents of the

citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Review the allegations of the petition as to why the appointment of the conservator is required and the facts set forth in the supplemental information form which addresses each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821, and refer to the supplemental information submitted by the petitioner in making his or her determinations.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(*l*) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) Such other persons as the court orders.

(m) The court investigator shall have discretion to release the report required by this section to the public conservator, interested

public agencies, and the long-term care ombudsman.

(n) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the report, if it would serve the interests of the conservatee. The county clerk shall make provisions for the limitation of the report exclusively to persons entitled to its receipt.

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

SEC. 7. Section 1851 of the Probate Code is repealed.

SEC. 8. Section 1851 is added to the Probate Code, to read:

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

SEC. 9. Section 1851.5 of the Probate Code is amended to read:

1851.5. (a) Promptly following the close of each fiscal year, the Controller shall determine the statewide average cost per investigation or review by a court investigator incurred by a county pursuant to Sections 1826, 1850, and 1851 during each fiscal year.

(b) Except as provided in Section 6102 of the Government Code, each county shall annually assess the estate of each conservatee in the county for any investigation or review conducted by a court

investigator at county expense with respect to that person pursuant to Section 1826, 1850, or 1851, at the rate determined by the Controller pursuant to subdivision (a). The court may order the estate to reimburse the county for the cost of the investigations required by statute, unless the court finds that the assessment would pose a hardship to the estate. A county may waive any or all of an assessment against an estate, on the basis of hardship, where the conservatorship of a living person is terminated by court order.

(c) Any amount otherwise owing to a county pursuant to Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation code for costs incurred by the county for the costs of investigation or review by court investigators pursuant to Sections 1826, 1850, and 1851 shall be reduced by the amount of any assessments actually collected during the fiscal year pursuant to subdivision (b).

SEC. 10. Section 1890 of the Probate Code is repealed.

SEC. 11. Section 1890 is added to the Probate Code, to read:

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) Any request for a court order under Section 1880 whether made as part of the original petition for appointment of a conservator or subsequent thereto, shall be accompanied by a declaration executed by a licensed physician that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor.

SEC. 11.5. Section 2540 of the Probate Code is amended to read:

2540. (a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. In addition, the conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall

describe the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the residence. The court, in its discretion, may require the court investigator to discuss the proposed sale with the conservatee. This subdivision shall not apply when the conservator is granted the power to sell real property of the estate pursuant to Section 2590.

SEC. 12. Section 2620.1 is added to the Probate Code, to read:

2620.1. The account required of a conservator of the estate pursuant to Section 2620, who is also a conservator of the person, shall be accompanied by a status report on the conservatee, indicating the conservator's personal evaluation of the conservatee's health, general well-being, and functional level. This report shall include notification of any intent to change any significant circumstances in the conservatee's living arrangement, condition, or estate. The status report shall be confidential.

SEC. 13. Section 2620.2 is added to the Probate Code, to read:

2620.2. (a) Whenever the conservator has failed to file an account as required by Section 2620, the court shall require that written notice be given to the conservator and the attorney of record for the conservatorship directing the conservator to file an account and to set the account for hearing before the court within 60 days of the date of the notice or, if the conservator is a public agency, within 120 days of the date of the notice.

(b) A citation shall be issued, served, and returned, requiring a conservator, who does not file an account as required by Section 2620, to appear and show cause why the conservator should not be punished for contempt.

(c) If the conservator does not appear and file an account as required by Section 2620 after having been cited under subdivision (b), the conservator may be punished for contempt or removed as conservator, or both, in the discretion of the court.

SEC. 14. Sections 3 to 6, inclusive, of this act shall become operative on July 1, 1990.

SEC. 15. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1081

An act to amend Section 104.12 of, and to add Section 104.2 to, the Streets and Highways Code, relating to highways.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 104.2 is added to the Streets and Highways Code, to read:

104.2. If property is provided through donation or at less than fair market value to the department for state highway purposes, or purchased with funds provided by a local agency, the donor or seller may reserve the right to develop the property, but any development of the property shall be subject to the approval of the department and any reservations, restrictions, or conditions that it determines necessary for highway safety.

SEC. 2. Section 104.12 of the Streets and Highways Code is amended to read:

104.12. (a) The department may lease to public agencies or private entities for any term not to exceed 99 years the use of areas above or below state highways, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection to the safety and the adequacy of highway facilities and to abutting or adjacent land uses. Authorized emergency vehicles, as defined in Section 165 of the Vehicle Code, which are on active duty and are not merely being stored, shall be given preference in the use of these areas, and no payment of consideration shall be required for this use of the areas by these vehicles. Prior to entering into any lease, the department shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the commission, except that, in the case of leases with private entities, the leases shall only be made after competitive bidding unless the commission finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interests of the state. The possibilities of entering into the leases, and the consequent benefits to be derived therefrom, may be considered by the department in designing and constructing the highways.

Revenues from the leases shall be deposited in the State Highway Account. If leased property was provided to the department for state highway purposes through donation or at less than fair market value, the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired. If the donor or seller was a local agency which no longer exists at the time the department enters into the lease, the local agency's share of lease

revenues shall be paid to the county or counties within which the local agency was situated.

(b) The department shall consider future lease potential of areas above or below state highway projects when planning new state highway projects. This consideration shall be accomplished by intradepartment consultation between offices concerned with project development and airspace lease development.

(c) The department shall submit to the Legislature an annual report on the income and the inventory status of airspace leased above and below state highways.

(d) The department shall report to the Governor and the Legislature on January 1, 1991, and thereafter biennially, on the number and nature of contractual agreements entered into pursuant to Section 104.2 and pursuant to this section.

CHAPTER 1082

An act to add Section 14132.81 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

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

(a) Victims of Alzheimer's Disease and other memory impairments can easily become lost or disoriented if they leave their residence unaccompanied.

(b) Families and caregivers of victims of Alzheimer's Disease and other memory impairments undergo substantial emotional stresses when a victim of that disease or other memory impairment disappears.

(c) Without an easy means of identification, police, medical personnel, and other emergency personnel have difficulty in learning that a person is a victim of Alzheimer's Disease or other memory impairment, or that a person has allergies that could be life-threatening.

(d) Identification bracelets with a 24-hour toll-free telephone number inscribed on them provide a widely recognized method of alerting emergency and other medical personnel that an individual has a medical condition such as Alzheimer's Disease.

(e) Programs such as the "Links for Life" program in San Diego County have proven effective in reuniting victims of Alzheimer's Disease with their families or caregivers.

SEC. 2. Section 14132.81 is added to the Welfare and Institutions Code, to read:

14132.81. (a) The purchase of identification bracelets for eligible recipients under the Medi-Cal program who have Alzheimer's Disease or some other cognitive defect, or medication allergies that could be life threatening, shall be a covered benefit under this chapter.

(b) The bracelets shall be purchased from an organization which maintains a 24-hour toll-free telephone number for emergency or medical personnel to make inquiries.

(c) The director shall develop regulations to implement this section.

(d) For purposes of this section "eligible recipients" means those persons who, in addition to qualifying for benefits under this chapter, have been determined by a licensed physician and surgeon to need the benefit authorized by this section.

(e) Benefits shall be provided under this section only to the extent that full federal financial participation is made available.

(f) Benefits shall be provided under this section only when the director determines that two or more organizationally independent providers are available to supply the benefit authorized by this section.

CHAPTER 1083

An act to amend Sections 13127 and 13128 of the Food and Agricultural Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 13127 of the Food and Agricultural Code is amended to read:

13127. (a) Not later than December 31, 1985, the department shall identify 200 pesticide active ingredients which the department determines have the most significant data gaps, widespread use, and which are suspected to be hazardous to people. Not later than 30 days after the report issued pursuant to Section 13125, the department shall notify each registrant of a pesticide product containing any of the identified 200 pesticide active ingredients of the applicable data gap required to be filled pursuant to this section.

(b) Not later than December 31, 1985, the department shall also adopt a timetable for the filling of all data gaps on all pesticide active ingredients, other than those identified by the department pursuant to subdivision (a), which are currently registered or licensed in California. The department shall notify registrants of the applicable data gaps and the scheduled time to initiate and complete studies as

provided in the timetable.

(c) (1) Not later than September 1, 1986, the department shall determine whether a test has been initiated to fill each of the data gaps for each pesticide active ingredient identified in subdivision (a). If no test has been initiated, the department shall fill data gaps in accordance with procedures provided in subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. In order to carry out this section, the director has the same authority to require information from registrants of active pesticide ingredients and to suspend registration that the administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. If a hearing is requested regarding the proposed suspension of registration, it shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. On or before July 1, 1986, the director shall, by regulation, prescribe procedures for resolving disputes or funding the filling of data gaps. The procedures may include mediation and arbitration. The arbitration procedures, insofar as practical, shall be consistent with the federal act, or otherwise shall be in accordance with the commercial arbitration rules established by the American Arbitration Association. The procedures shall be established so as to resolve any dispute within the timetable established in subdivision (a).

(2) The department shall also obtain the data which is identified in subdivision (b), according to the timetable and procedures specified in this section.

(d) (1) Not later than March 1, 1987, the director shall again determine whether tests have been initiated to fill each of the data gaps for each pesticide active ingredient identified in subdivision (a). If the tests have not been initiated or if, having been initiated, the tests are not completed within a reasonable time not to exceed four years, the director shall obtain the required test results. The director may utilize assessments charged to those registrants of the active ingredient for which the data gaps exist in amounts necessary to cover the department's expenses in filling the data gaps. Any assessments shall be made pursuant to Section 12824 of the Food and Agricultural Code. The director may also request an appropriation to be used in combination with assessments to obtain the required test results. The director shall initiate the tests as soon as possible, and the tests shall be completed within a reasonable time, not to exceed four years after initiation.

The director shall furnish not less than 30 days' public notice of any proposed action under this paragraph, stating the reasons therefor and allowing public comment thereon. Copies of this notice and final decision shall be provided to the appropriate committees of the Legislature.

(2) The director shall monitor compliance with the timetable

established pursuant to subdivision (b). If the director determines that tests are not initiated or completed according to the timetable, the director shall obtain the required test results as provided in paragraph (1).

(e) (1) This section does not apply to any product which the director determines has limited use or that substantial economic hardship would result to users due to unavailability of the product and there is not significant exposure to the public or workers and the product is otherwise in compliance with federal law.

(2) The director may not, pursuant to this subdivision, exempt all pesticide products containing the same pesticide active ingredient unless it is determined that the pesticide active ingredient has only limited use, there is insignificant exposure to workers or the public, and the products are otherwise in compliance with federal law. Any exemption issued pursuant to this paragraph shall expire at the end of three years after it is issued.

(f) (1) Whenever the director exercises the authority provided in paragraph (1) of subdivision (e), he or she shall give public notice of the action stating the reasons for exempting the pesticide product from the data requirements of this article. Copies of this notice shall be provided to the appropriate policy committees of the Legislature.

(2) Whenever the director acts pursuant to paragraph (2) of subdivision (e), the director shall furnish not less than 30 days' public notice of the proposed action, stating the reasons for exempting the pesticide product from the data requirements of this article and allowing public comment thereon. Copies of the notice and the final decision shall be provided to the appropriate policy committees of the Legislature.

SEC. 2. Section 13128 of the Food and Agricultural Code is amended to read:

13128. No applicant for registration or current registrant of a pesticide who proposes to purchase or purchases a registered pesticide from another producer in order to formulate the purchased pesticide into an end use product shall be required pursuant to Section 13127 to submit or cite mandatory health effect data pertaining to the safety of the purchased product or to offer to pay reasonable compensation for the use of any such data if the producer is engaged in fulfilling the requirements of Section 13127.

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 provisions relative to pesticides and birth defects may be clarified as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1084

An act to amend Sections 5655 and 12017 of the Fish and Game Code, relating to pollution, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 5655 of the Fish and Game Code is amended to read:

5655. (a) In addition to the responsibilities imposed pursuant to Section 5651, the department may clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, order any person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

(b) No order shall be issued pursuant to this section for the cleanup or abatement of petroleum products in any sump, pond, pit, or lagoon used in conjunction with crude oil production which is in compliance with all applicable state and federal laws and regulations.

(c) The department may issue an order pursuant to this section only if there is an imminent and substantial endangerment to human health or the environment and the order shall remain in effect only until any cleanup and abatement order is issued pursuant to Section 13304 of the Water Code. A regional water quality control board shall incorporate the department's order into the cleanup and abatement order issued pursuant to Section 13304 of the Water Code, unless the department's order is inconsistent with any more stringent requirement established in the cleanup and abatement order. Any action taken in compliance with the department's order is not a violation of any subsequent regional water quality control board cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) All money recovered or received pursuant to this section shall be deposited in the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund.

(e) For purposes of this section, "petroleum product" means oil in any kind or form, including, but not limited to, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil. "Petroleum product" does not include any pesticide which has been applied for agricultural, commercial, or industrial purposes or has been applied in accordance with a cooperative agreement authorized by Section 2426 of the Health and Safety Code, which has

not been discharged accidentally or for purposes of disposal, and whose application was in compliance with all applicable state and federal laws and regulations.

SEC. 2. Section 12017 of the Fish and Game Code is amended to read:

12017. (a) The Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund is hereby created.

(b) Notwithstanding Section 13001, any recovery or settlement of money received pursuant to the following sections shall be deposited in the account:

(1) Section 2014.

(2) Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6.

(3) Section 12015 or 12016.

(4) Chapter 4 (commencing with Section 151) of Division 1.5 of the Harbors and Navigation Code.

(5) Section 13442 of the Water Code.

(c) Moneys in the account are continuously appropriated to the department.

(d) Funds in the account shall be expended for the following purposes:

(1) Abatement, cleanup, and removal of pollutants from the environment.

(2) Response coordination, planning, and program management.

(3) Resource injury determination.

(4) Resource damage assessment.

(5) Economic valuation of resources.

(6) Restoration or rehabilitation at sites damaged by pollution.

(e) Notwithstanding subdivision (d), funds in the account in excess of one million dollars ($1,000,000) as of July 1 of each year may also be expended for the preservation of California plants, wildlife, and fisheries.

(f) Funds in the account may be expended for cleanup and abatement if a reasonable effort has been made to have the responsible party, pay cleanup and abatement costs and funds are not available for disbursement from the emergency reserve account of the Hazardous Substance Account in the General Fund pursuant to Section 25351 or 25354 of the Health and Safety Code.

(g) The department may use funds in the account to pay the costs of consultant contracts for resource injury determination or damage assessment during hazardous material or oil spill emergencies. These contracts are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

CHAPTER 1085

An act to add Title 12 (commencing with Section 93000) of the Government Code, and to amend Section 99317 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Title 12 (commencing with Section 93000) is added to the Government Code, to read:

TITLE 12. NORTH COAST RAILROAD AUTHORITY

CHAPTER 1. GENERAL PROVISIONS

93000 This title shall be known and may be cited as the North Coast Railroad Authority Act.

93001. It is the intent of the Legislature, in enacting this title, to provide an alternative for ensuring railroad service if the Interstate Commerce Commission authorizes the abandonment or discontinuance of service on the current Eureka Southern Railroad line, the Northwestern Pacific Railroad line, or the California Western Railroad line.

It is the intent of the Legislature to provide a means to consider and, if justified, to pursue economic development opportunities and projects related to rail service along these railroad lines.

It is the further intent of the Legislature that this title not provide a justification for the commission to grant a petition for abandonment or discontinuance of service on any of those lines.

93002. It is the intent of the Legislature that the authority be expanded to include the County of Del Norte if the extention of rail service to that county becomes feasible at a future date.

It is the further intent of the Legislature that the authority be expanded to include the Counties of Marin and Sonoma if regional planning for the railroad line extending from Humboldt County to Marin County becomes appropriate at a future date.

93003. The Legislature finds and declares that maintaining railroad service to the north coast area of California will provide economic benefits and, in addition, do all of the following:

(a) Ensure continuing passenger and freight railroad service to the north coast area.

(b) Explore opportunities for the improvement of rail service extending from Humboldt County through Mendocino County, and the potential extension of rail service to Del Norte County.

(c) Enhance tourist access to the north coast area and encourage the establishment of tourist-related facilities.

(d) Reduce reliance on motor vehicles and encourage the use of rail service as an alternative transportation means.

(e) Reduce traffic congestion on and deterioration of State Highway Route 101.

(f) Provide convenient and attractive transportation service for residents of and visitors to the north coast area.

93004. As used in this title "authority" means the North Coast Railroad Authority.

CHAPTER 2. CREATION OF AUTHORITY

93010. The authority is hereby created within the Counties of Humboldt and Mendocino to provide rail passenger and freight service within those counties.

93011. The authority shall be governed by a board of five directors, composed as follows:

(a) Two persons appointed by each of the boards of supervisors of the counties specified in Section 93010. These directors shall serve for terms of two years and until their successors have qualified.

(b) The District Director of Transportation for State Transportation District 1, ex officio.

93012. The authority shall conduct its first meeting not later than 120 days after the abandonment or discontinuance of service on any of the railroad lines specified in Section 93001.

CHAPTER 3. POWERS AND DUTIES OF AUTHORITY

93020. The authority has all of the following powers:

(a) To acquire, own, operate, and lease real and personal property reasonably related to the operation and maintenance of railroads.

(b) To issue revenue bonds pursuant to Section 93024 for any purpose of the authority.

(c) To acquire property by purchase, lease, gift, or through exercise of the power of eminent domain.

(d) To operate railroads, including those outside its boundaries in order to connect its lines with the lines of another railroad corporation.

(e) To accept grants or loans from state or federal agencies.

(f) To select a franchisee, which may be a public or private entity, to acquire or operate a rail transportation system within the area of the authority's jurisdiction.

93021. The authority may acquire, own, lease, and operate railroad lines and equipment, including, but not limited to, real and personal property, tracks, rights-of-way, equipment, and facilities.

93022. The authority may prepare a plan for the acquisition and operation of any railroad line specified in Section 93001, at no expense to the state, to achieve the purposes set forth in Section 93003.

93023. After preparation of a plan pursuant to Section 93022, the

authority may do any of the following:

(a) Conduct engineering and other studies related to the acquisition of any railroad line.

(b) Evaluate alternative plans from the private sector to acquire, finance, and operate a railroad system in a manner which achieves the purposes specified in Section 93003.

(c) Establish criteria for the award of a franchise.

(d) Select a franchisee to acquire, finance, and operate the railroad system.

(e) Accept grants, gifts, fees, or allocations from other entities, including private and public sources.

(f) Employ an executive officer, other staff, and consultants deemed appropriate for support of the activities of the authority.

93024. (a) The authority may issue bonds, payable from revenues of any facility or enterprise to be acquired or constructed by the authority, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code).

However, an election is not required in the case of revenue bonds authorized by the board of directors for railroad facilities, and any addition, extension, and improvement thereto, and all other facilities authorized to be acquired, constructed, or completed by the authority under this title.

(b) The authority is a local agency within the meaning of the Revenue Bond Law of 1941. The term "enterprise," as used in that law, includes railroad facilities, and any addition, extension, and improvement thereto, and all other facilities authorized to be acquired, constructed, or completed by the authority under this title.

93025. The state is not liable for any contracts, debts, or other obligations of the authority.

SEC. 2. Section 99317 of the Public Utilities Code, as amended by Chapter 105 of the Statutes of 1989, is amended to read:

99317. (a) Funds made available pursuant to subdivision (b) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, to fund the following types of transit capital improvement projects:

(1) Railroad rights-of-way acquisition.

(2) Exclusive public mass transit guideways and rolling stock.

(3) Intermodal transfer stations serving various transportation modes.

(4) Passenger ferries and terminals.

(b) Funds made available pursuant to Sections 199 and 199.1 of the Streets and Highways Code shall be appropriated to the department for allocation, as directed by the commission, solely to fund exclusive public mass transit guideways.

(c) The amount of funds allocated for a transit capital improvement project pursuant to this section shall not exceed 50 percent of the amount of the nonfederal share of project cost. This requirement shall not apply to projects for intercity rail.

SEC. 2.5. Section 99317 of the Public Utilities Code, as amended by Chapter 105 of the Statutes of 1989, is amended to read:

99317. (a) Funds made available pursuant to subdivision (b) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, to fund the following types of transit and intercity rail capital improvement projects:

(1) Railroad rights-of-way acquisition.

(2) Exclusive public mass transit guideways and rolling stock.

(3) Intermodal transfer stations serving various transportation modes.

(4) Passenger ferries and terminals.

(b) Funds made available pursuant to Sections 199 and 199.1 of the Streets and Highways Code shall be appropriated to the department for allocation, as directed by the commission, solely to fund exclusive public mass transit guideways.

(c) Funds made available for capital outlay pursuant to subdivision (a) of Section 14031.6 of the Government Code and subdivision (a) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, solely for capital outlay improvements and rolling stock on intercity rail passenger routes.

(d) The amount of funds allocated for a transit capital improvement project, except an intercity rail transit capital improvement project, pursuant to this section shall not exceed 50 percent of the amount of the nonfederal share of project cost. This requirement shall not apply to projects for intercity rail.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 99317 of the Public Utilities Code proposed by both this bill and SB 856. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 99317 of the Public Utilities Code, and (3) this bill is enacted after SB 856, in which case Section 2 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 this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1086

An act to make an appropriation in augmentation of Items 9840-001-001, 9840-001-494, and 9840-001-988 of Section 2.00 of the Budget Act of 1988, relating to contingencies or emergencies, to take effect immediately, usual current expenses.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

I am reducing the appropriation in Section 1 of Assembly Bill No 214 from $250,307,143 82 to $224,077,428 82 by reducing the General Fund appropriation in Section 1 (1) for Item 9840-001-001 from $230,562,143 82 to $204,332,428 82 This reduction of $26,229,715 is as follows

Department of Forestry $1,389,000

The bill includes $25,889,000 for emergency fire suppression but the Department of Forestry estimates an augmentation of $24,500,000 is sufficient.

Department of Education $24,840,715

The bill includes $134,960,000 for deficiencies in K-12 education Based on revised revenue estimates, the Department of Finance estimates that $110,119,285 is remaining for allocation to meet the Proposition 98 funding guarantee I am also reducing the amount in Section 2 utilized for the purposes of Section 8 of Article XVI of the California Constitution, to conform with the amount I have vetoed in Section 1 of this act

In taking this action, I recognize that Chapters 82 and 83, Statutes of 1989, which I signed earlier this year, provide a mechanism to ensure that K-14 education agencies receive the full guaranteed funding level enacted by Proposition 98 This mechanism requires a full reconciliation of revenues and appropriations to be jointly certified by the superintendent of Public Instruction, the Chancellor of the Community Colleges, and the Director of Finance Any amounts required to fulfill the funding guarantee will be allocated automatically by the State Controller

I am also reducing Section 2 from $134,960,000 to $110,119,285 to conform to my action in Section 1.

I am also deleting Section 3 which states that any balances remaining after the annual recertification of the second principal apportionment for the 1988–89 fiscal year for school districts and county offices of education shall be allocated by the Superintendent of Public Instruction to fund any remaining deficiencies of this act Under current law, the Superintendent has authorization to allocate remaining balances for specific purposes, which include any deficiencies in specific apportionments

With these deletions, I approve Assembly Bill No 214

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. (a) The sum of two hundred fifty million three hundred seven thousand one hundred forty-three dollars and eighty-two cents ($250,307,143.82) is hereby appropriated for expenditure in the 1988–89 fiscal year in augmentation of, and for the purposes of, contingencies or emergencies as provided in Items 9840-001-001, 9840-001-494, and 9840-001-988 of Section 2.00 of the Budget Act of 1988, in accordance with the following schedule:

(1) Two hundred thirty million five hundred sixty-two thousand one hundred forty-three dollars and eighty-two cents ($230,562,143.82) from the General Fund to the Reserve for Contingencies or Emergencies in Item 9840-001-001.

(2) Fourteen million six hundred forty thousand dollars ($14,640,000) from unallocated special funds to the Reserve for

Contingencies or Emergencies in Item 9840-001-494.

(3) Five million one hundred five thousand dollars ($5,105,000) from unallocated nongovernmental cost funds to the Reserve for Contingencies or Emergencies in Item 9840-001-988.

(b) The Director of Finance may withhold authorization for expenditure of funds provided in this section until such time as, and to the extent that, preliminary estimates of potential deficiencies are verified.

SEC. 2. Of the amount appropriated in Section 1 of this act, one hundred thirty-four million nine hundred sixty thousand dollars ($134,960,000) shall, for the purposes of Section 8 of Article XVI of the California Constitution, be deemed to be an appropriation for the support of the public school system (K-12) for the 1988–89 fiscal year.

SEC. 3. Notwithstanding any other provision of law, any balances remaining after the annual recertification of the second principal apportionment for the 1988–89 fiscal year for school districts and county offices of education shall be allocated by the Superintendent of Public Instruction to fund any remaining deficiencies recognized in this act.

SEC. 4. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1087

An act relating to open-space subventions, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

I am reducing the $10,000,000 appropriation contained in Section 1 of Assembly Bill No 284 to $5,000,000

This bill would appropriate $10 million to the State Controller to increase subventions to local taxing entities under the Williamson Act Open Space Subvention Program

The demands placed on budget resources require all of us to set priorities. A $5 million augmentation to the existing $14 6 million appropriated in the 1989–90 Budget Act provides a significant commitment to preserving our state's agricultural resources We must also fund other top priority programs and continue a prudent reserve for an economic uncertainties Thus, it would be inappropriate to provide a $10 million augmentation to this single program.

With this reduction, I approve Assembly Bill No 284.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. There is hereby appropriated for the 1989–90 fiscal year the sum of ten million dollars ($10,000,000) to the Controller for proportional allocation to eligible local governments pursuant to Section 16142 of the Government Code. The appropriation made by this section shall for the 1989–90 fiscal year be in addition to any

appropriation made for the same purpose pursuant to Sections 16100 and 16142 of the Government Code.

Prior to the allocation of funds to an eligible city, county, or city and county pursuant to this section, the Controller shall determine whether the allocation for the eligible city, county, or city and county would result in the city, county, or city and county having proceeds of taxes for the 1989–90 fiscal year in excess of its appropriations limit under Article XIII B of the California Constitution. If the Controller determines that the allocation will result in a city, county, or city and county exceeding its appropriations limit for the 1989–90 fiscal year, the Controller shall reduce the amount of the allocation computed for the city, county, or city and county pursuant to this section by the amount by which that allocation exceeds the entity's appropriations limit.

In the event that the Controller reduces an allocation to a city, county, or city and county in accordance with the preceding paragraph, if the voters of the city, county, or city and county subsequently authorize an increase in that entity's appropriations limit for the 1989–90 fiscal year, the Controller shall pay to the city, county, or city and county that portion of the allocation reduction which does not exceed the entity's increased appropriations limit within 30 days of the Controller receiving from the city, county, or city and county a certification of the election results increasing the entity's appropriations limit

SEC. 2. The Legislature finds and declares that many counties and cities have been required to divert their own general purpose revenues to pay for basic social welfare, public health, and justice programs. This shift has diminished local budgetary support for other programs and services, including those which promote the continued productive use of agricultural lands and the conservation of open space. In enacting Section 1 of this act and increasing the amount of state open-space subventions, the Legislature hereby encourages local officials to use a portion of these additional revenues to support programs and services which benefit agricultural lands and open space.

SEC. 3. The Legislature finds and declares that in enacting Section 1 of this act it is the intent of the Legislature to increase the subventions paid to cities and counties for certain open space lands. If a state agency undertakes a comprehensive review of this program of state subventions for open-space lands and if that study recommends that the Legislature change the program, then it is the intent of the Legislature to further revise this program after considering the recommendations by the study.

CHAPTER 1088

An act to add and repeal Chapter 14 (commencing with Section 15775) of Part 3 of Division 9 of the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

I am deleting the $120,000 appropriation contained in Section 4 of Senate Bill No 1484

This bill would require the Department of Social Services to establish a two-year demonstration project in Santa Barbara County for the purpose of conducting centralized intake and assessments for recipients in need of adult protective services. It also appropriates $120,000 from the General Fund in years 1990–91 and 1991–92 to establish this demonstration project.

Since the funding in this bill was not to be appropriated until next year, it is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1990–91 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 1484

GEORGE DEUKMEJIAN, Governor

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

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

(a) Across the nation we are facing a dramatic "greying" of our population. In California, there were two million eight hundred thousand people 65 years of age or older in 1985, and that number is projected to grow to three million eight hundred thousand by the year 2000. That means that by the year 2000, one in every nine Californians will be 65 years of age or older.

(b) The elderly and dependent adult population utilizes the services of various community agencies to meet their needs. Each of these service agencies requires a separate intake and assessment process.

(c) There is currently no standardized intake and assessment form or process which is acceptable for use by all agencies providing services to adult protective services clients.

(d) By alleviating the duplication of staff time on the intake and assessment process conducted at each of the various service agencies, a cost savings may be achieved with the development of a multidisciplinary intake and assessment unit for adult protective services.

SEC. 2. (a) It is the intent of the Legislature to establish a two-year demonstration project to centralize the intake and assessment process for elderly and dependent adults who may utilize various adult service programs by the development of a multidisciplinary intake and assessment unit for adult protective services.

(b) It is the further intent of the Legislature to incorporate the resources of volunteers in the delivery of services to elderly and dependent adults.

SEC. 3. Chapter 14 (commencing with Section 15775) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 14. MULTIDISCIPLINARY INTAKE AND ASSESSMENT UNIT

15775. The department shall, commencing July 1, 1990, pursuant to a request by Santa Barbara County, establish a two-year pilot program in that county which will establish a centralized multidisciplinary intake and assessment unit for adult protective services to gather information on elderly and dependent adults for all of the following purposes:

(a) Completing a comprehensive client-centered needs assessment.

(b) Developing a client-specific service plan.

(c) Referring, as appropriate, to community-based agencies.

(d) Implementing, with volunteers, the delivery of services specified in the service plan in subdivision (b).

When assessment is completed and the services needed are identified in the service plan, ongoing case management will be assigned to that member of the multidisciplinary unit responsible for the primary service identified.

15776. The goal of the pilot program shall be to develop all of the following:

(a) A generic adult intake form, to be used by all participating agencies.

(b) An adult protective services assessment form for statewide use.

(c) A model for the multidisciplinary intake and assessment unit, with potential statewide applicability, to be composed of representatives from, but not limited to, all of the following local entities:

(1) The county welfare department.

(2) The county department of mental health.

(3) The public guardian.

(4) The public conservator.

(5) The county public health department.

(6) The Multipurpose Senior Services Program.

(7) The Area Agency on Aging.

(8) The Santa Barbara Health Initiative.

(d) A model for incorporating senior and intergenerational volunteers into the delivery of supportive services for adult protective services clients.

15777. (a) The county shall report to the Legislature and to the State Department of Social Services by December 31, 1992, on the results of the program.

(b) The report required by subdivision (a) shall include, but need not be limited to, an evaluation of all of the following:

(1) The savings in staff time resulting from nonduplicative intake accomplished through the use of generic intake and assessment.

(2) A comparison of the following:

(A) The total number of clients served in the 1989–90 base year.

(B) The total number of clients served during the operative period of the pilot program.

(3) The savings generated through the use of volunteer hours in support of direct services.

15778. This chapter 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. The sum of one hundred twenty thousand dollars ($120,000) is appropriated from the General Fund to the State Department of Social Services, for allocation for purposes of this act, as follows:

(a) For the 1990–91 fiscal year, the sum of sixty thousand dollars ($60,000).

(b) For the 1991–92 fiscal year, the sum of sixty thousand dollars ($60,000).

CHAPTER 1089

An act to add Sections 39141.9, 46300.1, 46300.3, and 46300.4 to, and to repeal and add Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of, the Education Code, relating to schools, and making an appropriation therefor.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

I am deleting the $50,000 appropriation contained in Section 9 of Senate Bill No 1563

This bill would make substantial changes to the provisions authorizing local education agencies (LEAs) to conduct independent study programs. Among the major changes, this bill would require LEAs to adopt more rigorous standards for independent study programs and would reduce funding for adult independent study students to the statewide adult education revenue limit over two years. It also appropriates $50,000 to the Department of Education for administrative costs and $50,000 to the Legislative analyst for a study.

The Department of Education has resources available that were used to implement the existing independent study program regulations and guidelines. Therefore, I believe that the Department also can implement the provisions of this bill without additional funding and consider the appropriation unnecessary

With this deletion, I approve Senate Bill No 1563.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. It is the intent of the Legislature in enacting this act to encourage school districts and county offices of education to maintain effective alternative education programs designed to

respond to the different ways pupils acquire learning and to provide alternative means for pupils to complete their prescribed course of study. The Legislature finds and declares that independent study is an educational alternative that allows the flexibility in scheduling and learning activities required by many pupils.

The Legislature also finds and declares that independent study has grown by approximately 25 percent during the past four years, and that the number of school districts offering independent study has grown from 452 school districts in the 1982–83 school year to 672 in the 1987–88 school year. This growth is partially attributable to the use of independent study by school districts as a key component of their strategy to intensify efforts to retain pupils who are at risk of dropping out of school and to retrieve pupils who have previously dropped out of school.

The Legislature further finds and declares that, while independent study is often conducted in an exemplary manner, reviews conducted by the Auditor General, the Department of Finance, and the office of the Legislative Analyst have stated the following general concerns regarding independent study:

(a) The Auditor General has reported that of 25 school districts and county offices of education with the largest pupil participation in independent study, the amount of revenue spent on independent study ranged from 25 percent of the revenue to 18 percent in excess of their revenue for independent study.

(b) There are no statewide statistics on the number of pupils participating in independent study, the characteristics of these pupils, or the number who complete various course requirements through independent study, all of which is information which must be obtained in order to evaluate the effectiveness of the program.

(c) Independent study varies greatly with respect to the following components:

(1) Student-to-teacher ratios. The Auditor General reports ratios varying from 26:1 to 156:1.

(2) The frequency with which pupils meet with certificated personnel to discuss their progress and receive other educational services.

(3) Whether or not any screening criteria are used to determine whether full-time independent study is the most appropriate alternative for a pupil.

It is the intent of the Legislature to address all of these concerns in an effort to ensure that independent study is an effective alternative educational choice for pupils and their families.

SEC. 2. Section 39141.9 is added to the Education Code, to read:

39141.9. In order to provide alternative, community-based educational opportunities through independent study, any school district or county office of education may request an exemption from the State Allocation Board for a building or structure, or portion of a building or structure, from the definition of "school buildings" within the meaning of Section 39141. The exemptions may be

granted for no longer than two years and exemptions are renewable. An exemption may only be granted if the school district or county office of education demonstrates to the satisfaction of the State Allocation Board all of the following:

(a) The building or structure, or portion of building or structure, satisfies all of the following:

(1) It is not located on a regular schoolsite.

(2) It complies with all applicable local building standards and all relevant local health and safety standards in the community in which it is located.

(3) It is used for independent study.

(4) It serves fewer than 25 pupils enrolled in kindergarten or any of the grades 1 to 12, inclusive, at any one time in the building or structure, or in a portion of a building or structure where the remainder of the building or structure is not used for instructional purposes.

(b) The use of the building or structure is critical to providing an effective alternative, community-based program.

(c) The use of other buildings or structures that would meet seismic safety standards for school facilities is not practical.

SEC. 3. Section 46300.1 is added to the Education Code, to read:

46300.1. (a) For the 1990–91 and 1991–92 fiscal years, no school district or county office of education may receive apportionments for independent study by pupils 21 years of age or older, or by pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday for average daily attendance in excess of the number of units of average daily attendance generated by such pupils in the 1988–89 fiscal year.

(b) Commencing with the 1990–91 fiscal year, apportionments for pupils 21 years of age or older, and for pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday in independent study under Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 shall be reduced over a two-year period to the statewide average level per average daily attendance paid for pupils in adult education according to the following schedule:

(1) For the 1990–91 fiscal year, independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday generate a revenue limit equivalent to 166 percent of the statewide average level per unit of average daily attendance paid for pupils in adult education.

(2) For the 1991–92 fiscal year, independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday generate a revenue limit equivalent to 132 percent of the average adult education revenue limit.

(3) For the 1992–93 fiscal year and each fiscal year thereafter, independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday generate a revenue limit equivalent to 100 percent of the average adult education revenue limit.

SEC. 3.5. Section 46300.3 is added to the Education Code, to read:

46300.3. Apportionments paid for concurrent enrollment in adult education by independent study pupils 21 years of age or older, and pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, shall not exceed the adult education revenue limit.

This section shall become operative on July 1, 1990.

SEC. 3.7. Section 46300.4 is added to the Education Code, to read:

46300.4. If a pupil 21 years of age or older, or pupils 19 years of age or older who has not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since his or her 18th birthday, is pursuing adult education coursework through independent study, his or her attendance shall be eligible for apportionment only if the coursework meets the requirements for a high school diploma.

This section shall become operative on July 1, 1990.

SEC. 4. Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code is repealed.

SEC. 5. Article 5.5 (commencing with Section 51745) is added to Chapter 5 of Part 28 of the Education Code, to read:

Article 5.5. Independent Study

51745. (a) Commencing with the 1990–91 school year, the governing board of a school district or a county office of education may offer independent study to meet the educational needs of pupils in accordance with the requirements of this article. Educational opportunities offered through independent study may include, but shall not be limited to, the following:

(1) Special assignments extending the content of regular courses of instruction.

(2) Individualized study in a particular area of interest or in a subject not currently available in the regular school curriculum.

(3) Individualized alternative education designed to teach the knowledge and skills of the core curriculum. Independent study shall not be provided as an alternative curriculum.

(4) Continuing and special study during travel.

(5) Volunteer community service activities that support and strengthen pupil achievement.

(b) Not more than 10 percent of the pupils participating in an opportunity school or program, or a continuation high school, calculated as specified by the State Department of Education, shall be eligible for apportionment credit for independent study pursuant to this article.

(c) No individual with exceptional needs, as defined in Section 56026, may participate in independent study, unless his or her individualized education program developed pursuant to Article 3 (commencing with Section 56340) of Chapter 4 of Part 30 specifically provides for that participation.

(d) No temporarily disabled pupil may receive individual instruction pursuant to Section 48206.3 through independent study.

(e) No course included among the courses required for high school graduation under Section 51225.3 shall be offered exclusively through independent study.

51746. It is the intent of the Legislature that school districts and county offices of education offering independent study shall provide appropriate existing services and resources to enable pupils to complete their independent study successfully and shall ensure the same access to all existing services and resources in the school in which the pupil is enrolled pursuant to Section 51748 as is available to all other pupils in the school. In addition, the services and resources may include, but need not be limited to, any of the following:

(a) A designated learning center or study area staffed by appropriately trained personnel.

(b) The services of qualified personnel to assess the achievement, abilities, interests, aptitudes, and needs of participating pupils to determine each of the following:

(1) Whether full-time independent study is the most appropriate alternative for the pupil being referred.

(2) If the answer to paragraph (1) is affirmative, the determination of the most appropriate individualized plan and resources to be made available to pupils enrolled in full-time independent study.

51747. A school district or county office of education shall not be eligible to receive apportionments for independent study by pupils, regardless of age, unless it has adopted written policies, pursuant to rules and regulations adopted by the Superintendent of Public Instruction, which include, but shall not be limited to, each of the following:

(a) The maximum length of time, by grade level and type of program, which may elapse between the time an independent study assignment is made and the date by which the pupil must complete the assigned work.

(b) The number of missed assignments which will be allowed before an evaluation is conducted to determine whether it is in the best interests of the pupil to remain in independent study, or whether he or she should return to the regular school program. A written record of the findings of any evaluation made pursuant to this subdivision shall be maintained in the pupil's permanent record.

(c) A requirement that a current written agreement for each independent study pupil shall be maintained on file including, but not limited to, all of the following:

(1) The manner, time, frequency, and place for submitting a pupil's assignments and for reporting his or her progress.

(2) The method utilized to evaluate the pupil's work.

(3) The specific resources, including materials and personnel, which will be made available to the pupil.

(4) A statement of the policies adopted pursuant to subdivisions (a) and (b) regarding the maximum length of time allowed between the assignment and the completion of a pupil's assigned work, and the number of missed assignments which will require an evaluation of whether or not the pupil should be allowed to continue in independent study.

(5) The duration of the independent study agreement. No independent study agreement shall be valid for any period longer than one semester or one-half year for a school on a year-round calendar.

(6) A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.

(7) The inclusion of a statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate.

(8) Each written agreement shall be signed by the pupil, the pupil's parent or legal guardian if the pupil is less than 18 years of age, the certificated employee who has been designated as having responsibility for the general supervision of independent study, and all persons who have direct responsibility for providing assistance to the pupil.

51747.5. The independent study by each pupil 18 years of age or less shall be coordinated, evaluated, and, notwithstanding subdivision (a) of Section 46300, under the general supervision of an employee of the school district or county office of education who possesses a valid certification document pursuant to Section 44865, registered as required by law.

51747.6. The ratio of average daily attendance by independent study pupils 18 years of age or less to school district full-time equivalent certificated employees responsible for independent study, calculated as specified by the State Department of Education, shall not exceed the equivalent ratio for all other education programs operated by the school district. The ratio of average daily attendance by independent study pupils 18 years of age or less to county office of education full-time equivalent certificated employees responsible for independent study, to be calculated in a manner prescribed by the State Department of Education, shall not exceed the equivalent ratio for all other educational programs operated by the high school or unified school district with the largest average daily attendance of pupils in that county. The computation of the ratios shall be performed annually by the reporting agency at the time of, and in connection with, the second principal apportionment report to the

Superintendent of Public Instruction. Only those units of average daily attendance for independent study that reflect a teacher/student ratio that does not exceed the general ratio shall be eligible for apportionment pursuant to Section 42238.5 for school districts and Section 2558 for county offices of education. Nothing in this subdivision shall prevent a school district or county office of education from serving additional units of average daily attendance greater than the general ratio, however, those additional units shall not be funded pursuant to Section 42238.5 or Section 2558.

51748. School districts and county offices of education shall not be eligible to receive apportionment for independent study attendance by any pupil who is not otherwise identified in the written records of the district or county board by grade level, program placement, and the school in which he or she is enrolled.

51749. The Superintendent of Public Instruction, upon the next revision of the California Basic Educational Data System, or its equivalent, following the effective date of this article, shall include all data collection elements necessary to compile an annual statewide profile of pupils participating in independent study, including data on the number and percentage of pupils pursuing their coursework through independent study who successfully complete the requirements for a high school diploma.

51749.3. The Superintendent of Public Instruction shall establish rules and regulations for the purposes of implementing this article. A public hearing on the rules and regulations shall be held on or before March 15, 1990. The rules and regulations shall be adopted on or before June 30, 1990.

51749 5. This article shall become operative on July 1, 1990.

SEC. 6. (a) The Legislative Analyst, in consultation with the State Department of Education, shall conduct, or cause to be conducted, a study to determine the most appropriate means of offering independent study to pupils 21 years of age or older, and to pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, in addition to other issues regarding independent study. The study shall address, but shall not be limited to, the following questions:

(1) Whether independent study for pupils 21 years of age or older, and for pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday should be provided through the educational system consisting of kindergarten and grades 1 to 12, inclusive, or only through adult education.

(2) If it is recommended that independent study for adults be provided through the educational system consisting of kindergarten and grades 1 to 12, inclusive, whether there should be a cap on the number of units of average daily attendance generated by pupils 19 years of age or older.

(3) Whether more than one public educational agency should

offer independent study for pupils 21 years of age or older, and for pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday in a given geographic area.

(4) Whether independent study for pupils 21 years of age or older, and for pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday should be restricted to certain programs, such as diploma granting programs.

(5) Whether there should be a pupil to teacher ratio in independent study for pupils 21 years of age or older, and for pupils 19 years of age or older who have not been continuously enrolled in kindergarten or any of grades 1 to 12, inclusive, since their 18th birthday, and, if so, what that ratio should be.

(6) The recommended level of staffing within the State Department of Education necessary to implement Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code.

(b) The office of the Legislative Analyst shall submit the findings and recommendations in a report to the appropriate fiscal and policy committees of the Legislature, the Governor, and the Director of Finance on or before October 30, 1990.

SEC. 7. Section 4 of this act shall become operative on July 1, 1990.

SEC. 8. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Legislative Analyst for the purpose of conducting the study on independent study required by Section 6 of this act.

SEC. 9. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the State Department of Education for administrative costs incurred by the department in implementing Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code.

CHAPTER 1090

An act to add and repeal Section 17052.14 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 17052.14 is added to the Revenue and Taxation Code, to read:

17052.14. (a) (1) For taxable years beginning on or after January 1, 1989, and before January 1, 1994, there shall be allowed as

a credit against the "net tax" (as defined in Section 17039), an amount equal to 40 percent of the cost of qualified property purchased on or after January 1, 1989, and before January 1, 1994. The amount of the allowable credit shall be claimed as provided in subdivision (c).

(2) The basis of any qualified property, as defined in paragraph (1) of subdivision (d), for which a credit is allowed 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.

(b) The credit shall only be allowed by this section if:

(1) The total adjusted basis of all qualified property owned on the last day of the taxable year exceeds the total adjusted basis of all qualified property owned on the last day of the base year.

(2) The total number, or capacity to use recycled materials, of items of qualified property on the last day of the taxable year exceeds the total number or capacity of items of qualified property on the last day of the base year. If a qualified property owned in the base year is replaced by qualified property of larger capacity, the eligible costs shall be proportional to the increase in capacity.

(c) The amount of the allowable credit shall be claimed as follows:

(1) Twenty percent of the cost paid or incurred by the taxpayer for qualified property shall be allowed for the taxable year of purchase.

(2) Fifteen percent of the cost paid or incurred by the taxpayer for qualified property shall be allowed for the taxable year immediately succeeding the taxable year of purchase.

(3) Five percent of the cost paid or incurred by the taxpayer for qualified property shall be allowed for the taxable year immediately succeeding the taxable year specified in paragraph (2).

(4) The amount of credit allowed by this section shall not exceed two hundred fifty thousand dollars ($250,000) with respect to qualified property used in any one manufacturing facility.

(d) (1) "Qualified property" means machinery or equipment located within California, which is used by the taxpayer exclusively to manufacture finished products composed of at least 50 percent secondary waste material with at least 10 percent of which is composed of postconsumer waste generated from within California. "Qualified property" may include manufacturing equipment which utilizes 100 percent secondary waste, including at least 80 percent postconsumer waste where all of that material is contained within a finished product regardless of the finished product's percent postconsumer content. "Qualified property" includes, but is not limited to, deinking equipment utilized in the production of fine quality paper and equipment utilized to reclaim plastic which is used either as a raw material by a manufacturer or is sold to a manufacturer for use in the manufacture or fabrication of finished products.

(2) "Postconsumer waste" is only those products generated within California by a business or consumer which have served their

intended end uses and would normally be disposed of as solid waste, having completed their life cycle as a consumer item.

(3) "Secondary waste" means fragments of products or finished products of a manufacturing process generated within California, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(4) "Finished product" means a marketable product or component thereof that has an economic value to a consumer and is ready to be used without the requirement of further alteration of its form.

(5) "Base year" is the taxable year immediately preceding the taxable year for which the credit allowed by this section is claimed.

(e) The Department of Conservation shall do all of the following:

(1) Certify that the qualified property is purchased and used by the taxpayer as specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Provide an annual listing to the Franchise Tax Board, (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the Department of Conservation), of the qualified taxpayers who were issued the certification.

(3) Provide the taxpayer with a copy of the certification to retain for his or her records.

(f) The taxpayer shall do all of the following:

(1) Provide the Department of Conservation with documents, as deemed necessary by the Department of Conservation, verifying the purchase of the qualified property and that the machinery or equipment meets the recycling requirements specified in this section.

(2) Retain for his or her records a copy of the certificate issued by the Department of Conservation specified in paragraph (1) of subdivision (e).

(g) In the case where the credit allowed by this section exceeds the "net tax," for any taxable year for which a credit is allowed by subdivision (c), the excess may be carried over to reduce the "net tax," in the following year, and succeeding years if necessary, until the credit is exhausted.

(h) If a taxpayer disposes of or no longer uses the qualified property as defined in subdivision (d), then any amount that would have been otherwise allowed as a credit for the taxable year of disposition or nonuse shall not be allowed.

(i) 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 a partner's distributive share. In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(j) The Department of Conservation shall, no later than March 1, 1994, submit a report to the Legislature evaluating the impact of the tax expenditure in this section. The report shall include information about the number of taxpayers claiming the credit, the total dollar amount of credit allocated, and the equipment for which the credit was used. The report shall also determine to what extent, if any, the tax expenditure authorized by this section increased recycling activities in California. The Department of Conservation shall work cooperatively with the Franchise Tax Board to determine the relevant tax return data necessary to complete the report and the time the data is required. The Franchise Tax Board shall be responsible for providing the data to the Department of Conservation.

(k) This section shall remain in effect only until December 1, 1994, and as of that date is repealed, unless a later enacted statute, which is chaptered before December 1, 1994, deletes or extends that date. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 2. If Assembly Bill 939 of the 1989–90 Regular Session is chaptered and creates the California Integrated Waste Management Board, Section 17052.14 of the Revenue and Taxation Code, as added by this act, shall be administered by that board, notwithstanding any other provision of that section requiring administration by the Department of Conservation.

SEC. 3. This act shall become operative only if and at the same time as AB 1308 of the 1989–90 Regular Session becomes operative.

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

CHAPTER 1091

An act to add and repeal Section 23612.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 23612.5 is added to the Revenue and Taxation Code, to read:

23612.5. (a) (1) For income years beginning on or after January

1, 1989, and before January 1, 1994, there shall be allowed as a credit against the "tax" (as defined in Section 23036), an amount equal to 40 percent of the cost of qualified property purchased on or after January 1, 1989, and before January 1, 1994. The amount of the allowable credit shall be claimed as provided in subdivision (c).

(2) The basis of any qualified property, as defined in paragraph (1) of subdivision (d), for which a credit is allowed 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.

(b) The credit shall only be allowed by this section if:

(1) The total adjusted basis of all qualified property owned on the last day of the income year exceeds the total adjusted basis of all qualified property owned on the last day of the base year.

(2) The total number, or capacity to use recycled materials, of items of qualified property on the last day of the income year exceeds the total number or capacity of items of qualified property on the last day of the base year. If a qualified property owned in the base year is replaced by qualified property of larger capacity, the eligible costs shall be proportional to the increase in capacity.

(c) The amount of the allowable credit shall be claimed as follows:

(1) Twenty percent of the cost paid or incurred by the taxpayer for qualified property shall be allowed for the income year of purchase.

(2) Fifteen percent of the cost paid or incurred by the taxpayer for qualified property shall be allowed for the income year immediately succeeding the income year of purchase.

(3) Five percent of the cost paid or incurred by the taxpayer for qualified property shall be allowed for the income year immediately succeeding the income year specified in paragraph (2).

(4) The amount of credit allowed by this section shall not exceed two hundred fifty thousand dollars ($250,000) with respect to qualified property used in any one manufacturing facility.

(d) (1) "Qualified property" means machinery or equipment located within California, which is used by the taxpayer exclusively to manufacture finished products composed of at least 50 percent secondary waste material with at least 10 percent of which is composed of postconsumer waste generated from within California. "Qualified property" may include manufacturing equipment which utilizes 100 percent secondary waste, including at least 80 percent postconsumer waste where all of that material is contained within a finished product regardless of the finished product's percent postconsumer content. "Qualified property" includes, but is not limited to, deinking equipment utilized in the production of fine quality paper and equipment utilized to reclaim plastic which is used either as a raw material by a manufacturer or is sold to a manufacturer for use in the manufacture or fabrication of finished products.

(2) "Postconsumer waste" is only those products generated within California by a business or consumer which have served their

intended end uses and would normally be disposed of as solid waste, having completed their life cycle as a consumer item.

(3) "Secondary waste" means fragments of products or finished products of a manufacturing process generated within California, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(4) "Finished product" means a marketable product or component thereof that has an economic value to a consumer and is ready to be used without the requirement of further alteration of its form.

(5) "Base year" is the income year immediately preceding the income year for which the credit allowed by this section is claimed.

(e) The Department of Conservation shall do all of the following:

(1) Certify that the qualified property is purchased and used by the taxpayer as specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Provide an annual listing to the Franchise Tax Board, (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the Department of Conservation), of the qualified taxpayers who were issued the certification.

(3) Provide the taxpayer with a copy of the certification to retain for its records.

(f) The taxpayer shall do all of the following:

(1) Provide the Department of Conservation with documents, as deemed necessary by the Department of Conservation, verifying the purchase of the qualified property and that the machinery or equipment meets the recycling requirements specified in this section.

(2) Retain for its records a copy of the certificate issued by the Department of Conservation specified in paragraph (1) of subdivision (e).

(g) In the case where the credit allowed by this section exceeds the "tax," for any income year for which a credit is allowed by subdivision (c), the excess may be carried over to reduce that "tax," in the following year, and succeeding years if necessary, until the credit is used.

(h) If a taxpayer disposes of or no longer uses the qualified property as defined in subdivision (d), then any amount that would have been otherwise allowed as a credit for the income year of disposition or nonuse shall not be allowed.

(i) 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. 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.

(j) The Department of Conservation shall, no later than March 1, 1994, submit a report to the Legislature evaluating the impact of the tax expenditure in this section. The report shall include information about the number of taxpayers claiming the credit, the total dollar amount of credit allocated, and the equipment for which the credit was used. The report shall also determine to what extent, if any, the tax expenditure authorized by this section increased recycling activities in California. The Department of Conservation shall work cooperatively with the Franchise Tax Board to determine the relevant tax return data necessary to complete the report and the time the data is required. The Franchise Tax Board shall be responsible for providing the data to the Department of Conservation.

(k) This section shall remain in effect only until December 1, 1994, and as of that date is repealed, unless a later enacted statute, which is chaptered before December 1, 1994, deletes or extends that date. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 2. This act shall become operative only if and at the same time as Senate Bill 432 of the 1989–90 Regular Session becomes operative.

SEC. 3. If Assembly Bill 939 of the 1989–90 Regular Session is chaptered and creates the California Integrated Waste Management Board, Section 23612.5 of the Revenue and Taxation Code, as added by this act, shall be administered by that board, notwithstanding any other provision of those sections requiring administration by the Department of Conservation.

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

CHAPTER 1092

An act to add Division 12.6 (commencing with Section 17000) to the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Division 12.6 (commencing with Section 17000) is added to the Public Resources Code, to read:

DIVISION 12.6. PAVING MATERIALS

17000. The Director of Transportation, upon consultation with the Department of Conservation, shall review and modify all bid specifications relating to the purchase of paving materials, and base, subbase, and pervious backfill materials, using recycled materials. The recycled materials shall include, but are not limited to, recycled asphalt pavement, crushed concrete subbase, foundry slag, and paving materials utilizing recycled materials, including, but not limited to, crumb rubber from automobile tires, ash, and glass and glassy aggregates. The specifications shall be based on standards developed by the department for recycled paving materials and for recycled base, subbase, and pervious backfill materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for highway and road construction.

17001. In purchasing any materials to be used in paving or paving subbase for use by the Department of Transportation and any other state agencies which provide road construction and repair services, the State Procurement Officer shall make contracts available for those items which utilize recycled materials in paving materials and base, subbase, and pervious backfill materials, if the price of those items is competitive for the purposes intended. This section also applies to any person who contracts with the department or any other state agency to provide these construction and repair services. The recycled materials shall include, but are not limited to, recycled asphalt, crushed concrete subbase, foundry slag, and paving materials utilizing crumb rubber from automobile tires, ash, and glass and glassy aggregates. The specifications shall be based on the standards of the department for recycled paving materials and for recycled base, subbase, and pervious backfill materials.

SEC. 2. If Assembly Bill 939 of the 1989–90 Regular Session is enacted and creates the California Integrated Waste Management Board, Division 12.6 (commencing with Section 17000) of the Public Resources Code, as added by Section 1 of this act, shall be administered in consultation with that board, notwithstanding any other provision of that division requiring consultation with the Department of Conservation.

CHAPTER 1093

An act to add Division 12.5 (commencing with Section 16000) to the Public Resources Code, relating to newspapers.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

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

(a) Recycling old newspapers saves landfill space, reduces energy consumption, and preserves timber resources. Specific benefits can be derived by separating old newspapers from solid waste and by using such old newspapers to produce new newsprint.

(b) Californians consume approximately two million tons of newsprint each year, but only one million tons of old newspapers are separated from the solid waste stream and collected for reuse. Each ton of old newspapers that is recovered saves 3.3 cubic yards of landfill space, and recycling old newspapers into new newsprint saves approximately 50 percent of the energy needed to make newsprint from virgin sources.

(c) A critical component for increasing the recycling of old newspapers is securing adequate markets for the old newspapers separated from the solid waste stream and for the finished products made from such materials.

(d) Increasing the demand for newsprint made from old newspapers will stimulate manufacturers of newsprint to use larger amounts of old newspaper in their production of newsprint.

(e) The development of markets for recycled-content papers of all types and grades is beneficial to the state, and the use of recycled-content paper should be encouraged to the maximum feasible amount.

SEC. 2. Division 12.5 (commencing with Section 16000) is added to the Public Resources Code, to read:

DIVISION 12.5. NEWSPRINT

CHAPTER 1. DEFINITIONS

16000. "Consumer of newsprint" means a person who uses newsprint in a commercial printing operation or in a commercial publishing operation.

16001. "Deink" or "deinking old newspapers" means a process in which old newspaper is mixed with water, the paper fibers are separated to form a paper pulp, and the pulp is cleaned to remove contaminants.

16002. "Department" means the Department of Conservation.

16003. "Newsprint" means uncoated paper, whether supercalendered or machine finished, of the type generally used for, but is not limited to, the publication of newspapers, commercial advertising inserts, directories, or commercial advertising mailers , which is made primarily from mechanical woodpulps combined with some chemical woodpulp. "Newsprint" includes paper made from old newspapers which have been deinked, using the recycled pulp in lieu of virgin pulp. "Newsprint" includes all grades of paper sold as newsprint, supercalendered (SC) uncoated groundwood, or machine finished (MF) uncoated groundwood.

16004. "Old newspaper" or "recovered newspaper" means any newsprint which is separated from other types of solid waste or collected separately from other types of solid waste and made available for reuse in making new newsprint, and which meets quality standards for use as a raw material in the manufacture of a new paper product.

16005. "Post consumer waste paper" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item, including, but not limited to, printing plant waste paper

16006. "Recycled-content newsprint" means newsprint in which not less than 40 percent of its fiber consists of post consumer waste paper.

CHAPTER 2. RECYCLED-CONTENT NEWSPRINT PROGRAM

16050. On and after January 1, 1991, every consumer of newsprint in California shall ensure that at least 25 percent of all newsprint used by that consumer of newsprint is made from recycled-content newsprint, if recycled-content newsprint is available at a price comparable to that of newsprint made from virgin material, if the recycled-content newsprint meets the quality standards established by the department pursuant to Section 16065, and if the recycled-content newsprint is available within a reasonable period of time.

16051. The percentage of newsprint used which is made from recycled-content newsprint shall be calculated in tons used on an annual basis and shall increase to:

(a) Thirty percent on and after January 1, 1994.

(b) Thirty-five percent on and after January 1, 1996.

(c) Forty percent on and after January 1, 1998.

(d) Fifty percent on and after January 1, 2000.

16052. This division does not apply to any newsprint purchased prior to January 1, 1990.

CHAPTER 3. CERTIFICATION OF USE

16060. Each consumer of newsprint within the State of California shall, on or before March 1 of each year, certify to the department

the number of tons of newsprint used during the preceding calendar year and the number of tons of recycled-content newsprint used during the preceding calendar year.

16061. Every consumer of newsprint who submits recycled-content newsprint usage certification pursuant to Section 16060 may be subject to an audit to ensure that the recycled-content newsprint was used.

16062. Each person who supplies a consumer of newsprint with newsprint shall certify the amounts of recycled-content newsprint contained in each shipment to each consumer of newsprint. If a shipment contains no recycled-content newsprint, the supplier shall so certify.

16063. If a consumer of newsprint is unable to obtain sufficient amounts of recycled-content newsprint within any reporting period because recycled-content newsprint was not available at a comparable price to that for virgin material, failed to meet the quality standards established pursuant to Section 16065, or was not available within a reasonable period of time, the consumer of newsprint shall so certify to the department and provide the department with the specific reason for failing to use recycled-content newsprint. In order to make that certification in good faith, the newsprint consumer shall have contacted, for the purpose of obtaining recycled-content newsprint, every producer of recycled-content newsprint that offered to sell recycled-content newsprint to the consumer of newsprint within the last 12 months. The name of each person contacted, the corporate name, if any, and address and telephone number shall accompany each filing with the department.

16064. For the purposes of implementing and enforcing this chapter, the department shall develop and maintain a list which identifies every consumer of newsprint, as defined in Section 16000, and every person who supplies a consumer of newsprint with newsprint, in the state. The department may use information from local business permits, trade publications, or any other relevant information to develop the list.

16065. (a) For the purposes of implementing and enforcing this chapter, the department shall set newsprint comparable quality standards for each of the grades of newsprint specified in Section 16003 to determine the comparable quality of recycled-content newsprint to virgin material. These standards shall be based on the average numerical standards of printing opacity, brightness level, and cross machine tear strength available from all producers selling recycled-content newsprint in the state in quantities of at least 5,000 metric tons per year. The department shall set standards which deviate from this average by not more than 5 percent.

(b) The department shall review its standards at least once every two years and determine whether they should be adjusted to reflect changes in industry standards and practices, and, if so, the department shall set new standards according to the criteria in

subdivision (a).

16066. After January 1, 1994, the department shall conduct a survey of the paper industry to assess the availability of, quality of, and market for all recycled-content papers, including coated groundwood papers and other papers which are not newsprint. The department shall report the findings of its survey to the Legislature on or before July 1, 1994.

CHAPTER 4. FALSE CERTIFICATION

16070. If any person provides a consumer of newsprint with a false or misleading certificate concerning the recycled content of the delivered newsprint pursuant to Section 16062, the department, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

16071. If any consumer of newsprint provides the department with a false or misleading certificate concerning the percentage of recycled-content newsprint used pursuant to Section 16060, the department, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

16072. If any consumer of newsprint provides the department with a false or misleading certificate concerning why the consumer of newsprint was unable to obtain the minimum amounts of recycled-content newsprint pursuant to Section 16063, the department, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud

16073. Specific information on newsprint prices included as part of a certificate submitted to the department by newsprint consumers or suppliers of newsprint is propriety information and shall not be made available to the general public.

CHAPTER 5. PENALTIES

16080. (a) Any person who violates Chapter 3 (commencing with Section 16060) is guilty of an infraction punishable by a fine of not more than one thousand dollars ($1,000).

(b) In addition to subdivision (a), any person who violates this division may be assessed a civil penalty by the department of not more than one thousand dollars ($1,000) for each violation, pursuant to notice and hearing conforming with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Any civil penalties received pursuant to this subdivision shall be deposited in a separate account in the General Fund and, upon appropriation, shall be used by the department for the administration of this division.

SEC. 3. If Assembly Bill 939 of the 1989–90 Regular Session is

enacted and creates the California Integrated Waste Management and Recycling Board, Division 12.5 (commencing with Section 16000) of the Public Resources Code, as added by this act, shall be administered by that board, notwithstanding any other provision of this act specifying administration by the Department of Conservation.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1094

An act to amend and renumber Section 10507 of, to add Sections 10233, 10308.5, 10354, 10507, 10507.5, and 12183.5 to, to add Article 8.5 (commencing with Section 10855) to Chapter 2.5 of, to add Chapter 4 (commencing with Section 12150) and Chapter 5 (commencing with Section 12300) to, Part 2 of Division 2 of, and to repeal Article 7 (commencing with Section 10390) and Article 7.5 (commencing with Section 10400) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code, relating to recycling.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 10233 is added to the Public Contract Code, to read:

10233. Contractors shall certify in writing, under penalty of perjury, to the department awarding a contract under this part, the minimum, if not exact, percentage of recycled content, both postconsumer waste and secondary waste as defined in Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

SEC. 2. Section 10308.5 is added to the Public Contract Code, to read:

10308.5. Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer waste and secondary waste as defined in Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

SEC. 3. Section 10354 is added to the Public Contract Code, to read:

10354. Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer waste and secondary waste as defined in Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

SEC. 4. Article 7 (commencing with Section 10390) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code is repealed.

SEC. 5. Article 7.5 (commencing with Section 10400) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code is repealed.

SEC. 6. Section 10507 of the Public Contract Code is amended and renumbered to read:

10507.7. Except as provided for in this article, the Regents of the University of California shall let all contracts involving an expenditure of more than fifty thousand dollars ($50,000) annually for goods and materials to be sold to the University of California to the lowest responsible bidder meeting specifications, or else reject all bids. Contracts for services to be performed, other than personal or professional services, involving an expenditure of fifty thousand dollars ($50,000) or more annually shall be made or entered into with the lowest responsible bidder meeting specifications, or else all bids shall be rejected. If the regents deem it to be for the best interest of the university, the regents may, on the refusal or failure of the successful bidder for materials, goods, or services to execute a tendered contract, award it to the second lowest responsible bidder meeting specifications. If the second lowest responsible bidder fails or refuses to execute the contract, the regents may likewise award it to the third lowest responsible bidder meeting specifications.

SEC. 7. Section 10507 is added to the Public Contract Code, to read:

10507. For the purpose of this article, "recycled paper" means all paper and woodpulp products containing postconsumer waste and secondary waste materials as defined in this section. "Postconsumer

waste" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust or other wood residue from a manufacturing process.

"Recycled paper" means a paper product with not less than 50 percent of its total weight consisting of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste.

SEC. 8. Section 10507.5 is added to the Public Contract Code, to read:

10507.5. It is the intent of the Legislature to encourage the procurement of recycled paper products by the University of California by developing guidelines to encourage the procurement of recycled paper products where suitable for the uses intended and where the quality is equal and the price is equal or less than nonrecycled paper products. It is also the intent of the Legislature that the regents report annually to the Legislature, the Governor, and the California Waste Management Board commencing January 1, 1991, on the percentage of the total dollar amount of recycled paper products purchased or procured under this article.

SEC. 8.5. Section 12183.5 is added to the Public Contract Code, to read:

12183.5. The California Waste Management Board shall conduct with each state department and agency which purchases co-compost or compost products, regular fertilizer, or soil amendment products, including those state departments specified in Section 12183, testing of co-compost products produced at testing sites selected by the California Waste Management Board to determine whether the products meet the requirements specified in Sections 12181 and 12182 and any applicable state standards and regulations determined pursuant to Section 12183.

On or before January 1, 1989, the Legislative Analyst shall evaluate the results of the tests required by this section and report its findings to the Legislature as an interim report. The final report is due on January 1, 1990. The private contractor shall provide the necessary products by January 1, 1989. If the products are delayed, the report deadline shall be delayed by the same amount of time.

The private contractor which constructs and operates the co-compost facility on the permanent site selected by the City of Los Angeles shall agree to provide the necessary co-compost products and agree in advance to pay with nonstate funds an amount to the California Waste Management Board and each state department or agency for any costs that the department or agency incurs in testing products pursuant to this section and shall pay the Legislative

Analyst for costs incurred in evaluating test results.

SEC. 9. Article 8.5 (commencing with Section 10855) is added to Chapter 2.5 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 8.5. Recycled Paper

10855. For the purpose of this article, "recycled paper product" means all paper and woodpulp products containing postconsumer waste and secondary waste materials as defined in this section. "Postconsumer waste" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

"Recycled paper product" means a paper product with not less than 50 percent of its total weight consisting of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste.

10860. (a) The trustees shall revise the procedures and specifications for purchases of paper products to give preference, wherever feasible, to the purchase of paper products containing recycled paper products pursuant to Section 10855.

(b) The trustees shall give purchase preference to recycled paper products when both of the following apply:

(1) The products can be substituted for, and cost no more than, nonrecycled paper products.

(2) The products meet all applicable standards and regulations.

(c) To encourage the use of postconsumer waste, the trustees' specifications shall require recycled paper product contracts to be awarded to the bidder whose paper product contains the greater percentage of postconsumer waste if the fitness and quality and price meet the requirements in Sections 10855 and 10860.

(d) The trustees shall set the following goals for the purchasing of recycled paper products:

(1) By January 1, 1992, at least 35 percent of the total dollar amount of paper products purchased or procured by the trustees shall be purchased as a recycled paper product.

(2) By January 1, 1994, at least 40 percent of the total dollar amount of paper products purchased or procured by the trustees shall be purchased as a recycled paper product.

(3) By January 1, 1996, at least 50 percent of the total dollar amount of paper products purchased or procured by the trustees shall be purchased as a recycled paper product.

If at any time a goal has not been met, the trustees and the Department of General Services, in consultation with the California Waste Management Board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, providing a purchasing preference and altering the goals. The trustees and the Department of General Services, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature and the Governor in the department's annual report pursuant to Section 12225.

SEC. 10. Chapter 4 (commencing with Section 12150) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 4. STATE ASSISTANCE FOR RECYCLING MARKETS

Article 1. General Provisions

12150. This chapter shall be known and may be cited as the State Assistance for Recycling (STAR) Markets Act of 1989.

12153. The Legislature finds and declares all of the following:

(a) It is the policy of the state to conserve and protect resources for future citizens as well as the current people of the state.

(b) It is in the best interest that the state alter its perception of solid waste to instead look upon this waste as resources which can be recovered and reused.

(c) It is in the best interest of reducing the increasing burden on communities disposing of the state's solid waste for the state to take a role in developing an integrated state solid waste management policy, which includes source reduction, recycling, composting, market development, incineration, and landfills. Since recycling is a necessary component, the state shall encourage the use of recycled products to ensure that the state's industries have sufficient and adequate markets for products regeneratively utilizing the state's solid waste as recycled resources.

(d) It is the policy of the state to encourage the expansion of businesses located in California and, to whatever extent possible, to look favorably on California businesses in the recycling industry, which includes, but is not limited to, those California businesses that manufacture, distribute, or act as brokers for recycled products.

(e) Market development is the key to moving beyond the uneven collection of recyclable materials to stable resource recovery and reuse. Because of existing local collection programs, significant quantities of recycled resources such as the following are today available for purchase: fine grades of paper, high-quality paper products, plastics, retreaded automobile tires, rerefined lubricating oil, reused automotive parts, reclaimed solvents, recycled asphalt, recycled concrete, carpet or geotextiles composed of recycled plastics, and compost and co-compost products.

(f) In making these findings, the Legislature declares that the

policy and intent of this chapter is to set an example for the state and nation to encouarge the purchase of products utilizing recycled resources.

(g) It is the intent of the Legislature, whenever economically feasible and as markets allow, to continually expand the policies of the state to utilize recycled resources in the daily operations of the state. This includes, but is not limited to, the procurement and purchase of recycled materials, the use of recycled resources in the performance of a service or project for the state, the purchase of equipment used for the collection and sale of waste materials generated by the state.

(h) It is the intent of the Legislature that the Department of General Services work with all state departments, agencies, the Legislature, the California Waste Management Board, and the Department of Conservation to draft, establish, and implement policies which ensure the procurement and use of recycled resources.

(i) It is also the intent of the Legislature to encourage local public agencies and private companies to adopt policies to maximize the use of recycled resources.

12155. As used in this chapter, the following definitions shall apply:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Procuring agency" means the Department of General Services and any other state department or agency having delegated procurement authority granted pursuant to Section 10333 with an annual total dollar limit above one million dollars ($1,000,000) as prescribed by the Office of Procurement within the Department of General Services.

(d) "Board" means the California Waste Management Board, as defined pursuant to Section 66740 of the Government Code.

12157. This chapter applies to the procurement and purchase of the following materials, goods, and supplies, or products containing the following recycled resources and meeting the specified recycled content requirements pursuant to Section 12161, 12181, 12182, or 12200, whichever is applicable:

(a) Recycled paper products, which include, but are not limited to, fine grades of paper, corrugated boxes, newsprint, tissue, and toweling.

(b) Compost and co-compost products.

(c) Glass.

(d) Oil.

(e) Plastic.

(f) Solvents and paint, including water-based paint.

(g) Tires.

12158. This chapter does not apply to the procurement and purchase of asphalt concrete and portland cement concrete pavement.

Article 2. Recycled Paper Products

12160. The Legislature finds and declares that it is the policy of the state to conserve and protect its resources. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

The Legislature further finds and declares that the volume of solid waste generated within the state coupled with an increased rate in the consumption of paper products and the absence of adequate programs and procedures for the reuse of these materials threaten the quality of the environment and well-being of the people of California.

In making these findings, the Legislature declares that the policy and intent of this article is to improve environmental quality by the recycling of paper products.

12161. For the purpose of this article, "recycled paper product" means all paper and woodpulp products containing postconsumer waste and secondary waste materials, as defined in this section. "Postconsumer waste" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include fibrous waste generated during the manfacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

"Recycled paper product" means a paper product with not less than 50 percent of its total weight consisting of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste.

12162. (a) The department, in consultation with the board, shall revise its procedures and specifications for state purchases of paper products to give preference, wherever feasible, to the purchase of paper products containing recycled paper products as defined pursuant to Section 12161.

(b) The department shall give a preference to the suppliers of recycled paper products as defined pursuant to Section 12161. This preference shall be up to 5 percent of the lowest bid or price quoted by suppliers offering nonrecycled paper products.

In bids in which the state has reserved the right to make multiple awards, the recycled paper preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of recycled business in the contract award.

(c) The combined dollar amount of preference granted pursuant to this section and any other provision of law shall not exceed one hundred thousand dollars ($100,000).

(d) Notwithstanding subdivision (b), and subdivision (a) of

Section 12168, the recycled paper bidder preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code. This subdivision shall apply only when the small business is the lowest responsible bidder or is eligible for contract award on the basis of application of the 5 percent small business preference.

(e) To encourage the use of postconsumer waste, the department's specifications shall require recycled paper product contracts to be awarded to the bidder whose paper product contains the greater percentage of postconsumer waste if the fitness and quality and price meet the requirements in Sections 12161 and 12162.

(f) The department shall set the following goals for the purchasing of recycled paper products:

(1) By January 1, 1992, at least 35 percent of the total dollar amount of paper products purchased or procured by the department shall be purchased as a recycled paper product.

(2) By January 1, 1994, at least 40 percent of the total dollar amount of paper products purchased or procured by the department shall be purchased as a recycled paper product.

(3) By January 1, 1996, at least 50 percent of the total dollar amount of paper products purchased or procured by the department shall be purchased as a recycled paper product.

(g) Procuring agencies shall report to the department on their progress in meeting the goals and shall submit to the department a detailed plan to meet the goals. The department shall develop a uniform reporting procedure by which procuring agencies shall abide If at any time a goal has not been met, the department, in consultation with the board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, raising the purchasing preference and altering the goals for all or each recycled product. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's annual report pursuant to Section 12225

12162.5. All state agencies may, at the discretion of the individual agency director, print a symbol on paper products selected by the agency director. This symbol shall be determined by the department, in consultation with the board, and shall be similar to the following: "Printed on Recycled Paper." This symbol shall be printed only on paper products meeting the definition of recycled paper products in Section 12161.

12163. (a) The director, in consultation with the board, shall review the procurement specifications currently used by the department in order to eliminate, wherever economically feasible, discrimination against the procurement of recycled paper products.

(b) The director, in consultation with the board, shall review the

recycled paper product specifications at least annually to consider increasing the percentage of recycled paper product in paper and woodpulp product purchases. The director shall include his or her conclusions and recommendations in the department's annual report pursuant to Section 12225.

(c) When contracting with the department for the sale of material subject to this article, the contractor shall certify in writing to the contracting officer or his or her representative that the material offered contains the minimum percentage of recycled paper required by Section 12161 and shall specify the minimum, if not exact, percentage of secondary and postconsumer waste in the paper products. The certification shall be furnished under penalty of perjury.

(d) The department, in consultation with the board, shall establish purchasing practices which, to the maximum extent economically feasible, assure purchase of materials which may be recycled or reused when discarded.

(e) The department shall make every effort to eliminate purchases of paper products deemed potential contaminants to the state's recycling program pursuant to Section 12165.

12164. The department shall require the persons with whom it contracts to use, to the maximum extent economically feasible in the performance of the contract work, recycled paper products.

12164.5. (a) It is the intent of the Legislature that for the current state waste paper collection program, the department, in consultation with the California Waste Management Board, shall provide participating locations with public information awareness and training to state and legislative employees. Additionally, the department, in consultation with the California Waste Management Board, shall provide training for personnel, including but not limited to, state and buildings and grounds personnel, responsible for the collection of waste materials. This training shall include, but is not limited to, educating and training the personnel concerning the separation and collection of recyclable materials.

(b) It is also the intent of the Legislature that the department continue the current state waste paper collection program and use this program as a model to develop a plan for other waste materials generated by state and legislative employees.

(c) It is also the intent of the Legislature that the department, in consultation with the California Waste Management Board, shall submit a new recycling plan, which includes but is not limited to, the collection and sale of waste materials generated by state and legislative employees. This plan shall be submitted to the appropriate legislative policy committees on or before August 31, 1990. The plan may be phased in utilizing those office facilities and collecting those waste materials most conducive to operation of a source separation program, but shall be fully implemented by June 1, 1991.

12165. (a) After implementing a recycling plan pursuant to

subdivision (c) of Section 12164.5, the department, with the advice of the board, shall establish, implement, and maintain a recycling plan for the Legislature, which may include all legislative offices and individual members' district offices; all state offices whether in state-owned buildings or leased facilities in Sacramento, Los Angeles, and San Francisco Counties; and in any other areas as the director deems feasible. The plan shall include the provisions for the recycling of office paper, corrugated cardboard, newsprint, beverage containers (as defined in Section 14503 of the Public Resources Code), waste oil, and any other material at the discretion of the director, in consultation with the board.

(b) The collection program for each product and each location shall be reevaluated by the director on or before January 1, 1994. Subsequently, the director, in consultation with the board, upon the determination that inclusion of any particular material type would result in a net revenue loss to the state, shall have the discretion to exclude that material from the program, and shall report his or her conclusions and recommendations to the Legislature in the department's annual report pursuant to Section 12225. In determining the net revenue loss for the collection of a specified waste material, the director, in consultation with the board shall include the avoided cost to dispose of the waste material. The plan shall provide either for the collection and sale of materials to private brokers, recycling plants, or nonprofit organizations, or the operation of these entities by the state, or a combination thereof. The plan shall be implemented at the earliest possible date.

(c) The department, in consultation with the board, shall provide participating locations with public awareness information and training to state and legislative employees, including, but not limited to, the proper separation and disposal of recyclable resources. Additionally, the department, in consultation with the board, shall provide training for personnel, including, but not limited to, state buildings and grounds personnel, responsible for the collection of waste materials. This training shall include, but is not limited to, educating and training the personnel concerning the separation and collection of recyclable materials.

(d) No individual, group of individuals, state office, agency, or its employees shall establish a similar collection program or enter into agreement for a similar program unless approved by the director.

12166. The department may contract as necessary for the recycling of products which have been returned pursuant to Section 12165.

12167. Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the department or in agreement with the department, shall be used in accordance with the following priorities, when appropriated by the Legislature:

(a) To offset recycling program costs.

(b) To reduce increased charges for recycled paper products furnished to the Legislature, state departments, and agencies by the department and increased charges for recycled paper products acquired to the California State University, due to the preference which must be given the suppliers of recycled paper pursuant to Section 12162.

(c) Any remaining revenues not expended during a fiscal year shall be transferred to the General Fund.

12168. (a) Fitness and quality being equal, all local and state public agencies shall purchase recycled paper products instead of nonrecycled paper products whenever available at no more than the total cost of nonrecycled paper products. All local public agencies may give preference to the suppliers of recycled paper products. All local public agencies may define the amount of this preference.

In bids in which the state has reserved the right to make multiple awards, the recycled paper preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of firms offering recycled paper in the contract award.

(b) The combined dollar amount of preferences granted pursuant to this section and any other provisions of law shall not exceed one hundred thousand dollars ($100,000).

(c) Notwithstanding subdivision (a), and subdivision (b) of Section 12162, the recycled paper bidder preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code. This provision shall apply only when the small business is the lowest responsible bidder or is eligible for contract award on the basis of application of the 5-percent business preference.

12169. All local public agencies shall require the bidder to specify the minimum, if not exact, percentage of recycled paper product in the paper products, and both the postconsumer and secondary waste content regardless of whether the paper product meets the percentage of recycled paper product required pursuant to Section 12161. The contractor may certify zero recycled product. All contract provisions impeding the consideration of products with reclaimed paper content shall be deleted in favor of performance standards.

All printing contracts made by any local agency shall provide that the paper used shall meet the requirements of these provisions.

Except as otherwise provided in this article, state agencies shall also be subject to this section.

Article 3. Compost and Co-compost Products

12180. The Legislature hereby finds and declares that it is the policy of the state to encourage the use of marketable end products which are produced as a result of superior waste management by

counties, cities, and local agencies.

The Legislature further finds and declares that it is in the public interest to provide special consideration for the state purchase of co-compost and compost products because these products substantially reduce the need for solid waste disposal facilities, such as landfills, and will assist the state in providing new alternatives for the alarming decrease in available solid waste disposal facilities, such as landfills.

12181. For purposes of this article, "co-compost product" means an end product which meets all of the following requirements:

(a) It is derived from a blending of materials, of which at least 80 percent, whenever possible, is household refuse and the remainder is sewage sludge or other comparable substitutes, including, but not limited to, nontoxic dairy wastes, livestock and horse manure, or fish wastes.

(b) It is usable.

(c) It is produced by the waste management facilities of counties, cities, or local agencies, or of private entities.

12182. For purposes of this article, "compost product" means an end product which meets all of the following requirements:

(a) It is derived from the controlled biological decomposition of a blend of organic wastes, including, but not limited to, wood byproducts, plant waste, yard refuse, or sewage sludge.

(b) It is usable.

(c) It is produced by the waste management facilities of counties, cities, or local agencies, or of private entities.

12183. (a) All state departments and agencies, including, but not limited to, the Department of Transportation, the Department of Water Resources, the Department of Foresty, and the Department of Parks and Recreation, shall give purchase preference to compost and co-compost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both, if the co-compost products meet all applicable state standards and regulations, as determined by appropriate testing. The product preference shall include, but not be limited to, the construction of noise attenuation barriers and safety walls, highway planting projects, and recultivation and erosion control programs.

12184. It is the intent of the Legislature, in enacting this article, that the revenues derived from the state purchase of co-compost products will be used by counties, cities, and local agencies to offset the costs of construction, operation, and maintenance of co-compost waste disposal facilities.

12185. All state departments and agencies procuring compost and co-compost products in procurement, service, or construction contracts shall report to the department their purchasing activities, including, but not limited to, total contracting dollars, volume, and number of contracts. The department shall design an appropriate and uniform reporting mechanism which shall be made available to

all state agencies.

Article 4. Recycled Materials, Goods, and Supplies

12200. For the purpose of this article:

(a) "Recycled product" means all materials, goods, and supplies, no less than 50 percent of the total weight of which consists of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste. A recycled product shall include any product which could have been disposed of as solid waste having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of its form.

(b) "Postconsumer waste" means a finished material which would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes.

(c) "Secondary waste" means fragments of finished products or finished products of a manufacturing process, which has converted a resource into a commodity of real economic value, and includes postconsumer waste, but does not include excess virgin resources of the manufacturing process.

12205. (a) Procuring agencies purchasing materials, goods, and supplies, shall require all contractors to certify in writing to the contracting officer, or his or her representative, whether the material, good, or supply offered contains the minimum percentage of recycled product required by subdivision (a) of Section 12200. The contractor shall specify the minimum, if not exact, percentage of recycled product in the product, both the secondary and postconsumer waste content. This certification shall be furnished under penalty of perjury

(b) The department, in consultation with the board, shall review and revise the procurement specifications currently used by procuring agencies in order to eliminate discrimination against the procurement or purchase of recycled products whenever quality of a recycled product is functionally equal to the same product manufactured with virgin resources In determining procurement specifications by procuring agencies, with the exception of any specifications which have been established to preserve the public health and safety, all state procurement and purchasing specifications shall be established in a manner which results in the maximum state procurement and purchase of recycled products.

(c) Procuring agencies shall establish purchasing practices which assure, to the maximum extent economically feasible, purchase of materials, goods, and supplies which may be recycled or reused when discarded.

(d) Procuring agencies procuring or purchasing materials, goods, or supplies shall give a purchasing preference to recycled products when all of the following apply:

(1) The product meets applicable standards.

(2) The product can be substituted for a comparable nonrecycled product.

(3) The product costs no more than a comparable nonrecycled product.

(e) The department shall set the following goals for purchases made by procuring agencies:

(1) By January 1, 1991, at least 10 percent of state purchases are of recycled products.

(2) By January 1, 1993, at least 20 percent of state purchases are of recycled products.

(3) By January 1, 1995, at least 40 percent of state purchases are of recycled products.

(4) The goals specified in this subdivision shall be applied to the purchases of procuring agencies of the products listed in subdivisions (b), (c), (d), (e), (f), and (g) of Section 12157 and shall be applied to the total dollar amount of the combined purchases of those products.

(f) The combined purchases of the procuring agencies shall meet each specified goal for each specified product category as defined in subdivisions (c), (d), (e), (f), and (g) of Section 12157. If at any time a goal has not been met, the department in consultation with the board, shall review procurement policies of procuring agencies and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, providing a purchasing preference and altering the goals for all or each recycled product. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

12210. (a) Fitness and quality being equal, all local and state public agencies shall purchase recycled products instead of nonrecycled products whenever available at no more than the total cost of nonrecycled products. All local public agencies may give preference to the suppliers of recycled products. All local public agencies may determine the amount of this preference.

12213. All local public agencies shall require the bidder to specify the minimum, if not exact, percentage of recycled product in the products offered, both the postconsumer and secondary waste content regardless of whether the product meets the percentage of recycled product required pursuant to subdivision (a) of Section 12200. All contract provisions impeding the consideration of products with recycled product shall be deleted in favor of performance standards.

Except as otherwise provided in this article, state agencies are also subject to this section.

12225. On or before August 31, 1991, and every year thereafter, the department, in consultation with the board, shall prepare a report to the Legislature describing the purchase and procurement of products purchased by the state before and after January 1, 1990.

The report shall detail as much as possible, the amount of recycled products utilized by state contractors before and after the enactment of this chapter. The report shall include, but not be limited to, the following:

(a) Listed by department, the total dollar amounts, volume, and number of contracts of individual products purchased by the department and any other agency having delegated procurement authority pursuant to Section 10333.

(b) Total dollar amounts, volume, and number of contracts of each product purchased by the state, which includes the Legislature, the California State University, and the University of California systems.

(c) A list of individual recycled products purchased pursuant to Sections 10507.5 and 10860, inclusive, this chapter and Chapter 5 (commencing with Section 12300).

(d) The total dollar amounts, volume, and number of contracts of individual products, whether recycled or nonrecycled, purchased by the state.

(e) The total dollar amounts, volume, and number of contracts of recycled products including recycled paper and compost products purchased pursuant to Sections 10507.5 and 10860, inclusive, this chapter, and Chapter 5 (commencing with Section 12300).

(f) The total dollar amount and volume of compost and co-compost products utilized by the state pursuant to Section 12183 or any other state or local program.

(g) For recycled paper products purchased by procuring agencies, the total number of contracts, dollar amounts, and volume of those contracts that were eligible for the preference pursuant to Section 12162.

(h) For each recycled product, including recycled paper and compost products, the total dollar amounts, volume, and number of contracts that were eligible a preference or a combination thereof pursuant to Sections 4533, 7095, and 14838 of the Government Code.

(i) Total number of bids for each product listed in Section 12157, whether or not a contract was awarded the bid.

(j) The range of dollar amounts for bids on procurement contracts which include, but is not limited to, contracts for the procurement of individual recycled products listed in Section 12157.

(k) For each waste material, total revenue dollars and volume generated from the state waste materials collection program pursuant to Section 12165.

(*l*) Recommendations to the Legislature as to revisions of the percentage amounts contained in the secondary waste and postconsumer waste definitions for individual products which will result in greater procurement of recycled products composed of recycled resources that would otherwise be disposed of as solid waste in the state's disposal facilities.

(m) Recommendations on specific products available containing secondary postconsumer waste which are procured by the state, used

in the performance of a service or project for the state, and used in state construction contracts.

These products shall be recommended as candidates for the application of the recycled paper product preference described in Section 12162.

(n) The California Waste Management Board, in consultation with the department, shall identify those products purchased in either large volumes or high dollar amounts by the state which are available as a recycled product. The board shall include this list in the department's annual report and shall revise this list as products purchased by the state become feasibly available in recycled form.

12226. (a) It is the intent of the Legislature that the state pursue all feasible measures to improve markets for recycled products including, but not limited to, procurement preferences for purchases made by the state.

(b) Not later than March 1, 1990, the board shall submit to the Legislature a report concerning the state's role in market development for recycling. The report shall address the need for and effectiveness of procurement preferences for the state purchase of recycled goods and materials. The report shall include, but not be limited to, an analysis of the role procurement preferences can play in encouraging recycling and expanding the markets for recycled goods and materials.

SEC. 11. Chapter 5 (commencing with Section 12300) is added to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 5. RECYCLED PRODUCT PROCUREMENT BY THE LEGISLATURE

Article 1. General Provisions

12300. Unless otherwise provided, this chapter shall apply to all purchases made on behalf of the Legislature, whether made by the Senate Committee on Rules, the Assembly Committee on Rules, the Joint Rules Committee, or any other agency of the Legislature.

12301. The following definitions govern the interpretation of this chapter:

(a) "Department" means the Department of General Services.

(b) "Board" means the California Waste Management Board, as defined pursuant to Section 66740 of the Government Code.

(c) "Recycled paper product" means all paper and woodpulp products containing postconsumer waste and secondary waste materials. "Postconsumer waste" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include fibrous waste generated during the manufacturing process

such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process. "Recycled paper product" means a paper product with not less than 50 percent of its total weight consisting of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste.

(d) "Recycled product" means all materials, goods, and supplies, no less than 50 percent of the total weight of which consists of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste. A recycled product shall include any product which could have been disposed of as solid waste having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of its form. "Postconsumer waste" means a finished material which would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes. "Secondary waste" means fragments of finished products or finished products of a manufacturing process, which has converted a resource into a commodity of real economic value, and includes postconsumer waste, but does not include excess virgin resources of the manufacturing process.

12305. This chapter applies to the procurement and purchase of the following materials, goods, and supplies, or products containing the following recycled resources, and meeting the specified content requirements pursuant to either subdivision (c) or (d) of Section 12301, whichever is applicable:

(a) Paper products which include, but are not limited to, fine grades of paper, corrugated boxes, newsprint, tissue, and toweling.

(b) Glass.

(c) Oil.

(d) Plastic.

(e) Solvents and paint, including water-based paint.

(f) Tires.

12306. This chapter does not apply to the procurement and purchase of asphalt concrete and portland cement concrete pavement.

Article 2. Recycled Paper Products

12310. (a) The Legislature shall revise its procedures and specifications for purchases of paper products to give preference, wherever feasible, to the purchase of paper products containing recycled paper product.

(b) The Legislature shall give purchase preference to recycled paper products when both of the following apply:

(1) The products can be substituted for, and cost no more than, nonrecycled paper products.

(2) The products meet all applicable standards and regulations.

(c) The Legislature shall set the following goals for the purchase

of recycled paper products:

(1) By January 1, 1992, at least 35 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product.

(2) By January 1, 1994, at least 40 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product.

(3) By January 1, 1996, at least 50 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product. Each specified goal shall be met for paper products. If at any time a goal has not been met, the Legislature and the department, in consultation with the board, shall review procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, raising the purchasing preference and altering the goals for all or each recycled product. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's biennial report pursuant to Section 12225.

(d) To encourage the use of postconsumer waste, the Legislature's specifications shall require recycled paper product contracts to be awarded to the bidder whose paper contains the greater percentage of postconsumer waste if the fitness and quality and price meet the requirements of subdivision (c) of Section 12301 and of Section 12310.

(e) When contracting with the Legislature for the sale of recycled paper products, the contactor shall certify in writing to the contracting officer or his or her representative, that the recycled paper products offered contains the minimum percentage of waste materials required by subdivision (c) of Section 12301. The contractor shall specify the minimum, if not exact, percentage of recycled product in the paper product, both the secondary and postconsumer waste content. This certification shall be furnished under penalty of perjury.

(f) The Legislature may, in consultation with the board, print a symbol on paper products selected by the Legislature. The symbol shall be similar to the following: Printed on recycled paper. This symbol shall be printed only on paper products meeting the definition of recycled paper products in Section 12301.

Article 3. Recycled Materials, Goods, and Supplies

12320. (a) The Legislature shall require contractors to certify in writing to the contracting officer, or his or her representative, whether the materials, goods, or supplies offered contain the minimum percentage of recycled product required by subdivision (d) of Section 12301. The contractor shall specify the minimum, if not exact, percentage of recycled product in the product, both the

secondary and postconsumer waste content. This certification shall be furnished under penalty of perjury.

(b) The Legislature, in consultation with the department and the board, shall review and revise the procurement specifications currently used by the Legislature in order to eliminate discrimination against the procurement or purchase of recycled products whenever quality of a recycled product is reasonably equal to the same product manufactured with virgin resources. In determining procurement specifications, with the exception of any specifications which have been established to preserve the public health and safety, all legislative procurement and purchasing specifications shall be established in a manner which results in the maximum legislative procurement and purchase of recycled products.

(c) The Legislature, in consultation with the board, shall establish purchasing practices which assure, to the maximum extent feasible, the purchase of materials, goods, and supplies which may be recycled or reused when discarded.

(d) The Legislature shall give purchase preference to recycled products when all of the following apply:

(1) The product meets applicable standards.

(2) The product can be substituted for a comparable nonrecycled product.

(3) The product costs no more than a comparable nonrecycled product.

(e) To encourage the use of postconsumer waste, the Legislature's specifications shall require recycled product contracts to be awarded to the bidder whose product contains the greater percentage of postconsumer waste if the fitness and quality and price meet the requirements in subdivision (d) of Section 12301 and Section 12310.

(f) The Legislature shall set the following goals for purchases made by the Legislature or any individual or group of individuals purchasing on behalf of the Legislature:

(1) By January 1, 1991, at least 10 percent of legislative purchases are of recycled products.

(2) By January 1, 1993, at least 20 percent of legislative purchases are of recycled products.

(3) By January 1, 1995, at least 40 percent of legislative purchases are of recycled products.

(4) The goals specified in this subdivision shall be applied to the purchase by the Legislature of products described in subdivisions (b), (c), (d), (e), and (f) of Section 12305 and shall be applied to the total dollar amount of the combined purchases of those products.

Each specified goal shall be met for each product listed pursuant to Section 12305. If at any time a goal has not been met, the Legislature and the department, in consultation with the board, shall review procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, raising the

purchasing preference and altering the goals for all or each recycled product. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1095

An act to amend Section 11553 of, and to repeal Chapter 1 (commencing with Section 66700) of, Chapter 2 (commencing with Section 66770) of, Article 1 (commencing with Section 66795), Article 2 (commencing with Section 66796.30), Article 3 (commencing with Section 66796.45), Article 4 (commencing with Section 66796.50), Article 5 (commencing with Section 66796.55), Article 6 (commencing with Section 66796.64), Article 7 (commencing with Section 66796.70), Article 8 (commencing with Section 66796.80), and Article 9 (commencing with Section 66798) of, Chapter 3 of, and Chapter 4 (commencing with Section 66799) of, Title 7.3 of, the Government Code, to repeal Chapter 1 (commencing with Section 4100), Chapter 1.5 (commencing with Section 4170), Chapter 2 (commencing with Section 4200), Chapter 2.5 (commencing with Section 4250), Chapter 2.6 (commencing with Section 4260), Chapter 2.7 (commencing with Section 4270), and Chapter 3 (commencing with Section 4300) of Part 2 of Division 5 of the Health and Safety Code, and to add Division 30 (commencing with Section 40000) to, and to repeal Section 46811 of, the Public Resources Code, and to amend Sections 45002, 45009, 45051, 45101, 45151, 45855, 45901, 45981, and 45982 of the Revenue and Taxation Code, relating to solid waste.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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) 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.

(j) Member of the California Integrated Waste Management and Recycling 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. Chapter 1 (commencing with Section 66700) of Title 7.3 of the Government Code is repealed.

SEC. 4. Chapter 2 (commencing with Section 66770) of Title 7.3 of the Government Code is repealed.

SEC. 5 Article 1 (commencing with Section 66795) of Chapter 3 of Title 7 3 of the Government Code is repealed.

SEC. 6. Article 2 (commencing with Section 66796 30) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC. 7. Article 3 (commencing with Section 66796.45) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC 8. Article 4 (commencing with Section 66796.50) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC. 9. Article 5 (commencing with Section 66796.55) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC. 10. Article 6 (commencing with Section 66796.64) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC. 11. Article 7 (commencing with Section 66796.70) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC 12 Article 8 (commencing with Section 66796.80) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC. 13. Article 9 (commencing with Section 66798) of Chapter 3 of Title 7.3 of the Government Code is repealed.

SEC. 14. Chapter 4 (commencing with Section 66799) of Title 7.3 of the Government Code is repealed.

SEC. 15. Chapter 1 (commencing with Section 4100) of Part 2 of Division 5 of the Health and Safety Code is repealed.

SEC. 16. Chapter 1.5 (commencing with Section 4170) of Part 2 of Division 5 of the Health and Safety Code is repealed.

SEC 17. Chapter 2 (commencing with Section 4200) of Part 2 of

Division 5 of the Health and Safety Code is repealed.

SEC. 18. Chapter 2.5 (commencing with Section 4250) of Part 2 of Division 5 of the Health and Safety Code is repealed.

SEC. 19. Chapter 2.6 (commencing with Section 4260) of Part 2 of Division 5 of the Health and Safety Code is repealed.

SEC. 20. Chapter 2.7 (commencing with Section 4270) of Part 2 of Division 5 of the Health and Safety Code is repealed.

SEC. 21. Chapter 3 (commencing with Section 4300) of Part 2 of Division 5 of the Health and Safety Code is repealed.

SEC. 22. Division 30 (commencing with Section 40000) is added to the Public Resources Code, to read:

DIVISION 30. WASTE MANAGEMENT

PART 1. INTEGRATED WASTE MANAGEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Findings and Declarations

40000. The Legislature hereby finds and declares, as follows:

(a) In 1988, Californians disposed of over 38 million tons of solid waste, an amount which is expected to grow if existing solid waste policies are continued. This amounts to more than 2,500 pounds of waste per person living in the state, more than any other state in the country and over twice the per-capita rate of most other industrialized counties.

(b) Over 90 percent of California's solid waste currently is disposed of in landfills, some of which pose a threat to groundwater, air quality, and public health.

(c) While California will exhaust most of its remaining landfill space by the mid-1990's, there presently is no coherent state policy to ensure that the state's solid waste is managed in an effective and environmentally sound manner for the remainder of the 20th century and beyond.

(d) The amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program.

40001. The Legislature declares that the responsibility for solid waste management is a shared responsibility between the state and local governments. The state shall exercise its legal authority in a manner that ensures an effective and coordinated approach to the safe management of all solid waste generated within the state and shall oversee the design and implementation of local integrated waste management plans.

40002. As an essential part of the state's comprehensive program for solid waste management, and for the preservation of health and

safety, and the well-being of the public, the Legislature declares that it is in the public interest for the state, as sovereign, to authorize and require local agencies, as subdivisions of the state, to make adequate provision for solid waste handling, both within their respective jurisdictions and in response to regional needs consistent with the policies, standards, and requirements of this division and all regulations adopted pursuant to this division. The provisions of this division which authorize and require local agencies to provide adequate solid waste handling and services, and the actions of local agencies taken pursuant thereto, are intended to implement this state policy.

40003. Nothing in this division abrogates, limits, or otherwise affects the duties of the Department of Conservation under the California Beverage Container Recycling and Litter Reduction Act, Division 12.1 (commencing with Section 14500).

Article 2. General Provisions

40050. This division shall be known and may be cited as the California Integrated Waste Management Act of 1989.

40051. In implementing this division, the board and local agencies shall do both of the following:

(a) Promote the following waste management practices in order of priority:

(1) Source reduction.

(2) Recycling and composting.

(3) Environmentally safe transformation and environmentally safe land disposal, at the discretion of the city or county.

(b) Maximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal. For wastes that cannot feasibly be reduced at their source, recycled, or composted, the local agency may use environmentally safe transformation or environmentally safe land disposal, or both of those practices.

40052. The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to streamline permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

40053. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on solid waste management facilities in order to prevent or mitigate potential nuisances, if the conditions or restrictions do not conflict with or impose lesser requirements than the policies, standards, and requirements of this division and all regulations adopted pursuant to

this division.

40054. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of the Attorney General, on the request of the board, the state water board, a regional water board, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any health hazard, pollution, or nuisance.

40055. (a) This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer, including, but not limited to, the exercise by the state water board or the regional water boards of any of their powers and duties pursuant to Division 7 (commencing with Section 13000) of the Water Code, the exercise by the State Department of Health Services of any of its powers and duties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the exercise by the State Air Resources Board or any air pollution control district or air quality management district of any of its powers and duties pursuant to Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code.

(b) The exercise of authority under this division, including, but not limited to, the adoption of regulations, plans, permits, or standards or any enforcement actions shall not duplicate or be in conflict with any determination relating to water quality control made by the state water board or regional water boards.

(c) Any plans, permits, standards, or corrective action taken under this division shall incorporate, as a condition of the action, any applicable waste discharge requirements issued by the state water board or a regional water board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7, of the Water Code and the 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 action or proposed action.

40056. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the right of any person to commence and maintain at any time any appropriate action for relief against a nuisance as defined in the Civil Code.

40057. Each county, city, district, or other local governmental agency which provides solid waste handling services shall provide for those services, including, but not limited to, source reduction, recycling, composting activities, and the collection, transfer, and disposal of solid waste within or without the territory subject to its solid waste handling jurisdiction.

40058. The solid waste handling services shall be provided for by one or any combination of the following:

(a) The furnishing of the services by the local agency itself.

(b) The furnishing of the services by another local agency.

(c) The furnishing of the services by a solid waste enterprise.

40059. (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following:

(1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

(2) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.

(b) Nothing in this division modifies or abrogates in any manner any franchise previously granted or extended by any county or other local governmental agency.

CHAPTER 2. DEFINITIONS

40100. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

40105. "Authorized recycling agent" means a person that a local governing body or private commercial entity authorizes or contracts with to collect its recyclable waste material. An authorized recycling agency may be a municipal collection service, private refuse hauler, private recycling enterprise, or private nonprofit corporation or association.

40110. "Board" means the California Integrated Waste Management Board.

40115. "City" or "county" includes city and county.

40116. "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream.

40120. "Designated recycling collection location" means the place where an authorized recycling agent has contracted with either the local governing body or a private entity to pick up recyclable material segregated from other waste material. "Designated recycling collection location" includes, but is not limited to, the curbside of a residential neighborhood or the service alley of a commercial enterprise.

40121. "Disposal facility" or "facility" means any facility or location where disposal of solid waste occurs.

40122. "Disposal site" or "site" includes the place, location, tract

of land, area, or premises in use, intended to be used, or which has been used for the landfill disposal of solid wastes. "Disposal site" includes solid waste landfill, as defined in Section 46027.

40123. "Disposal site owner" means the person who holds title to the property used as a disposal site after January 1, 1977.

40130. "Enforcement agency" means the local agency designated pursuant to Article 1 (commencing with Section 43200) of Chapter 2 of Part 4 for the purpose of carrying out this division, or the board if no designation of a local agency has been approved by the board.

40131. "Enforcement program" means the regulations and procedures adopted by the board pursuant to Chapter 2 (commencing with Section 43200) of Part 4.

40140. "Hazard" includes any condition, practice, or procedure which is or may be dangerous, harmful, or perilous to employees, property, neighbors, or the general public.

40141. (a) "Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following:

(1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(b) Unless expressly provided otherwise, "hazardous waste" includes extremely hazardous waste and acutely hazardous waste.

40150. "Local governing body" means the legislative body of the city, county, or special district which has authority to provide solid waste handling services.

40160. "Operator" means the person to whom the approval to operate a disposal site, transfer or processing station, or collection system is granted.

40170. "Person" includes an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

40171. "Pollution" means the condition caused by the presence in or on a body of water, soil, or air of any solid waste or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality, appearance, or usefulness of the water, soil, land, or air is significantly degraded or adversely altered.

40172. "Processing" means the reduction, separation, recovery, conversion, or recycling of solid waste.

40180. "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary

to be used in the marketplace. "Recycling" does not include transformation, as defined in Section 40201.

40181. "Regional planning agency" means any of the following:

(a) An agency organized pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(b) A regional planning district formed pursuant to Chapter 2 (commencing with Section 65060) of Division 1 of Title 7 of the Government Code.

(c) A joint area planning commission formed pursuant to Section 65101 of the Government Code.

(d) Any agency established by a legislative act and recognized by the Office of Planning and Research as performing general environmental and resources planning for any region of the state.

40182. "Regional water board" means a California regional water quality control board.

40190. "Segregated from other waste material" means any of the following:

(a) The placement of recyclable materials in separate containers.

(b) The binding of recyclable material separately from the other waste material.

(c) The physical separation of recyclable material from other waste material.

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include hazardous waste.

40192. "Solid waste disposal" or "disposal" means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

40193. "Solid waste enterprise" means any individual, partnership, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing solid waste handling services.

40194. "Solid waste facility" includes a disposal facility, a disposal site, and a solid waste transfer or processing station.

40195. "Solid waste handling" or "handling" means the collection, transportation, storage, transfer, or processing of solid wastes.

40196. "Source reduction" means any action which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with

incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials in the manufacturing process. "Source reduction" does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

40197. "State water board" means the State Water Resources Control Board.

40200. (a) "Transfer or processing station" or "station" includes those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation.

(b) "Transfer or processing station" or "station" does not include any of the following:

(1) A facility, whose principal function is to receive, store, separate, convert, or otherwise process in accordance with state minimum standards, manure.

(2) A facility, whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal.

(3) The operations premises of a duly licensed solid waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with regulations adopted pursuant to Section 43309.

40201. "Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

CHAPTER 3. INTEGRATED WASTE MANAGEMENT AND RECYCLING BOARD

Article 1. Membership, Terms, and Removal

40400. There is in the Resources Agency the California Integrated Waste Management Board. Any reference in any law or regulation to the State Solid Waste Management Board or the California Waste Management Board shall hereafter apply to the California Integrated Waste Management Board.

40401. The board shall consist of the following members:

(a) One member appointed by the Governor who has private sector experience in the solid waste industry.

(b) One member appointed by the Governor who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality.

(c) Two members appointed by the Governor who shall represent

the public.

(d) One member appointed by the Senate Committee on Rules who shall represent the public

(e) One member appointed by the Speaker of the Assembly who shall represent the public.

40402. Except the member appointed pursuant to subdivision (a) of Section 40401 or any person who formerly served as a member of a city council or as a county supervisor, no person shall be a member of the board if that person has received more than 10 percent of his or her income in the two years before the appointment to the board, directly or indirectly, from a person or entity subject to regulation by the board.

40403. No board member may derive any earned income directly or indirectly, from a person or from an entity subject to regulation by the board or from any organization which actively participates in matters before the board.

40404. (a) The members of the board shall represent the state at large and notany particular area of the state and shall serve full time.

(b) Except as provided in Section 40406 for specified members of the initial board and the member of the board who succeeds the initial member described in paragraph (3) of subdivision (b) of Section 40406, the appointments to the board made by the Governor shall be subject to confirmation by the Senate in accordance with Article 2 (commencing with Section 1770) of Chapter 4 of Division 4 of Title 1 of the Government Code.

40405. The chairperson of the board shall be elected by a majority of the board members. The member appointed pursuant to subdivision (a) or (b) of Section 40401 shall not serve as chairperson.

40406. (a) Except as provided for the initial board in subdivision (b), each member of the board shall be appointed for a term of four years. A vacancy shall be filled by the appointing power for the unexpired portion of the term in which it occurs.

(b) The term of the initial member of the board are as follows:

(1) The term of the initial member appointed pursuant to subdivision (a) of Section 40401 ends on January 1, 1992.

(2) The term of the initial member appointed pursuant to subdivision (b) of Section 40401 ends on January 1, 1993.

(3) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1996.

(4) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1997.

(5) The term of the initial member appointed pursuant to subdivision (d) of Section 40401 ends on January 1, 1995.

(6) The term of the initial members appointed pursuant to subdivision (e) of Section 40401 is January 1, 1994.

(c) Notwithstanding subdivision (b) of Section 40404, the initial members appointed by the Governor pursuant to subdivision (c) of Section 40401 are not subject to confirmation by the Senate.

(d) The Governor shall appoint the initial members appointed

pursuant to subdivisions (a) and (b) of Section 40401 and transmit the appointment on or before July 1, 1990. The Senate shall confirm or refuse to confirm the appointments made pursuant to subdivision (a) or (b), or both, on or before a date which is 90 days after receipt of the notice of appointment.

(e) If the Senate refuses or fails to confirm the appointments pursuant to subdivision (d), the Governor, on or before a date which is within 20 days after that refusal or failure, shall appoint another person and transmit the appointment and transmit the appointment and the Senate shall confirm or refuse to confirm that appointment on or before a date which is 90 days after receipt of the notice of appointment.

(f) If the Senate takes no action to confirm or refuse to confirm an appointment pursuant to subdivision (d) or (e) on or before January 1, 1991, that appointment is deemed confirmed.

40407. The board shall elect a vice chairperson from its members.

40408. The annual salary of the members of the board is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each member of the board shall also receive necessary traveling and other expenses incurred in the performance of his or her official duties out of appropriations made for the support of the board.

40410. (a) Each member of the board shall have one vote. Except as provided in Section 40450, the affirmative vote of at least four members shall be required for the transaction of any business of the board.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and four members of the board shall at all times constitute a quorum.

40411. (a) No member of the board shall participate in any board action or attempt to influence any decision or recommendation by any employee of or consultant to the board which involves himself or herself or which involves any entity with which the member is connected as a director, officer, consultant, or full- or part-time employee, or in which the member has a direct personal financial interest within the meaning of Section 87100 of the Government Code.

(b) No board member shall participate in any proceeding before any agency as a consultant or in any other capacity on behalf of any solid waste handler or any organization which actively participates in matters before the board.

(c) For a period of 12 months after leaving office, a former board member shall not act as agent or attorney for, or otherwise represent, any other person before the board by making any formal or informal appearance or by making any oral or written communication to the board.

40412. (a) For the purposes of this section, "ex parte communication" means any oral or written communication concerning matters, other than purely procedural issues, about a

matter under the board's jurisdiction which is subject to a rollcall vote pursuant to Section 40466.

(b) No board member or any person, excepting a staff member acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, shall conduct an ex parte communication, except as follows:

(1) If an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's record.

(2) Communications cease to be ex parte communications when the board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board's official record of the proceeding.

40413. Any person who violates Section 40411 or 40112 is punishable by a fine of not more than fifty thousand dollars ($50,000) or by imprisonment for not more than one year in the county jail or in the state prison, or by both that fine and imprisonment.

40414. Upon request of any person or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated Section 40403, 40411, or 40412 and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance, as near as may be, with rules governing civil actions. If, after trial, the court finds that the board member has knowingly violated any of those sections, it shall pronounce judgment that the member be removed from office.

Article 2. Staff

40430. The board shall appoint a chief executive officer exempt from civil service laws who shall administer the functions of the board. The board shall prescribe the duties and fix the salary of the chief executive officer.

40431. The board may appoint legal counsel, clerical and secretarial employees, technical personnel, and other staff, and acquire facilities, that it finds necessary for the performance of its functions. The staff of the board shall be subject to the relevant system and procedures of the state civil service. The State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code) applies to those personnel.

40432. The Attorney General shall represent the board and the state in litigation concerning affairs of the board, unless the Attorney General chooses to represent another state agency which is a party to the action. In that case, the legal counsel of the board shall represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board.

40433. The Governor shall appoint one adviser for each member

of the board upon the request of the board member. Each adviser shall receive a salary as shall be fixed by the board with the approval of the Department of Personnel Administration.

40434. (a) The Legislature finds and declares that the responsibilities of the board are substantially greater and more complex that those of the former California Waste Management Board which it replaces, and that it is therefore necessary to establish a new organizational and management structure to implement this division.

(b) On or before April 1, 1991, the board shall establish a new organizational and management structure to implement this division. The board, in consultation with the State Personnel Board and the Department of Personnel Administration, shall establish new managerial classifications consistent with the board's new organizational and management structure. The board shall conduct an extensive recruitment effort to find the most qualified candidates for all new managerial positions.

(c) On or before April 1, 1991, the board shall conduct an extensive recruitment effort to fill the position of the chief executive officer. The board shall conduct competitive examinations for all qualified candidates and shall select the chief executive officer from among the best qualified candidates.

Article 3. Powers and Duties

40500. The board may appoint a committee of not less than four members of the board to carry on investigations, inquiries, or hearings which the board may undertake or hold. Every order made by a committee pursuant to an inquiry, investigation, or hearing, when approved or confirmed by the board and ordered filed in its office, shall be the order of the board.

40501. The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers and duties. The board shall have the same powers as are conferred upon heads of departments of the state by Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

40502. The board shall adopt rules and regulations, as necessary, to carry out this division in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall make available to any person, upon request, copies of proposed regulations.

40503. The board shall maintain its headquarters in the County of Sacramento, and may establish regional offices in any part of the state that the board deems necessary.

40504. The board shall hold meetings at least monthly at the times and places determined by the board.

40505. In order to carry out its powers and duties under this chapter, the board may enter into any contracts that the board

determines to be necessary.

40506. The board may accept grants, gifts and donations for the purposes specified in this division.

40507. The board shall file a biennial report with the Legislature commencing on or before January 1, 1991. The report shall summarize progress achieved by the board in implementing programs established pursuant to this division and shall include all of the following:

(a) Procedures for the timely review of county and city source reduction and recycling elements, countywide siting elements, and countywide integrated waste management plans.

(b) Recommendations concerning state actions needed to maintain an efficient and environmentally safe solid waste management infrastructure.

(c) Recommendations for state actions that are needed to improve the implementation of integrated waste management plans at the state and local levels.

(d) The identification of the geographical location of major existing and potential markets for recyclable materials diverted from solid waste landfills and transformation facilities.

(e) Specific market development strategies and a schedule of proposed market development activities to properly sequence market expansion to prevent an oversupply of recovered material.

(f) Recommendations for public education and information activities needed to promote the reduction and recycling of solid waste.

40508. The board is designated as the state solid waste management agency for all purposes stated in the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.) and any other federal act heretofore or hereafter enacted affecting solid waste.

40509. The board may render technical assistance and make recommendations concerning potential solid waste disposal sites upon the request of the board of supervisors of any county. The board may request any state agency to assist the board in rendering technical assistance and making recommendations pursuant to this section.

40510. The board shall use a rollcall vote for all official board decisions, including, but not limited to, approval, denial, or amendment of integrated waste management plans, exemptions, time extensions, approval, denial, and amendment of any permits issued pursuant to a vote of the board and other appropriate decisions. The rollcall votes shall be included in the minutes of the board's meetings.

Article 4. Disposal Cost Fees

40600. (a) The board, in consultation with the State Board of Equalization and the appropriate policy and fiscal committees of the

Legislature, shall, on or before January 1, 1991, complete and submit to the Governor and the Legislature, a report and model legislation for introduction and sponsorship by the board during the 1991–92 Regular Session for the most effective means of enacting and implementing a disposal cost fee system on goods sold in California which are not subject to Division 12.1 (commencing with Section 14500) and which are normally disposed of in solid waste landfills or processed in transformation facilities.

(b) In evaluating any disposal cost fee, the board shall give highest priority to those disposable goods which comprise the greatest percentage of materials being disposed and the greatest potential for environmental degradation, and shall take into consideration disposable goods which are already effectively recycled, reduced, or reused.

PART 2. INTEGRATED WASTE MANAGEMENT PLANS

CHAPTER 1. PLAN PREPARATION

Article 1. Legislative Findings

40900. (a) The Legislature finds that integrated waste management plans prepared and adopted by local agencies shall conform, to the maximum extent possible to the policies and goals established under Article 1 and Article 2 of this division.

(b) 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.

(c) The Legislature declares that if 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 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.

Article 2. Local Task Forces

40950. (a) On or before March 1, 1990, and every five years thereafter, each county, which is not a city and county, shall convene a task force to assist in coordinating the development of city source reduction and recycling elements prepared pursuant to Article 1

(commencing with Section 41000) of Chapter 2 and to prepare the countywide siting element required pursuant to Chapter 4 (commencing with Section 41700).

(b) The membership of the task force shall be determined by the board of supervisors and a majority of the cities within the county which contain a majority of the population in the county and may include representatives of the solid waste industry, environmental organizations, general public, special districts, and affected governmental agencies.

(c) To ensure a coordinated and cost-effective regional recycling system, the task force shall do all of the following:

(1) Identify solid waste management issues of countywide or regional concern.

(2) Determine the need for solid waste collection systems, processing facilities, and marketing strategies that can serve more than one local jurisdiction within the region.

(3) Facilitate the development of multijurisdictional arrangements for the marketing of recyclable materials.

(4) To the extent possible, facilitate resolution of conflicts and inconsistencies between or among city source reduction and recycling elements.

(d) The task force shall develop goals, policies, and procedures which are consistent with guidelines and regulations adopted by the board, to guide the development of the siting element of the countywide integrated waste management plan.

CHAPTER 2. CITY SOURCE REDUCTION AND RECYCLING ELEMENTS

Article 1. Requirements

41000. (a) On or before July 1, 1991, each city shall prepare, adopt, and, excepting a city and county, submit to the county in which the city is located a source reduction and recycling element which includes all of the components specified in this chapter and which complies with the requirements specified in Chapter 6 (commencing with Section 41780).

41001. The city source reduction and recycling element shall include a program for management of solid waste generated within the city, consistent with the waste management hierarchy provided in Section 40051.

41002. The city source reduction and recycling element shall place primary emphasis on implementation of all feasible source reduction, recycling, and composting programs while identifying the amount of landfill and transformation capacity that will be needed for solid waste which cannot be reduced at the source, recycled, or composted.

41003. Each city source reduction and recycling element shall include, but is not limited to, all of the following components for solid

waste generated in the jurisdiction of the plan:

(a) A waste characterization component.
(b) A source reduction component.
(c) A recycling component.
(d) A composting component.
(e) A solid waste facility capacity component.
(f) An education and public information component.
(g) A funding component.
(h) A special waste component.
(i) A household hazardous waste component.

Article 2. Waste Characterization Component

41030. The city waste characterization component shall identify the constituent materials which compose solid waste generated within the area affected by the city source reduction and recycling element. The information shall be statistically representative of the solid waste generated within the jurisdiction of the city and shall reflect seasonal variations. The constituent materials shall be identified by volume, percentage in weight or its volumetric equivalent, material type, and source of generation, which includes residential, commercial, industrial, governmental, or other sources.

Article 3. Source Reduction Component

41050. The city source reduction component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the recycling and composting components, reduce a sufficient amount of solid waste generated within the jurisdiction of the city source reduction and recycling element to comply with the requirements of Section 41780.

41051. The city source reduction component shall describe the types of materials which will be reduced under the programs in Section 41050.

41052. The city source reduction component shall describe the methods the city will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through source reduction.

41053. The city source reduction component shall describe new facilities, and of expansion of existing facilities, which will be needed to implement the source reduction, recycling and composting components.

41054. The city source reduction component shall evaluate rate structures to reduce the amount of wastes that generators produce, and other source reduction strategies, including, but not limited to, programs and economic incentives to reduce the use of nonrecyclable materials, replace disposable materials and products with reusable materials and products, reduce packaging, and increase the efficiency of the use of paper, cardboard, glass, metal,

and other materials.

Article 4. Recycling Component

41070. The city recycling component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the source reduction and composting components, reduce a sufficient amount of solid waste generated within the jurisdiction of the plan to comply with the requirements of Section 41780.

41071. The city recycling component shall describe the types of materials which will be recycled under the programs in Section 41070.

41072. The city recycling component shall describe the methods the city will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through recycling.

41073. The city recycling component shall describe new facilities, and of expansion of existing facilities, which will be needed to implement the recycling component.

41074. The city recycling component shall describe methods which will be used to increase the markets for recycled materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each city may grant a price preference to encourage the purchase of recycled products. The amount of the price preference shall be determined by the city.

41075 The city recycling component shall evaluate industrial, commercial, residential, governmental, and other curbside, mobile, dropoff, and buy-back recycling programs, manual and automated material recovery facilities, zoning and building code changes which encourage recycling of materials, and rate structures which encourage recycling of materials.

Article 5. Composting Component

41200. The city composting component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the source reduction and recycling components, reduce a sufficient amount of solid waste generated within the jurisdiction of the plan to comply with the requirements of Section 41780.

41201. The city composting component shall describe the types of materials which will be composted under the programs in Section 41200.

41202. The city composting component shall describe the methods the city will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through composting.

41203. The city composting component shall describe any new facilities, and expansion of existing facilities, which will be needed to

implement the composting component.

41204. The city composting component shall describe the methods which will be used to increase the markets for composted materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each city may grant a price preference to encourage the purchase of composted products. The amount of the price preference shall be determined by the city.

Article 6. Education and Public Information Component

41220. The city education and public information component shall describe to the board how the city will increase public awareness of, and participation in, recycling, source reduction, and composting programs.

Article 7. Funding Component

41230. The city funding component shall identify and specifically describe projected costs, revenues, and revenue sources to implement all components of the city source reduction and recycling element.

Article 8. Special Waste Component

41250. The city special waste component shall describe existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos and sewage sludge which is not hazardous waste. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes.

Article 9. Facility Capacity Component

41260. The city solid waste facility capacity component shall include, but is not limited to, a projection of the amount of disposal capacity which will be needed to accommodate the solid waste generated within the city preparing the element for a 15-year period, reduced by all of the following:

(a) Implementation of source reduction, recycling, and composting programs required by this part or through implementation of other waste diversion programs.

(b) Any permitted processing, destruction, or transformation capacity which will be available during the 15-year planning period.

(c) All disposal or transformation capacity which has been secured through an agreement with another city or county or through an agreement with a solid waste enterprise.

Article 10. Household Hazardous Waste Component

41280. The city household hazardous waste component shall include a program and implementation schedule for the collection, treatment, and disposal of hazardous waste generated by residences within the jurisdiction of the plan.

CHAPTER 3. COUNTY SOURCE REDUCTION AND RECYCLING ELEMENTS

Article 1. Requirements

41300. On or before January 1, 1991, each county shall prepare and adopt for the unincorporated area a county source reduction and recycling element which includes all of the components specified in this chapter and which complies with the requirements specified in Chapter 6 (commencing with Section 41780).

41301. The county source reduction and recycling element shall set forth a program for management of solid waste generated with the unincorporated area of the county, consistent with the waste management hierarchy provided in Section 40051.

41302. The county source reduction and recycling element shall place primary emphasis on implementation of all feasible source reduction, recycling, and composting programs while identifying the amount of landfill and transformation capacity that will be needed for solid waste which cannot be reduced at the source, recycled, or composted.

41303. Each county source reduction and recycling element shall include, but is not limited to, all of the following components for solid waste generated in the jurisdiction of the plan:

(a) A waste characterization component.
(b) A source reduction component.
(c) A recycling component.
(d) A composting component.
(e) A solid waste facility capacity component.
(f) An education and public information component.
(g) A funding component.
(h) A special waste component.
(i) A household hazardous waste component.

Article 2. Waste Characterization Component

41330. The county waste characterization component shall identify the constituent materials which compose solid waste generated within the area affected by the county source reduction and recycling element. The information shall be statistically representative of the solid waste generated within the jurisdiction of the county and shall reflect seasonal variations. The constituent materials shall be identified by volume, percentage in weight or its

volumetric equivalent, material type, and source of generation which includes residential, commercial, industrial, governmental, or other sources.

Article 3. Source Reduction Component

41350. The county source reduction component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the recycling and composting components, reduce a sufficient amount of solid waste generated within the jurisdiction of the plan to comply with the requirements of Section 41780.

41351. The county source reduction component shall describe the types of materials which will be reduced under the programs in Section 41350.

41352. The county source reduction component shall describe the methods the city will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through source reduction.

41353. The county source reduction component shall describe new facilities, and of expansion of existing facilities, which will be needed to implement the source reduction, recycling, and composting components.

41354. The county source reduction component shall evaluate rate structures to reduce the amount of wastes that generators produce, and other source reduction strategies, including, but not limited to, programs and economic incentives to reduce the use of nonrecyclable materials, replace disposable materials and products with reusable materials and products, reduce packaging, and increase the efficiency of the use of paper, cardboard, glass, metal, and other materials.

Article 4. Recycling Component

41370. The county recycling component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the source reduction and composting components, reduce a sufficient amount of solid waste generated within the jurisdiction of the plan to comply with the requirements of Section 41780.

41371. The county recycling component shall describe the types of materials which will be recycled under the programs in Section 41370.

41372. The county recycling component shall describe the methods the city will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through recycling.

41373. The county recycling component shall describe new facilities, and expansion of existing facilities, which will be needed to implement the recycling component.

41374. The county recycling component shall describe methods which will be used to increase markets for recycled materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each county may grant a price preference to encourage the purchase of recycled products. The amount of the price preference shall be determined by the county.

41375. The county recycling component shall evaluate industrial, commercial, residential, governmental, and other curbside, mobile, dropoff, and buy-back recycling programs, manual and automated material recovery facilities, zoning, and building code changes which encourage recycling of materials, and rate structures which encourage recycling of materials.

Article 5. Composting Component

41400. The county composting component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the source reduction and recycling components, reduce a sufficient amount of solid waste generated within the jurisdiction of the plan to comply with the requirements of Section 41780.

41401. The county composting component shall describe the types of materials which will be composted under the programs in Section 41400.

41402. The county composting component shall describe the methods the city will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through composting.

41403. The county composting component shall describe new facilities, and expansion of existing facilities, which will be needed to implement the composting component.

41404. The county composting component shall describe methods which will be used to increase the markets for composted materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each county may grant a price preference to encourage the purchase of composted products. The amount of the price preference shall be determined by the county.

Article 6. Education and Public Information Component

41420. The county education and public information component shall describe to the board how the county will educate and inform its citizens about the recycling and composting programs.

Article 7. Funding Component

41430. The county funding component shall identify and specifically describe projected costs, revenues, and revenue sources

to implement all components of the county source reduction and recycling element.

Article 8. Special Waste Component

41450. The county special waste component shall describe existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos and sewage sludge which is not hazardous waste. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes.

Article 9. Facility Capacity Component

41460. The county solid waste facility capacity component shall include, but is not limited to, a projection of the amount of disposal capacity which will be needed to accommodate the solid waste generated within the unincorporated area of the county preparing the element for a 15-year period, reduced by all of the following:

(a) Implementation of source reduction, recycling, and composting programs required by this part or through implementation of other waste diversion programs.

(b) Any permitted disposal or transformation capacity which will be available during the 15-year planning period.

(c) All disposal or transformation capacity which has been secured through an agreement with another city, county, or through an agreement with a solid waste enterprise.

Article 10. Household Hazardous Waste Component

41480. The county household hazardous waste component shall include a program and implementation schedule for the collection, treatment, and disposal of hazardous wastes generated by residences within the jurisdiction of the plan.

CHAPTER 4. COUNTYWIDE SITING ELEMENTS

Article 1. Element Preparation

41700. Each county shall prepare a countywide siting element which provides a description of the areas to be used for development of adequate transformation or disposal capacity concurrent and consistent with the development and implementation of the county and city source reduction and recycling elements adopted pursuant to this part.

41701. Each countywide siting element and revision thereto, shall include, but is not limited to, all of the following:

(a) A statement of goals and policies for the environmentally safe transformation or disposal of solid waste which cannot be reduced,

recycled, or composted.

(b) An estimate of the total transformation or disposal capacity in cubic yards and years that will be needed for a 15-year period to safely handle solid wastes generated with the county which cannot be reduced or recycled.

(c) The remaining combined capacity of existing solid waste transformation or disposal facilities existing at the time of the preparation of the siting element, or revision thereto, in cubic yards and years.

(d) The identification of an area or areas for the location of new solid waste transformation or disposal facilities or the expansion of existing facilities which are consistent with the applicable city or county general plan if the county determines that existing capacity will be exhausted within 15 years or additional capacity is desired.

41702. An area is consistent with the city or county general plan if all of the following requirements are met:

(a) The city or county 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 of the Government Code.

(b) 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.

(c) The land use authorized in the applicable city or county general plan adjacent to or near the area reserved for the establishment of new solid waste transformation or disposal of solid waste or expansion of existing facilities is compatible with the establishment or expansion of the solid waste facility.

41703. If the county determines that existing capacity will be exhausted within 15 years or additional capacity is desired and that there is no area available for the location of a new solid waste transformation or disposal facility or the expansion of an existing solid waste transformation or disposal facility which is consistent with any applicable city or county general plan, the siting element shall include a specific strategy for the transformation or disposal of solid waste in excess of remaining capacity.

41704. Except as provided in subdivision (a) of Section 41710, any area or areas identified for the location of a new solid waste transformation or disposal facility shall be located in, coextensive with, or adjacent to, a land use area authorized for a solid waste transformation or disposal facility in the applicable city or county general plan.

Article 2. Tentative Reservations

41710. (a) A county may tentatively reserve an area or areas for the location of a new solid waste transformation or disposal facility or the expansion of an existing transformation or disposal facility even though that reservation of the area or areas is not consistent

with the applicable city or county general plan. A reserved area in a countywide siting element is tentative until it is made consistent with the applicable city or county general plan.

(b) If a county has tentatively identified a site expansion or a potential site for a new solid waste transformation or disposal facility in its countywide siting element, that tentative site identification may be deemed a tentative area for the purposes of Sections 41711 and 41712.

41711. An area tentatively reserved for the establishment or expansion of a solid waste transformation or disposal facility shall be removed from the countywide siting element if 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 transformation or disposal facility.

41712. The removal of a tentatively reserved area from the countywide siting element, pursuant to Section 41711, shall be accomplished by either one of the following methods:

(a) The county shall remove the area at the time of the next revision of the siting element.

(b) 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 siting element.

Article 3. General Plan Consistency

41720. The countywide siting element submitted to the board, shall include a resolution from each affected city or the county stating that any areas identified for the location of a new or expanded solid waste transformation or disposal facility pursuant to Section 41701 is consistent with the applicable general plan.

Article 4. Local Agency Approval

41721. The countywide siting element, and any amendments thereto, shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county except in those counties which have only two cities, in which case the plan is subject to approval of the city which contains the majority of the population of the incorporated area of the county. Each city shall act upon the countywide siting element or any proposed amendment within 90 days after receipt of the siting element or proposed amendment. If a city fails to act upon the siting element or the proposed amendment within 90 days after receiving the siting element or the amendment, the city shall be deemed to have approved the siting element or proposed amendment as submitted.

CHAPTER 5. COUNTYWIDE INTEGRATED WASTE MANAGEMENT PLANS

Article 1. Plan Preparation

41750. Each county and city and county shall prepare and submit to the board in accordance with the schedule set forth in Chapter 6 (commencing with Section 41780), a countywide integrated waste management plan, which includes all of the following:

(a) All city source reduction and recycling elements prepared pursuant to Chapter 2 (commencing with Section 41000) and submitted to the county.

(b) The county's source reduction and recycling element for the unincorporated area of the county prepared pursuant to Chapter 3 (commencing with Section 41300).

(c) The countywide siting element prepared pursuant to Chapter 4 (commencing with Section 41700).

41751. The countywide integrated waste management plan shall include a summary of significant waste management problems facing the county or city and county. The plan shall provide an overview of the specific steps that will be taken by local agencies, acting independently and in concert, to achieve the purposes of this division. The plan shall contain a statement of the goals and objectives set forth by the countywide task force created pursuant to Chapter 1 (commencing with Section 40900).

Article 2. Plan Approval

41760. The countywide integrated waste management plan and any amendments thereto, excepting a source reduction and recycling element prepared by a city and county, shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which have only two cities, in which case the plan is subject to the approval of the city which contains a majority of the population of the incorporated areas of the county. Each city shall act upon the plan and any proposed amendment within 90 days after receipt of the amendment. If a city fails to act upon the plan or the proposed amendment within 90 days after receiving the plan or the amendment, the city shall be deemed to have approved the plan or the amendment as submitted.

Article 3. Plan Revision

41770. Each countywide integrated waste management plan and the elements thereof shall be reviewed, revised, if necessary, and submitted to the board every five years in accordance with the schedule set forth under Chapter 7 (commencing with Section 41800).

CHAPTER 6. ADDITIONAL PLANNING REQUIREMENTS

Article 1. Waste Diversion

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule which shows both of the following:

(1) For the initial element, the city or county will divert 25 percent of all solid waste from landfill or transformation facilities by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first revision of the element, the city or county shall divert 50 percent by January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from implementing source reduction, recycling, and composting activities designed to exceed these goals.

41781. (a) For the purpose of determining the base rate of solid waste from which recycling levels shall be calculated, "solid waste" includes only the following:

(1) Materials in the waste stream generated within a local agency's jurisdiction which are normally disposed of at a landfill or transformation facility.

(2) The amount of solid waste diverted from a landfill or transformation facility through source reduction, recycling, or composting.

(b) For the purposes of this section, "solid waste" does not include agricultural wastes, inert solids, or other waste products which would not normally be disposed of at a landfill or transformation facility.

(c) For the purposes of this chapter, the amount of solid waste from which the required reductions are measured shall be the amount of solid waste existing on the date of the approval of the county or city source reduction and recycling element by the board with adjustments for increases or decreases in the quantity of waste caused only by changes in population or changes in the number or size of governmental, industrial, or commercial operations in the jurisdiction.

(d) For the purpose of determining recycling levels required pursuant to this article, counties and cities shall include all existing residential, commercial, and industrial source reduction, recycling, and composting activities that divert solid waste from solid waste landfills and transformation facilities.

41782. The board may provide an exemption or reduction in the goals specified in Section 41780 if the city or county demonstrates, and the board concurs, that preparation of a city or a county source reduction and recycling element is not feasible due to the small geographic size of the city or county and the small quantity of waste generated within the city or county. The board may establish

alternative, but less comprehensive, requirements for those counties or cities to ensure compliance with this division.

41783. For any city or county source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent source reduction and recycling requirement established under Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, only if all of the following conditions are met:

(a) The transformation project has complied with Sections 21151.1 and 41150 of this code and Section 42315 of the Health and Safety Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once a month, and, notwithstanding Section 25143.7 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city or county within which a transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city or county is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and the environment.

41784. If the board determines that a city or county source reduction and recycling element submitted after January 1, 1995, will not achieve the 50 percent requirement established under Section 41780, and the city or county chooses not to use a transformation project to achieve the 50 percent requirement, the board shall not require the city or county to achieve the 50 percent diversion requirement through transformation, or impose any penalty on the city or county to compel the city or county to achieve the 50 percent requirement through transformation.

41785. On and after January 1, 1995, and upon the request of a city or county, or city and county, the board may establish an alternative source reduction, recycling, and composting requirement to the 50 percent requirement established under Section 41780 if all of the following conditions are met:

(a) The board holds a public hearing and makes both of the following findings based upon substantial evidence on the record:

(1) That the local agency is effectively implementing all feasible source reduction, recycling, and composting measures.

(2) That the alternative source reduction, recycling, and composting requirement represents the greatest feasible amount the city, county, or city and county may achieve.

41786. (a) Notwithstanding Section 41780, the board may reduce the recycling goals specified in Section 41780 for any city or county which, on or before January 1, 1989, disposed of 75 percent or more of its solid waste by transformation if both of the following conditions exist:

(1) The attainment of the 25 percent or 50 percent goal specified in Section 41780 would result in substantial impairment of the obligations of one or more contracts in existence on January 1, 1989, for the city or county to furnish solid waste for fuel.

(2) The attainment of the 25 percent or 50 percent goal specified in Section 41780 would substantially interfere with the repayment of debt incurred to finance the transformation project.

(b) For any city or county described in subdivision (a), the board shall establish new goals which require the maximum feasible amount of source reduction, recycling, and composting and which would not meet the conditions in paragraphs (1) and (2) of subdivision (a).

Article 2. Board Review

41790. In order to coordinate solid waste management activities throughout the state and to ensure that Article 2 (commencing with Section 40050) of Chapter 1 of Part 1 is implemented, the board shall review each county and city source reduction and recycling element and each countywide integrated waste management plan adopted pursuant to this part to determine if it complies with Article 2 (commencing with Section 40050) of Chapter 1 of Part 1.

41791. (a) Any county which has less than five years of remaining landfill capacity shall submit its countywide integrated waste management plan to the board on or before January 1, 1992.

(b) Any county which has between five and eight years of landfill capacity shall submit its countywide integrated waste management plan to the board on or before January 1, 1993.

(c) Any city or county which has more than eight years of landfill capacity shall submit its countywide integrated waste management plan to the board on or before January 1, 1994.

41792. It is the intent of the Legislature, in enacting this part, that cities and counties shall commence efforts to implement source reduction, recycling, or composting activities immediately upon enactment of this part, in order to achieve the deadlines specified under this chapter.

41793. Each county or city shall hold at least one public hearing before approving its source reduction and recycling element and the countywide integrated waste management plan.

41794. Any city may submit its city source reduction and recycling element to the board for review before the dates in the schedule in Section 40791.

CHAPTER 7. APPROVAL OF LOCAL PLANNING

Article 1. Board Approval

41800. Within 120 days of receiving a city source reduction and recycling element or a countywide integrated waste management plan, the board shall determine whether the element or plan complies with Article 2 (commencing with Section 40050) of Chapter 1 of Part 1 and Chapter 2 (commencing with Section 41000) and Chapter 5 (commencing with Section 41750) and, based upon this determination, the board shall approve or disapprove the element or plan.

41801. Before approving an element or plan pursuant to Section 41800, the board shall adopt written findings based on substantial evidence in the record that implementing the element will achieve the requirements established pursuant to this part, including the requirements of Section 41780.

Article 2. Deficiencies

41810. If the board disapproves a city source reduction and recycling element or a countywide integrated waste management plan, the board shall issue a notice of deficiency to the city or county which identifies the specific reasons for the disapproval. The notice of deficiency shall include specific recommendations on how to correct the deficiencies in the element or plan.

41811. Within 120 days of receipt of the notice of deficiency issued pursuant to Section 41810, the city or county shall correct the deficiencies, readopt, and resubmit the city source reduction and recycling element or the countywide integrated waste management plan to the board.

41812. If the board determines that the revised city source reduction and recycling element or the countywide integrated waste management plan submitted pursuant to Section 41811 still fails to meet the requirements of this part, the board shall conduct a public hearing for the purpose of hearing testimony on the plan or element and the deficiencies identified by the board.

41813. After conducting a public hearing pursuant to Section 41812, the board may impose administrative civil penalties of not more than ten thousand dollars ($10,000) per day on any city or county which fails to submit an adequate plan in accordance with the requirements of this chapter.

Article 3. Other Provisions

41820. The board may grant a one-year time extension from the requirements of Section 41780 to any city or county if the following conditions are met:

(a) The board adopts written findings, based upon substantial

evidence in the record, that unfavorable, unforeseen, and severely adverse market conditions beyond the control of city or county prevent the city or county from meeting the requirements of Section 41780.

(b) The city or county submits a plan of correction which demonstrates how the city or county will meet the requirements of Section 41780 before the time extension expires, which includes the source reduction, recycling, or composting steps the city or county will implement, and which states how these programs will be funded.

(c) The city or county demonstrates that it is achieving the maximum feasible amount of source reduction, recycling, and composting of solid waste within its jurisdiction.

41821. Each year following the board's approval of a city source reduction and recycling element or the countywide integrated waste management plan, the city or county shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780. The report shall include information on increases or reductions in waste generated due to increases or decreases in the quantity of waste caused only by changes in population or changes in the number or the size of governmental, industrial, or commercial operations in the jurisdiction so that the board may determine if the source reduction and recycling requirements established under Section 41780 need to be revised.

41822. Each city or county shall review its city source reduction and recycling element or the countywide integrated waste management plan at least once every five years to correct any deficiencies in the element or plan, to comply with the source reduction and recycling requirements established under Section 41780, and to revise the documents, as necessary, in order to comply with this part. Any revision made to an element or plan pursuant to this section shall be submitted to the board for review and approval or disapproval pursuant to the schedule established under this chapter.

41823. A city or county may enter into a memorandum of understanding with another city, county, regional planning agency, agency formed under a joint exercise of powers agreement, or district established to manage solid waste for the purpose of preparing and implementing source reduction and recycling elements or a countywide integrated waste management plan.

41824. On or before January 1, 1990, the board shall prepare, and 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 for use by cities and counties in the preparation of source reduction and recycling elements and countywide integrated waste management plans. The regulations and guidelines shall include specific recommendations on how local agencies can achieve diversion of solid waste from landfills through source reduction, recycling, and composting in accordance with this chapter.

Article 3. Review and Enforcement

41825. Not less frequently than every two years, the board shall review each city or county source reduction and recycling element to determine whether a city or county is implementing its source reduction and recycling element. If, after a public hearing, which to the extent possible is held in the local agency's jurisdiction, the board finds that the city or county has failed to implement its source reduction and recycling element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

Article 4. Enforcement

41850. If, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the county or city and county has failed to implement its element, the board may impose administrative civil penalties of up to ten thousand dollars ($10,000) per day until the city or county implements the element.

41851. Nothing in this chapter shall infringe on the existing authority of counties and cities to control land use or to make land use decisions, and nothing in this chapter provides or transfers new authority over that land use to the board.

CHAPTER 8. LOCAL FEE AUTHORITY

41900. Each city and county shall demonstrate a funding source, or sources, available to pay for preparing, adopting, and implementing the element or plan, as required by Sections 41003, 41230, 41303, and 41430.

41901. A city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan prepared pursuant to this chapter. The fees shall be based on the types or amounts of the solid waste, and shall be used to pay the actual costs incurred by the city or county in preparing, adopting, and implementing the plan, as well as in setting and collecting the local fees. In determining the amounts of the fees, a city or county shall include only those costs directly related to the preparation, adoption, and implementation of the plan and the setting and collection of the local fees.

41902. A local agency may directly collect the fees authorized by this chapter or may, by agreement, arrange for the fees to be collected by a solid waste hauler providing solid waste collection for the city or county.

41903. A city or county may assess special fees of a reasonable amount on the importation of waste from outside of the county to publicly owned or privately owned facilities. No city or county shall export solid waste to any other jurisdiction unless the exporting city

or county has, within one year following the date specified in Section 41791 or a later date established or permitted by the board, an approved city source reduction and recycling element or countywide integrated waste management plan and is in compliance with it, provided, however, that, until one year following the date specified in Section 41791 or a later date established by the board, nothing herein shall be construed as prohibiting the export of solid waste. The board may waive the requirements of this section if the board determines that all additional reasonable source reduction and recycling programs are being implemented in the city or county or if the board determines that the system to export waste supports or enhances the city or county source recovery and recycling element.

CHAPTER 9. UNLAWFUL ACTS

41950. No person, other than the authorized recycling agent of the city or county, shall remove paper, glass, cardboard, plastic, used motor oil, ferrous metal, aluminum, or other recyclable materials which have been segregated from solid waste materials and placed at a designated collection location for the purposes of collection and recycling. No person shall be subject to an action for a violation of this section, unless the person knows, or reasonably should know, that the materials would otherwise be collected by the authorized recycling agent for the purpose of recycling the materials.

41951. Unless otherwise provided by contract, paper, glass, cardboard, plastics, used motor oil, ferrous metal, aluminum, and other waste materials, which have been segregated from other waste materials, and placed at the designated collection location, shall not be removed by anyone other than the authorized recycling agent.

41952. Nothing in this chapter limits the right of any person to donate, sell, or otherwise dispose of his or her recyclable materials.

41953. In any civil action by a recycling agent against a person alleged to have violated Section 41950, the court may allow treble damages, as measured by the value of the material removed, against the unauthorized person removing the recyclable material.

41954. Nothing in this article limits the authority of a local agency to adopt or enforce regulations or ordinances on the same matters of this article.

41955. A violation of this part is a misdemeanor punishable pursuant to Section 19 of the Penal Code.

PART 4. SOLID WASTE FACILITIES

CHAPTER 1. SOLID WASTE FACILITY STANDARDS

Article 1. Landfill Facility Requirements

43000. The following definitions govern the construction of this chapter:

(a) "Waste management unit" means the area of a solid waste landfill facility in or on which solid wastes are placed for disposal.

(b) "New waste management unit" means a waste management unit which is not authorized on or before January 1, 1990, under waste discharge provisions adopted on or before that date pursuant to Division 7 (commencing with Section 13000) of the Water Code and for which a solid waste facility permit was not issued on or before that date pursuant to Title 7.3 (commencing with Section 66700) of the Government Code as it read before January 1, 1990.

Article 2. Handling and Disposal Standards

43020. The board shall adopt and revise minimum standards for solid waste handling and disposal for the protection of air, water, and land from pollution, in accordance with this division, and Section 4520 and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board shall consider any recommendations of the State Air Resources Board for the prevention of air pollution and any recommendations of the state water board for the prevention of water pollution.

43021. Standards shall include the design, operation, maintenance, and ultimate reuse of solid waste processing or disposal facilities, but shall not include aspects of solid waste handling or disposal which are solely of local concern

Article 3. Financial Responsibility

43040. The board shall adopt standards and regulations on or before January 1, 1991, requiring that, as a condition for the issuance, modification, revision, or review of a solid waste facilities permit for a disposal facility, the operator of the disposal facility shall provide assurance of adequate financial ability to respond to personal injury claims and public or private property damage claims resulting from the operations of the disposal facility which occur before closure.

CHAPTER 2. SOLID WASTE HANDLING AND DISPOSAL

Article 1. Local Enforcement Agencies

43200 (a) On or before August 1, 1991, the board shall prepare and adopt certification regulations for local enforcement agencies. The regulations shall specify requirements that a local agency shall meet before being designated as an enforcement agency. The regulations shall include, but are not limited to, all of the following:

(1) Technical expertise.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources.

(4) Training requirements.

(5) The existence of at least one permitted solid waste facility

within the jurisdiction of the local agency.

(b) The regulations adopted pursuant to subdivision (a) shall specify four separate types of certifications for which an enforcement agency may be designated, as follows:

(1) Permitting, inspection, and enforcement of regulations at solid waste landfills.

(2) Permitting, inspection, and enforcement of solid waste incinerators.

(3) Permitting, inspection, and enforcement of transfer and processing stations.

(4) Inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

43201. After August 1, 1992, no enforcement agency shall be designated pursuant to this article unless the board determines that the agency fully complies with one or more of the certification types specified in Section 43200. No enforcement agency shall, after August 1, 1992, exercise the powers of an enforcement agency pursuant to this chapter unless the agency has been certified by the board.

43202. There may be designated within each county an enforcement agency to carry out this chapter. If an agency is not designated and certified, the board, in addition to its other powers, shall be the enforcement agency within the county.

43203. The designation of the enforcement agency shall be made by any one of the following procedures:

(a) The board of supervisors of the county may designate the enforcement agency subject to the approval by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county.

(b) The county and the cities within the county may enter into a joint exercise of powers agreement pursuant to Section 6500 of the Government Code for the purpose of establishing an enforcement agency.

(c) A city council may designate an enforcement agency to carry out this chapter.

43204. No enforcement agency may exercise the powers and duties of an enforcement agency until the designation is approved by the board. The board shall not approve a designation unless it finds that the designated enforcement agency is capable of fulfilling its responsibilities under the enforcement program and meets the certification requirements adopted by the board pursuant to Section 43200.

43205. If no enforcement agency is designated, the board shall become the enforcement agency, and shall assume all powers and authorities established pursuant to this chapter. Nothing in this chapter prevents a designation of an enforcement agency under Section 43202 at a later date.

43206. A designation made pursuant to this article may be withdrawn in the same manner in which it was made.

43207. No local governmental department or agency which is the

operating unit for a solid waste handling or disposal operation shall be the enforcement agency for the types of solid waste handling or disposal operation it conducts.

43208. Notwithstanding any other provision of law, except as provided in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and Section 731 of the Code of Civil Procedure, no local governing body may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to a facility that accepts both hazardous wastes and other solid wastes and which meets any of the criteria enumerated in subdivision (a) of Section 25148 of the Health and Safety Code, and was operating as of May 1, 1981, pursuant to a valid solid waste facility permit, so as to prohibit or unreasonably regulate the operation of, or the disposal, treatment, or recovery of resources from solid wastes at any such facility. However, nothing in this section authorizes an operator of such a facility to violate any term or condition of a local land use or facility permit or any other provision of law not in conflict with this section.

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this chapter and the regulations adopted thereunder, and under Section 43020, pertaining to the minimum standards for solid waste handling and disposal for the protection of air, water, and land from pollution and nuisance, and for the protection of the public health.

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, and training programs.

(e) Adopt an enforcement program consisting of regulations necessary to implement this chapter and the standards adopted pursuant thereto, and to establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body. However, any such regulation shall be consistent with this title and all regulations adopted by the board. The enforcement program shall also include a description of the locally adopted procedures for carrying out the permit and inspection program pursuant to Chapter 3 (commencing with Section 44001).

(f) Keep and maintain records of its inspection, enforcement, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards. The consultation shall include affording the health agency adequate

notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

43210. For those facilities which accept only hazardous wastes and to which the provisions of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code apply, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code.

43211. For those facilities which accept both hazardous wastes and other solid wastes, the State Department of Health Services shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code. The board shall, at mixed waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes other than hazardous wastes at the facility pursuant to this chapter.

43212. If the board becomes the enforcement agency, it may charge reasonable fees to the local governing body to recover operation costs.

43213. The enforcement agency may, upon a majority vote of its local governing body, prescribe, revise, and collect fees or other charges from each operator of a solid waste facility or from any person who conducts solid waste handling if the local governing body having ratesetting authority has approved rate adjustments to compensate the solid waste hauler or solid waste facility operator for the amount of the surcharge imposed pursuant to this section. The fee or other charge shall be based on the weight, volume, or type of solid waste which is received or handled by any such operator or person or on any other appropriate basis or any combination of the foregoing. In no case shall the fee or other charge imposed by the enforcement agency under this section exceed the actual cost of the solid waste enforcement authorized under this title.

43214. The board shall develop performance standards for evaluating local enforcement agencies and shall periodically review each enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities to assess compliance with state standards.

43215. If the board finds that an enforcement agency is not fulfilling its responsibilities, the board shall notify the enforcement agency of the particular reasons for finding that the enforcement agency is not fulfilling its responsibilities and of the board's intention to withdraw its approval of the designation if, within a time to be specified in that notification, but in no event less than 30 days, the enforcement agency does not take the corrective action specified by

the board.

43216. If the board withdraws its approval of the designation of an enforcement agency, another enforcement agency shall be designated pursuant to Section 43203 within 90 days and approved by the board. If no designation is made within 90 days, the board shall become the enforcement agency within the jurisdiction of the former enforcement agency.

43217. The board shall provide ongoing training, technical assistance, and guidance to enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(a) Technical studies and reports.

(b) Copies of innovative facility operation plans.

(c) Investigative findings and analyses of new waste management practices and procedures.

43218. Each enforcement agency shall inspect each solid waste facility within its jurisdiction at least one time each month and shall file, within 30 days of the inspection, a written report in a format prescribed by the board.

43219. (a) The board, in conjunction with an inspection conducted by the enforcement agency, shall conduct each year at least one inspection of each solid waste facility in the state. A written inspection report shall be prepared and submitted within 30 days of the inspection to the enforcement agency.

(b) If the board identifies significant violations of state minimum requirements that were not identified and resolved through previous inspections by the enforcement agency, the board shall conduct a performance review of the enforcement agency within 120 days, prepare a written performance report within 60 days of the review, and require the submission of a plan of correction by the enforcement agency within 90 days of the report.

(c) The board shall withdraw an enforcement agency's designation pursuant to Section 43215 if it determines the enforcement agency has failed to submit an adequate plan of correction or has failed to implement the plan.

Article 2. Powers and Duties of the Board

43300. The board, when acting in its capacity as an enforcement agency, may enforce all provisions of this division, and the regulations adopted thereto, for the protection of air, water, and land from pollution and nuisance, and for the protection of the public health.

43301. The board shall coordinate action in solid waste handling and disposal with other federal, state, and local agencies and private persons.

43302. The board may request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

43303. The board shall develop, implement, and maintain inspection, enforcement, and training programs.

43304. The board shall adopt an enforcement program consisting of regulations necessary to implement this division and the standards adopted pursuant thereto. The enforcement program shall include a description for carrying out the permit and inspection program pursuant to Chapter 3 (commencing with Section 44001).

43305. The board may, as it deems necessary, establish specific local standards for solid waste handling and disposal after consultation with the local governing body. However, the standards shall be consistent with this division and all regulations adopted by the board.

43306. The board shall keep and maintain records of its inspection, enforcement, training, and regulatory programs and of any other official action in accordance with regulations adopted by the board.

43307. The board shall consult with the appropriate local health agency concerning all actions which involve health standards. The consultation shall include granting the health agency adequate notice and opportunity to conduct and report any evaluation that it reasonably deems appropriate.

43308 For those facilities which accept only hazardous wastes and to which Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code applies, the board shall have no enforcement or regulatory authority. Except as otherwise provided in Section 40052, all enforcement activities for those facilities relative to the control of hazardous wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code.

43309. The board may adopt regulations specifying the operations subject to the exception in paragraph (3) of subdivision (b) of Section 40200. The regulations shall prohibit the storing of more than 90 cubic yards of waste in covered containers during any 72-hour period and the transfer of uncontainerized refuse from smaller refuse hauling motor vehicles to larger refuse transfer motor vehicles for transport to the point of ultimate disposal.

43310. If the board becomes the enforcement agency, it may charge reasonable fees to the local governing body to recover operation costs.

Article 3. Closure Plans

43500. (a) The Legislature hereby finds and declares that the long-term protection of air, water, and land from pollution due to the disposal of solid waste is best achieved by requiring financial assurances of the closure and postclosure maintenance of solid waste landfills.

43501. Any person owning or operating a solid waste landfill, as

defined in Section 46027, shall do both of the following:

(a) On or before January 31, 1990, or upon application to become an operator of a solid waste facility pursuant to Section 44001, certify to the board and the enforcement agency that all of the following have been accomplished:

(1) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs.

(2) The owner or operator has established a trust fund or equivalent financial arrangement acceptable to the board, as specified in subdivision (f).

(3) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the board will ensure adequate resources for closure and postclosure maintenance.

(b) Submit to the regional water board and the board a plan for the closure of the landfill and a plan for the postclosure maintenance of the landfill.

43502. All documentation relating to the preparation of the closure and postclosure maintenance costs shall be retained by the owner or operator and shall be available for inspection by the board or the enforcement agency at reasonable times.

43503. The closure plan and the postclosure maintenance plan shall be submitted not later than the first date after July 1, 1990, that the solid waste facilities permit is required to be reviewed, pursuant to subdivision (d) of Section 66796.33 of the Government Code, as it read on December 31, 1989, or Section 44001. The closure and postclosure maintenance plans shall be included in that review. If the owner or operator intends to close the solid waste landfill on or before September 28, 1992, or if the solid waste landfill does not have sufficient permitted capacity to operate after September 28, 1992, the owner or operator shall submit the plans on or before July 1, 1990, or upon application to become an operator of a solid waste facility pursuant to Section 44001.

43504. Pursuant to the procedural requirements in Chapter 3 (commencing with Section 44001), the enforcement agency or the board may suspend or revoke a permit if the applicant fails within a reasonable period of time to submit an acceptable plan for the closure of the landfill and an acceptable plan for postclosure maintenance of the landfill.

43505. The closure plan and the postclosure maintenance plan may be revised only upon the filing of a written application therefor by the owner or operator, and the approval, or amendment and approval, by the board.

43506. After receiving a complete closure plan and postclosure maintenance plan, the regional water board shall approve or disapprove the plans pursuant to the authority and time schedules specified in Division 7 (commencing with Section 13000) of the Water Code. The action by the regional water board shall include a review and approval of the estimates of the funds necessary to

implement those portions of the plans approved by the regional water board. The board shall incorporate the action of the regional water board and shall only approve plans that include an acceptable mechanism for providing the necessary funds to implement the plans.

43507. The owner and operator shall, regardless of any changes occurring during the continued operation of the landfill, close and maintain the landfill during postclosure in accordance with the most recent closure plan and the most recent postclosure maintenance plan approved by the board pursuant to this article.

43508. The board may recover any costs incurred in meeting the requirements of this article by charging a fee pursuant to Chapter 8 (commencing with Section 41900) of Part 2.

43509. (a) The board shall adopt and amend regulations specifying closure plan and postclosure maintenance plan adoption procedures and uniform closure and postclosure standards. The regulations shall also require solid waste landfill owners or operators to calculate, and periodically revise, cost estimates for closure and postclosure maintenance for a period of not less than 30 years after closure.

(b) The board may adopt regulations that authorize the adoption of both preliminary and final closure and postclosure maintenance plans. Regulations for preliminary closure and postclosure maintenance plans may require less specificity and engineering detail than final closure and postclosure maintenance plans, and these regulations shall apply only in those cases in which there is reasonable certainty that the solid waste landfill will not close for at least one year following approval of the plans. Preliminary closure and postclosure maintenance plans shall provide sufficient detail to enable the owner or operator and the board to accurately estimate the costs for closure and postclosure maintenance.

43510. The regulations adopted by the board pursuant to Section 43509 shall not duplicate or conflict with the regulations imposing the closure and postclosure maintenance requirements adopted by the state water board which are found in Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Code of Regulations.

Article 4. Financial Ability

43600. Any person owning or operating a solid waste landfill shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for the cost of closure and postclosure maintenance, in an amount equal to the estimated cost of closure and 15 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

43601. The evidence of financial ability shall be in the form of a trust fund into which funds shall be deposited on an annual basis in

amounts sufficient to meet closure and postclosure costs when needed, or an equivalent financial arrangement acceptable to the board, and shall be reviewed and approved by the board in conjunction with the required plans.

43602. The evidence of financial ability required of an owner or operator shall be adjusted to equal the estimated costs of closure and 15 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

43603. The board shall not require an owner or operator of a solid waste landfill to revise or amend a closure plan submitted pursuant to this section or former Section 66796.22 of the Government Code after closure of the landfill in order to reflect subsequent changes in any standards and regulations adopted by the board.

43604. After closure, and during the postclosure maintenance period, a solid waste landfill owner or operator shall maintain evidence of financial ability for postclosure maintenance at all times equal to the estimated cost of 15 years of postclosure maintenance, except that, 15 years before the end of the postclosure maintenance period specified in a postclosure maintenance plan approved by the board, an owner or operator may request approval of the board to provide evidence of financial ability in a lesser amount.

43605. Nothing in this division affects the authority of the State Water Resources Control Board to impose closure and postclosure maintenance requirements on solid waste landfills.

43606. (a) Except for financial arrangements approved by the board pursuant to this article, no indemnification, hold harmless, or similar agreement or conveyance is effective to transfer from the owner or operator of a solid waste landfill to any other person any obligations imposed on the owner or operator under this article.

(b) Notwithstanding subdivision (a), nothing in this section prohibits any agreement between the owner and the operator regarding their respective obligations for closure and postclosure maintenance of a solid waste landfill, and nothing in this section prohibits a cause of action that an owner or operator has or would have against the other party by reason of that agreement.

CHAPTER 3. PERMIT AND INSPECTION PROGRAM

Article 1. Solid Waste Facility Permits

44001. Any person who proposes to become an operator of a solid waste facility shall file with the enforcement agency having jurisdiction over the facility, or the board if there is no designated and certified enforcement agency, an application for a solid waste facilities permit at least 120 days in advance of the date on which it is desired to commence operation.

44002 The operation of a solid waste facility by any person, except as authorized pursuant to a solid waste facilities permit issued

by the enforcement agency, is prohibited.

44003. When the operator of the disposal site is not the disposal site owner, the disposal site operator's application for a solid waste facilities permit shall contain any information that the enforcement agency may require regarding the disposal site owner's interest in the real property utilized as the disposal site.

44004. (a) No operator of a solid waste facility shall make a significant change in the design or operation of any solid waste facility except in conformance with the terms and conditions in a solid waste facilities permit or revised permit issued by the enforcement agency to that operator

(b) If the operator wishes to modify the operation of a solid waste facility, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 120 days in advance of the date when the proposed modification is to take place.

(c) Under circumstances which present an immediate danger to public health, as determined by the enforcement agency, the 120-day filing period may be waived.

44005. Any person, who is the owner of a disposal site, shall file with the enforcement agency or the board a report specifying the date when he or she encumbered, sold, transferred, or conveyed, or permitted to be encumbered, sold, transferred, or conveyed, by agreement for sale or in any other manner, his or her interest or any portion thereof in the real property utilized as the disposal site. The report shall be filed within 30 days after any sale, transfer, or conveyance of the real property.

44006. (a) Each report or application filed under this article shall be submitted under oath or under penalty of perjury.

(b) Each report, notice, or application filed under this article shall be submitted on a form approved by the board.

(c) Each application required to be filed under this article shall be accompanied by a filing fee according to a fee schedule established by the enforcement agency to reflect the cost of processing the application. Any filing fee established by the enforcement agency shall not exceed five hundred dollars ($500), except as necessary to recover costs incurred in meeting the requirements of Article 3 (commencing with Section 43500) and Article 4 (commencing with Section 43600) of Chapter 2. This fee is in addition to the fee authorized by Section 41900.

44007. The enforcement agency shall not issue or revise a solid waste facilities permit unless it has, at least 65 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.

44008. A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days of the time the application is filed unless waived by the applicant.

44009. The board shall, in writing, concur or object to the

issuance, modification, or revision of any solid waste facilities permit within 60 days of the board's receipt of any proposed solid waste facilities permit submitted under Section 44007. If the board determines that the permit is not consistent with state standards, it shall object to provisions of the permit, and shall submit such objections to the enforcement agency for its consideration. If the board fails to concur or object in writing within 60 days, it shall be deemed to have concurred in the issuance of the permit as submitted to it.

44010. The enforcement agency shall issue the permit only if it finds that the proposed solid waste facilities permit is consistent with the standards adopted by the board.

44011. A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days of the time the application is filed unless waived by the applicant.

44012. When issuing or revising any solid waste facilities permit, the enforcement agency shall ensure that primary consideration is given to preventing environmental damage and that the long-term protection of the environment is the guiding criterion. To achieve these purposes, the enforcement agency may prohibit or condition the handling or disposal of solid waste to protect, rehabilitate, or enhance the environmental quality of the state or to mitigate adverse environmental impacts.

44013. The enforcement agency may suspend, revise, or revoke any permit pursuant to Chapter 4 (commencing with Section 44300).

44014. (a) Upon compliance with Sections 44007, 44008, 44009, and 44011, and after any necessary hearing, the enforcement agency may issue, modify, or revise a solid waste facilities permit if the board has concurred in the permit.

(b) The permit shall contain all terms and conditions which the enforcement agency determines to be appropriate for the operation of the solid waste facility. The operator shall comply with all terms and conditions of the permit.

(c) Within 15 days of issuing, modifying, or revising a solid waste facilities permit, the enforcement agency shall transmit to the disposal site owner and the person who is or proposes to become an operator of a transfer or processing station or a disposal site, or both, a copy of the solid waste facilities permit.

44015. Any solid waste facilities permit issued or revised under this chapter shall be reviewed and, if necessary, revised at least once every five years.

44016. (a) The enforcement agency or the board may suspend or revoke the permit of any solid waste facility designed to convert solid waste from offsite sources into energy or synthetic fuels if the facility utilizes recyclable materials for conversion to energy and if the local agency in whose jurisdiction the materials are collected requires, by ordinance, contract, or otherwise, that recyclable materials within the jurisdiction of that local agency be converted into energy at that facility. This subdivision does not otherwise restrict the ability of a

solid waste facility to purchase, collect, transport, or process recyclable materials.

(b) As used in this section, "local agency" means any county, city, or district authorized to collect, dispose, or collect and dispose of solid waste, or any joint powers authority formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code which is authorized to construct and operate a facility for the conversion of solid waste into energy, synthetic fuel, or reusable materials.

(c) As used in this section, "recyclable materials" means discarded paper, glass, cardboard, plastic, ferrous metal, or aluminum which has been segregated from other solid waste materials for the purpose of reuse or recycling, except that recyclable materials do not include materials which a local agency, having jurisdiction over the locations where these materials exist, determines could be potentially harmful to the public health, or materials which create a public nuisance, as defined in Section 3480 of the Civil Code.

44017. The enforcement agency shall include, in the permit of any solid waste facility designed to convert solid waste into energy or synthetic fuels, a provision which requires the use of operating procedures at the facility to prevent significant quantities of hazardous waste from entering the conversion process and to ensure that the ash which is produced is nonhazardous.

Article 2. Facility Inspections

44100. (a) The enforcement agency, in issuing or reviewing any solid waste facilities permit or in connection with any action relating thereto or authorized by this division, may investigate the operation by any person of a transfer or processing station, or disposal site, collection or handling equipment, or storage area for solid wastes.

(b) In the investigation, the enforcement agency may require any person, who is or proposes to become an operator of a transfer or processing station, disposal site, collection or handling equipment, or storage area for solid wastes, to furnish, under penalty of perjury, any technical or monitoring program reports or other reports that the enforcement agency may specify.

44101 In the investigation, the enforcement agency may inspect the facility, equipment, or vehicle used for storage, collection, transportation, processing, or disposal of solid waste, as necessary to ensure compliance with this division and to determine that the terms and conditions of solid waste facilities permits are being complied with.

The inspection shall be made with the consent of the owner or possessor of the facilities or, if consent is refused, with a warrant duly issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may

be made without consent or the issuance of a warrant.

44102. Upon the request of any person furnishing any report, notice, application, or other document required by this chapter, the enforcement agency or the board shall not make available for inspection by the public those portions of the report, notice, application, or other document which contain trade secrets as defined in subdivision (3) of Section 499c of the Penal Code.

However, the portions of a report, notice, application, or other document shall be made available to governmental agencies for the use in making reports and to the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the report.

Nothing in this section prohibits the disclosure of information pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1.

44103. (a) For those facilities which accept only hazardous wastes, a solid waste facilities permit issued by the enforcement agency is not required. A single hazardous waste facilities permit issued by the State Department of Health Services pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5 of Division 20 of the Health and Safety Code shall be the only waste facilities permit necessary for the use and operation of hazardous waste disposal facilities.

(b) For those facilities which accept both hazardous wastes and other solid wastes, two permits shall be required, as follows:

(1) The hazardous waste facilities permit issued by the State Department of Health Services pursuant to Article 9 (commencing with Section 25200) of Division 20 of the Health and Safety Code.

(2) The solid waste facilities permit issued by the enforcement agency pursuant to this article.

(c) Nothing in this section limits or supersedes any other permit or licensing requirements imposed by other provisions of law.

44104. (a) The board shall maintain an inventory of solid waste facilities which violate state minimum standards. To the extent it is practicable to do so, the board shall incorporate in this inventory existing information collected in the course of previous surveys of this type and similar information made available to the board by state and local agencies.

(b) Whenever a solid waste facility is proposed to be included in the inventory, the board shall give notice thereof by certified mail to the disposal site owner and the operator of the solid waste facility. If, within 90 days of that notice, the violation has not been corrected, the solid waste facility shall be included in the inventory. The board shall update and publish the inventory twice annually.

44105. (a) The board shall maintain an inventory of all permitted solid waste facilities and shall conduct regular inspections.

(b) The board shall establish a special unit to investigate illegal, abandoned, or closed solid waste disposal sites to ensure that public health and safety and the environment are adequately protected.

44106. (a) The enforcement agency shall develop a compliance schedule for a solid waste facility included in the inventory prepared pursuant to Section 44014. The compliance schedule shall ensure that diligent progress will be made to bring the solid waste facility into compliance with state minimum standards within one year of the date on which actual notice is received that the solid waste facility was included in the inventory.

(b) If the solid waste facility is not in compliance within that period, the enforcement agency shall revoke the operating permit of the solid waste facility until the violations of state minimum standards are remedied. If a closed or abandoned disposal site is not in compliance within the one-year period, the unremedied condition is prima facie evidence of negligence; and, in any action for damages against the owner of the property for injury caused by the unremedied condition, the burden of proving that the injury was not caused by the unremedied condition shall be on the owner of the property.

(c) The enforcement agency may recover any costs incurred pursuant to this section by charging the fee authorized by Section 41900.

Article 3. Other Requirements

44150. (a) The enforcement agency shall not issue, revise, or reissue a solid waste facilities permit for any project which proposes to use transformation, as defined in Section 40201, unless the project complies with all of the following conditions:

(1) The proposed project meets all of the requirements specified in Section 44007.

(2) The proposed project is consistent with state solid waste management policy as set forth in Section 40051.

(3) The proposed project has a defined source of waste, including waste available from existing solid waste transfer and processing stations.

(4) The proposed 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. This guarantee shall not include any materials which will be recycled pursuant to paragraph (5).

(5) The proposed project, and any contracts or commitments the project has entered into for the provision of waste, uses front-end recycling methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(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 Chapter 4 (commencing with Section 40500).

(7) The ash or other residue generated from the transformation

project is routinely tested at least once a month, and, notwithstanding Section 25143.7 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a Class 1 hazardous waste disposal facility.

(b) Facilities for the recovery of methane gas are not subject to this section.

44151. Any solid waste facility, located outside of any city, shall be maintained in compliance with the flammable clearance provisions of Chapter 5 (commencing with Section 4371) of Part 2 of Division 4 of the Government Code.

44152. No enforcement agency shall issue or revise a permit for a solid waste disposal facility or a solid waste incineration facility until the board has concluded in writing that the proposed permit is consistent with the state's minimum standards for solid waste facilities.

CHAPTER 4. DENIAL, SUSPENSION, OR REVOCATION OF PERMITS

Article 1. Denial of Permits

44300. If the enforcement agency denies a permit, or if the applicant deems the terms and conditions of the proposed permit inappropriate, the applicant may request a hearing. The hearing shall be held in accordance with Article 4 (commencing with Section 44800).

44301. (a) A hearing to determine whether a permit should be issued shall be initiated by the filing of a statement of issues by the enforcement agency. The enforcement agency shall file the statement within 15 days after receiving a written request from an applicant for a hearing. The statement of issues shall be a written statement specifying the statutes and regulations with which the applicant shall show compliance by producing proof at the hearing and any particular matters which come to the attention of the enforcement agency which would authorize a denial of the permit.

(b) The statement of issues and a notice of defense shall be served personally on the applicant or by registered mail at least 20 days prior to the hearing.

Article 2. Suspension, Revocation, or Modification of Permits

44500. After a hearing, any permit may be suspended, amended, or revoked by the enforcement agency for cause, including, but not limited to, any or all of the following:

(a) A violation of any term or condition contained in the permit.

(b) Having obtained the permit by misrepresentation or failing to disclose fully all relevant facts.

(c) A change in any condition that requires either a temporary or permanent modification, reduction, or elimination of the permitted operation to bring it into compliance with the requirements of this

chapter.

(d) A finding that the facility poses a substantial threat to public health or the environment.

44501. A hearing to determine whether a permit should be revoked, suspended, or modified shall be initiated by the filing of an accusation by the enforcement agency. The accusation shall be a written statement of charges which sets forth, in ordinary and concise language, the acts or omissions with which the permittee is charged. It shall specify the statutes and regulations which the permittee is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and regulations.

44502. The accusation and all accompanying documents shall be served personally on the permittee or by registered mail.

44503. (a) The enforcement agency shall include with the accusation a form entitled "Notice of Defense" which, when signed by, or on behalf of, the permittee and returned to the enforcement agency, will acknowledge service of the accusation and constitute a notice of defense under Section 44504.

(b) The accusation shall also be accompanied by a statement that the permittee may request a hearing by filing a notice of defense within 20 days after service of the accusation, that failure to file a notice of defense constitutes a waiver of the right to a hearing, and that the permittee has the right to inspect and copy documents relative to the accusation.

44504. Within 20 days after service of an accusation, the permittee may file with the enforcement agency a notice of defense in which the permittee may do one or more of the following:

(a) Request a hearing.

(b) Object to the accusation upon the ground that it does not state acts or omissions upon which the enforcement agency may proceed.

(c) Object to the form of the accusation on the ground that it is so indefinite or uncertain that the permittee cannot identify the transaction or prepare his or her defense.

44505. A copy of the accusation or statement of issues shall be sent to the board by the enforcement agency when the accusation or statement is filed.

44506. The permittee shall be entitled to a hearing on the merits if he or she files a notice of defense, and a notice of defense is a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense is a waiver of the right to a hearing, except the enforcement agency may consent to a hearing.

44507. The notice of defense shall be in writing signed by, or on behalf of, the permittee and shall state his or her mailing address.

Article 3. Hearings

44800. All hearings required to be conducted under this chapter or Chapter 10 (commencing with Section 41100) shall be conducted by a hearing panel of three persons appointed by the chairperson of

the local governing body of the enforcement agency under either of the following alternatives:

(a) The local governing body may appoint itself as the hearing panel.

(b) The local governing body may appoint an independent hearing panel.

44801. (a) If an independent hearing panel is appointed, not more than one member of the local governing body shall serve on the hearing panel. Members of the panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management. At least one member of the hearing panel shall be a technical expert with knowledge of solid waste management methods and technology. At least one member shall be a representative of the public at large. Panel members shall serve for a term of two years, and may serve more than one term but not more than two consecutive terms. If a member does not complete his or her term, the local governing body may appoint a replacement to serve out the remainder of the unexpired term.

(b) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

44802. The panel shall conduct the hearing, determine the facts, and issue a decision which shall be binding on the parties unless appealed as provided in Section 44815.

44803. (a) After initiation of a proceeding in which an applicant for a permit or a permittee is entitled to a hearing on the merits, a party, upon written request made to any other party prior to the hearing, is entitled to both of the following:

(1) Obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing.

(2) Inspect and make a copy of any relevant documents in the possession or custody or under the control of the other party, including statements made by any person pertaining to the subject matter of the proceeding, all writings pertaining to the subject matter of the proceeding, and investigative reports made by or on behalf of the board or other party pertaining to the subject matter of the proceeding.

(b) Nothing in this section authorizes the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as an attorney's work product.

44804. Any party claiming his or her request for discovery pursuant to Section 44803 has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the hearing will be held, naming as respondent the party refusing or failing to comply with Section 44803. The petition shall be served upon the respondent and filed within 15 days after the respondent first failed or refused to comply with Section 44803.

44805. If, from a reading of the petition for discovery, the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent; otherwise, the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his or her attorney of record in the administrative proceeding by personal service or registered mail and shall be returnable not later than 10 days from its issuance. The respondent party may serve and file a written answer to the petition and order to show cause.

44806. The administrative proceedings shall be stayed during the pendency of the proceeding before the superior court on the petition for discovery only if the court issues an order to show cause.

44807. The court shall decide the issues on the petition for discovery on the matters examined by the court in camera, the papers filed by the parties, and any oral argument and additional evidence that the court allows.

44808. The court shall, not later than 30 days after the filing of the petition for discovery, file its order denying or granting the petition. The order of the court shall be in writing setting forth the matters the petitioner is entitled to discover. A copy of the order shall be mailed immediately by the clerk to the parties.

44809.. The order of the superior court on a petition for discovery is final and not subject to review by appeal. However, a party aggrieved by the superior court's order may, within 15 days after the service of the order, file in the appropriate court of appeal and serve a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order.

44810. (a) Before the hearing has commenced, the hearing panel shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance of witnesses or production of documents at the hearing. Compliance with Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum.

(b) The subpoena process shall be extended to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he or she resides, unless the distance is less than 150 miles from his or her place of residence. However, the hearing panel, upon affidavit of any party showing that the testimony of that witness is material and necessary, may endorse on the subpoena an order requiring the attendance of that witness.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the enforcement agency. shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage, in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

44811. Oral evidence shall be taken only on oath or affirmation.

Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against him or her. If the permittee does not testify in his or her own behalf, the permittee may be called and examined as if under cross-examination.

44812. (a) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of that evidence over objection in civil actions.

(b) Hearsay evidence may be used solely for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(c) The rules of privilege shall be affected to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

44813. (a) In reaching a decision, official notice may be taken, prior to submission of the case for decision, of any generally accepted technical or scientific matter pertaining to solid waste management, and of any fact which may be judicially noticed by the courts of this state.

(b) Parties present at the hearing shall be informed of the matters to be officially noticed, and those matters shall be noted in the record. On request, any party shall be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority.

44814. (a) Within 30 days after the case is submitted for decision, the hearing panel shall issue its decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and the penalty, if any.

(b) Copies of the decision shall be sent to all parties and to the board.

44815. The decision shall become effective 30 days after it is mailed or personally served upon the permittee unless the permittee files an appeal to the board of a decision by a hearing panel appointed by the local governing body of the enforcement agency. If an appeal to the board is filed, the decision of the hearing panel is stayed pending determination by the board.

44816. (a) If the permittee fails to file a notice of defense or to appear at the hearing, the hearing panel may take action based upon information supplied by the permittee to the enforcement agency in writing, including, but not limited to, the permit application.

(b) If the burden of proof is on the permittee to establish that he or she is entitled to the action of the enforcement agency sought, the

hearing panel may act without taking further evidence.

(c) Nothing in this article deprives the permittee of the right to make any showing by way of mitigation.

44817. A person whose permit has been revoked or suspended may petition the enforcement agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. If the enforcement agency declines to take the action requested, the petitioner, if he or she so requests, shall be granted a hearing pursuant to this article.

PART 5. ENFORCEMENT

CHAPTER 10. ADMINISTRATIVE ENFORCEMENT

Article 1. Permit Violations

45000. Any person who is operating or proposes to operate a transfer or processing station or a disposal site, or both, in violation of a solid waste facilities permit, or who is operating or proposes to operate any solid waste facility without a solid waste facilities permit, or who owns a disposal site and causes or permits the operator of the disposal site to violate the terms and conditions of a solid waste facilities permit or to operate the disposal site without a solid waste facilities permit, shall, upon order of the enforcement agency, cease and desist any improper action, clean up any solid waste, abate the effects thereof, or take any other necessary remedial action. If the enforcement agency fails to issue the order, the board, after notification of the enforcement agency, may do so.

45001. If any of the circumstances set forth in Section 45000 pose an imminent threat to life or health, the board may expend any available money to perform any cleanup and abatement or remedial work required.

45002. (a) If the circumstances set forth in Section 45000 do not pose an imminent threat to life or health, but the chief executive officer of the board determines that it is necessary for the public health to perform cleanup and abatement work or remedial work, the chief executive officer shall request the authorization to perform the work from the board.

45003. After receiving a request pursuant to subdivision (a), the board may hold a hearing pursuant to Article 3 (commencing with Section 44800) of Chapter 4 of Part 4 on the matter and thereafter deny, grant, or grant in part the request.

45004. If the board grants a request submitted under Section 45002, the board shall, in a written decision, specify the nature of actions that may be taken and the maximum amount of moneys to be expended for the work.

45005. (a) Any work performed pursuant to Section 45001 or 45004 is in default of, or in addition to, remedial work by the operator

or other persons, and the work may be performed regardless of whether injunctive relief is being sought.

(b) The board may perform the work itself, or have the work performed by, or in cooperation with, any other governmental agency or private contractor, and may use rented tools or equipment, either with or without operators furnished.

45006. Notwithstanding any other provisions of law, the board may enter into oral or written contracts for cleanup and abatement work or remedial work pursuant to Section 45001 or 45004, and the contracts, whether written or oral, may include provisions for equipment rental or the furnishing of labor and materials necessary to accomplish the work. Those contracts by the board are exempt from approval by the Department of General Services pursuant to Section 14780 of the Government Code.

44007. (a) If the solid waste is cleaned up, the effects thereof abated, or other necessary remedial action is taken by any governmental agency pursuant to Section 45001 or 45004, any person to whom an order pursuant to Section 45000 was issued is liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the operation, abating the effects thereof, or taking other remedial action.

(b) The amount of those costs is recoverable in a civil action by, and shall be paid to, that governmental agency together with the costs of suit incurred. From any available money, the governmental agency shall reimburse the board to the extent of the board's contribution.

Article 2. Civil Penalties

45200. Any person who operates a solid waste facility except as permitted by a solid waste facility permit, or who owns a disposal site and intentionally or negligently causes or permits the operator of the disposal site to violate the terms and conditions of a solid waste facilities permit or to operate the disposal site without a solid waste facilities permit, or who intentionally or negligently violates any standard adopted by the board for the storage or removal of solid wastes, is subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day the violation or operation occurs.

45201. Any attorney authorized to act on behalf of the board shall petition the superior court to impose, assess, and recover the civil penalties authorized by Section 41130. Funds collected shall be paid to the Solid Waste Management Fund.

45202. Remedies under this article are in addition to, and do not supersede or limit, any other remedies, civil or criminal.

Article 3. Hazard, Pollution, or Nuisances

45300. (a) Whenever the enforcement agency finds that any person is operating a solid waste facility or proposes to operate a solid

waste facility which causes or threatens to cause a condition of hazard, pollution, or nuisance constituting an emergency requiring immediate action to protect the public health, welfare, or safety, the enforcement agency may issue a cease and desist or cleanup order under this article. If the enforcement agency fails to issue an order the board, after notification of the enforcement agency, may do so.

(b) The enforcement agency may, whenever it determines that the operation of a disposal site is causing or threatening to cause a condition of hazard, pollution, or nuisance due to the migration of methane gas or any solid waste, require the owner or operator of the disposal site to take corrective action as necessary to abate a nuisance or protect human health and the environment.

45301. At least 10 days before issuing an enforcement order which is not for an emergency, within five days after issuing an enforcement order for an emergency, or within 15 days after discovering a violation of a state law, regulation, or term or condition of a permit, for a solid waste disposal site which is likely to result in an enforcement action, the following agencies shall provide a written statement providing an explanation of, and justification for, the enforcement order or a description of the violation in the following manner:

(a) The enforcement agency shall provide the statement to the regional water board, to the air pollution control district or air quality management district, and to the State Department of Health Services.

(b) A regional water board shall provide the statement to the enforcement agency, the air pollution control district or air quality management district, and the State Department of Health Services.

(c) An air pollution control district or an air quality management district shall provide the statement to the enforcement agency, the regional water board, and the State Department of Health Services.

(d) The State Department of Health Services shall provide the statement to the enforcement agency, the regional water board, and the air pollution control district or air quality management district.

45302. Within 10 days after receiving a notice of the issuance of, or the proposal to issue, an enforcement order pursuant to Section 45301, the regional water board, the enforcement agency, the air pollution control district or the air quality management district, and the State Department of Health Services shall inspect the solid waste disposal site to determine whether any state law, regulation, or term or condition of a permit, which that board or agency is authorized to enforce, is being violated.

45303. If any board or agency specified in Section 41151 receives a complaint concerning a solid waste disposal site and the board or agency determines that it is not authorized to take action concerning the complaint, the board or agency shall refer the complaint within 10 days of receipt to another state agency which it determines is authorized to take action.

45304. If any agency or board specified in Section 45301 receives

a complaint concerning a solid waste disposal site which the agency or board does not refer to another state agency pursuant to Section 45303, or if the agency or board receives a complaint referred to it by another agency or board pursuant to Section 45303, the agency or board shall either take enforcement action concerning that facility or, within 10 days, provide the person who filed the complaint with a written statement explaining why an enforcement action would not be appropriate.

Article 4. Corrective Actions

45400. Upon the request of the enforcement agency, or upon its own initiative, the board may, after notification of the enforcement agency, enforce this division. In taking any action, the board is vested, in addition to its other powers, with all the powers of the enforcement agency under this division.

45401. (a) Upon the request of the enforcement agency, or upon its own initiative, the board may, after notification of the enforcement agency, require the owner or operator of a solid waste landfill to do either of the following:

(1) Take corrective action as necessary to abate a nuisance or protect human health and the environment.

(2) Prepare and implement a closure plan and postclosure maintenance plan.

(b) The board may expend funds available to it from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund in preparing and issuing an order under this subdivision.

45402. (a) Upon the request of the enforcement agency or a regional water board, or upon its own initiative, the board may, after notification of the enforcement agency, contract for the preparation and, if necessary, the implementation of any closure plan or postclosure maintenance plan required by Article 3 (commencing with Section 43500) of Chapter 2 of Part 4 after issuance of an order pursuant to Section 45401 and the failure of the owner or operator to comply on or before the date specified in the order.

(b) The board may expend funds allocated from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund to carry out this section.

45403. (a) Upon the request of the enforcement agency, or upon its own initiative, the board may, after notification of the enforcement agency, contract for corrective action after the issuance of an order pursuant to Section 45401 and failure of the owner and operator to comply on or before the date specified in the order.

(b) The board may expend funds allocated from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund to carry out this section.

45404. (a) If the board expends any funds pursuant to Section 45402 or 45403, the owner and the operator of the solid waste landfill

shall pay the board an amount equal to the amount expended, a reasonable amount for the board's cost of contract administration, and an amount equal to the interest that would have been earned on the expended funds.

(b) The amount of any cost incurred by the board pursuant to this section shall be recoverable in a civil action by the board or, upon request of the board pursuant to Section 40432, by the Attorney General.

(c) Any amounts recovered, except amounts payable to the board for contract administration, shall be deposited in the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund.

45405. Any contract entered into by the board, pursuant to this article, is exempt from approval by the Department of General Services pursuant to Section 14780 of the Government Code.

45406. Nothing in this division affects the authority of the state water board or a regional water board to issue enforcement orders or take corrective actions on solid waste facilities.

45407. Any corrective action taken under this division shall incorporate, as a condition of the action, any applicable waste discharge requirements issued by the state water board or a regional water board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170, 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 action or proposed action.

Article 5. Administrative Appeals

45500. Within 30 days of issuance of a written decision by a hearing panel under Chapter 3 (commencing with Section 44001) or Chapter 4 (commencing with Section 44300) of Part 4, any aggrieved person may appeal to the board to review the written decision of the hearing panel. The board may, on its own motion, review at any time a written decision of the hearing panel.

45501. Within 30 days after an appeal has been filed with the board, the board may do any of the following:

(a) Determine not to hear the appeal if the appellant fails to raise substantial issues.

(b) Determine not to hear the appeal if the appellant failed to participate in the administrative hearing before the hearing panel, except that the board shall hear the appeal if the appellant shows good and excusable cause for his or her failure to appear.

(c) Determine to accept the appeal and to decide the matter without a hearing on the basis of the record before the hearing panel and on written arguments submitted by the parties.

(d) Determine to accept the appeal and hold a hearing, within 60

days, unless all parties stipulate to extending the hearing date.

45502. (a) If the board declines to hear the appeal, it shall notify all parties, and the decision of the hearing panel shall become effective 30 days after the date of the board's notification to the parties unless judicial review is sought.

(b) If the board accepts the appeal, the evidence before the board shall consist of the record before the hearing panel and any other relevant evidence which, in the judgment of the board, should be considered to effectuate and implement the policies of this division.

45503. In reviewing any decision of a hearing panel, the board's review shall be limited to those issues that relate to the enforcement of the state minimum standards for solid waste handling and disposal.

45504. The board may find the decision of the hearing panel inconsistent with the provisions of this division and the standards adopted by the board. Upon a finding that the decision of the hearing panel was inconsistent, the board may do any of the following:

(a) Direct that the appropriate action be taken by the enforcement agency.

(b) Refer the matter to any other state agency having jurisdiction.

(c) Take the appropriate action itself.

(d) Any combination of the above.

45505. Any attorney authorized to act on behalf of the board, at the board's request, shall petition the superior court for injunctive relief to enforce Article 1 (commencing with Section 44001) of Chapter 3 of Part 4 or Article 1 (commencing with Section 45000) or Article 3 (commencing with Section 45300) of this chapter, any term or condition in any solid waste facilities permit, or any standard adopted by the board for the storage of solid waste or for the operation of collection and transportation equipment.

45506. If the enforcement agency fails to enforce the provision, term, condition, or standard specified in Section 45505, the Attorney General shall, at the request of the board, petition the superior court for injunctive relief to enforce it

45507. The board shall, by regulation, require the appropriate administrative procedures, including notice to the permittee, to be followed by the board prior to taking action against any person under Section 45200 or 45506.

45508. Failure to appeal to the board for review as provided in this chapter does not preclude a person from filing an action in the superior court to contest the action of an enforcement agency brought under this chapter.

Article 6. Jurisdictional Disputes

45600. If an operation of a transfer or processing station or disposal site, or both, is carried on within the jurisdiction of more than one enforcement agency and there is disagreement between the enforcement agencies involved as to the conditions in the solid waste facilities permit which should be established or the

enforcement thereof, either enforcement agency may submit the disagreement to the board for resolution.

45601. Upon the request of the enforcement agency, or upon its own initiative, the board may, after notification of the enforcement agency, enforce this division. In taking any action under this section, the board is vested, in addition to its other powers, with all of the powers of the enforcement agency under this division.

Article 7. Reports to Legislature

45700. (a) On or before January 1, 1991, the state water board shall submit a report to the Legislature. The report shall summarize the extent of hazardous waste in solid waste disposal sites and the potential effects these hazardous wastes may have upon the quality of waters of the state and recommend actions needed to protect the quality of water.

(b) The report shall summarize the data from those solid waste water quality assessment test reports which have been submitted during the preceding year to regional water boards pursuant to Section 13273 of the Water Code, and shall evaluate the accuracy of the solid waste water quality assessment tests conducted.

CHAPTER 2. JUDICIAL REVIEW

45800. Within 30 days after service of a copy of a decision and order issued by the board under Article 5 (commencing with Section 45500) of Chapter 1, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof.

45801. The evidence before the court shall consist of the records before the board, including the enforcement agency's records, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division.

45802. Except as otherwise provided in this chapter, subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure govern proceedings pursuant to this article.

PART 6. SOLID WASTE DISPOSAL SITE CLEANUP AND MAINTENANCE

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. Short Title and Findings

46000. This part shall be known and may be cited as the Solid Waste Disposal Site Hazard Reduction Act of 1989.

46001. (a) The Legislature finds and declares as follows:

(1) There are approximately 1,300 closed and active solid waste landfills in California.

(2) Recent studies have indicated that there may be future leachate and gas migration problems at California solid waste landfills

(3) A state solid waste cleanup and maintenance fund should be financed through fees collected from solid waste landfill operators. In addition to providing resources to respond to potential health and environmental problems at onsite and offsite solid waste landfills, the fund should be used to support state and local landfill permit enforcement programs and to provide grants to local agencies to initiate and implement waste separation programs to prevent the disposal of household hazardous waste in solid waste landfills, and to preserve remaining solid waste disposal capacity.

(b) It is, therefore, the intent of the Legislature, in enacting this chapter, to provide a means for addressing and funding these urgent problems.

Article 2. Definitions

46020. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

46021. "Account" means the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund.

46022. "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 water board, an enforcement agency, and the board.

46023. "Committee" means the Solid Waste Cleanup and Advisory Committee.

46024. "Corrective action" means any action, required or approved by the board, a regional water 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.

46025. "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 water board pursuant to Division 7 (commencing with Section 13000) of the Water Code and does not contain significant quantities of decomposable waste.

46026. "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 water board or the board.

46027 "Solid waste landfill" means a disposal facility that accepts solid waste 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 or a facility which receives only nonhazardous wood waste derived from timber production or wood product manufacturing.

46028. "State board" means the State Board of Equalization.

Article 2. The Solid Waste Cleanup and Maintenance Advisory Committee

46100. The committee is hereby established within the board.

46101. (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 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.

46102. The Secretary of Environmental Affairs shall serve, ex officio, as chairperson of the committee

46103. The committee shall submit an annual report to the Legislature in 1990, 1991, and 1992 on all of the following:

(a) The status of regulatory activities by state agencies relating to closure and postclosure maintenance of solid waste facilities.

(b) The progress on coordinating these activities among the state agencies with regulatory authority over closure and postclosure maintenance of solid waste facilities.

46104. All members of the committee shall serve without compensation, except the members appointed pursuant to subdivisions (e), (f), and (g) of Section 46101, are entitled to receive from the account one hundred dollars ($100) for each day attending meetings of the committee and necessary traveling and other expenses incurred by him or her in the performance of official duties.

46105. The committee shall meet at those times and places which are determined by the board. Five members of the committee constitute a quorum

46106 No member of the committee shall participate in any board or committee action involving a grant or loan guarantee which involves the member or any recipient of a grant or loan guarantee with which the member is connected as a director, officer, or employee, or in which the member otherwise has a financial interest within the meaning of Section 87100 of the Government Code.

46107. The committee shall establish detailed criteria for selecting grant recipients and for making loan guarantees pursuant

to this chapter and shall make recommendations to the board thereon.

CHAPTER 3. DUTIES AND FUNCTIONS OF THE BOARD

46200. The board shall administer this chapter and may exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon the board pursuant to this chapter.

46201. The board may enter into loan guarantee agreements with owners or operators of solid waste landfills operating solid waste disposal facilities on or after January 1, 1990, pursuant to a solid waste facilities permit issued by the board.

46202. The board may enter into contracts which the board deems necessary to carry out its powers and duties pursuant to this part.

46203 The board may provide grants, pursuant to Chapter 5 (commencing with Section 46400), to counties and cities for local programs to help prevent the disposal of hazardous wastes at solid waste disposal sites, including, but not limited to, programs to manage household hazardous waste These grants shall not exceed, in any one fiscal year, more than 20 percent of the total revenues deposited, or anticipated to be deposited, in the account during the fiscal year.

46204 The board may fix reasonable fees and charges for loan guarantees and revise, from time-to-time, these fees and charges.

46205. The board shall adopt criteria for selecting grant recipients and for making loan guarantees pursuant to this part

46206. All expenses incurred by the board in carrying out this part are payable solely from the account. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur a liability or obligation beyond the extent to which money is provided in the account.

46207. On or before March 1, the board shall submit to the Legislature an annual report of its activities for the preceding calendar year

46208. The board shall adopt regulations to carry out this part, including, but not limited to, regulations for the issuing of loan guarantees and grants from the account. The board shall reserve 25 percent of the total revenues deposited, or anticipated to be deposited, in the account each fiscal year for the purpose of guaranteeing loans.

46209. This part does not grant any local or state agency any power in addition to any other power which may be authorized under any other provision of law.

CHAPTER 4. LOAN GUARANTEES

Article 1. Loan Guarantee Requirements

46300. 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 46801.

46301. 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 the purposes described in Section 46300, including, but not limited to, the California Pollution Control Financing Authority.

46302. The board shall not make a loan guarantee pursuant to this chapter unless the board finds both of the following:

(a) That the owner or the operator of a solid waste landfill requires financial assistance to complete a corrective action.

(b) That loan guarantee funds will not be used to fund routine closure and postclosure maintenance activities that could be paid or financed out of trust funds or equivalent arrangements established pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 5

46303 The board shall adopt uniform criteria for guaranteeing loans pursuant to this article. The criteria shall include a test for demonstrating financial need, ability to repay, and collateral requirements, if any The board shall not accept as collateral any land upon which solid waste has been disposed.

46304. The board shall not make a loan guarantee to a solid waste landfill owner or operator who cannot demonstrate compliance, or at least a good faith attempt to comply, with applicable laws, regulations, and solid waste facilities permit requirements.

46305. The board shall not make a loan guarantee to any solid waste landfill owner or operator, unless the board receives determinations from all state and local agencies authorized to approve the closure plan or postclosure plan, or issue the corrective action order, that the loan guarantee, if made, will further compliance with the permit, plan, or order.

46306 The board shall establish a method of determining priority in the allocation of loan guarantee funds available for corrective actions.

46307. The board shall base the priority for allocation of funds on all of the following factors:

(a) The financial need of the operator and owner of the solid waste landfill.

(b) The need for the loan guarantee to prevent potential hazards to public health or the environment.

(c) The increase in the cost of closure, postclosure, or corrective action which is likely to occur if the action is deferred.

(d) The record of compliance by the operator, or if applicable the owner, with the solid waste facilities permit for the solid waste landfill and with corrective action orders.

46308 Applicants for loan guarantees shall submit a nonrefundable application fee of one hundred dollars ($100) payable to the board, for deposit in the account, to defray the board's expenses in reviewing the application, including a check on the applicant's credit rating.

46309. The board shall not, on or after January 1, 1990, guarantee a loan to a person who is not the owner or operator of a solid waste landfill operating pursuant to a solid waste facilities permit issued by the board pursuant to Chapter 3 (commencing with Section 44001) and accepting solid wastes.

Article 2. Defaults

46350. The board shall adopt procedures to be followed if there is a default in payment of a loan guaranteed pursuant to this article

46351. The default procedures may vary, depending on whether the loan guarantee was secured by real property, secured by personal property, or unsecured.

46352. The board may take legal action to secure repayments from loan guarantee recipients defaulting on loan guarantees made pursuant to this article and may call on the assistance of other state agencies in securing repayment, including, but not limited to, a levy against any tax refunds owed to the borrower by any state agency.

46353. The repeal of this article shall not extinguish a loan guarantee obligation and shall not impair any loan security taken by the board or the authority of the state to pursue appropriate action for collection.

CHAPTER 5. GRANTS

46400. The board may make grants of funds in the account to a city or county for any of the following purposes related to the safe operation, closure, and maintenance of solid waste landfills operating on or after January 1, 1990.

(a) Support for establishing collection systems to ensure that hazardous waste, including, but not limited to, household hazardous waste, is not improperly disposed of in a solid waste landfill.

(b) Payment of the local costs of waste control and enforcement programs that help prevent the disposal of hazardous wastes in solid waste landfills.

46401. If a city or county has already funded the type of program described in Section 46400 locally, the board shall award a minimum grant of funds from the account to reimburse that city or county for the actual cost of the local program in that fiscal year or 20 percent

of the fees generated or anticipated to be generated in the city or county into the account during that fiscal year, whichever is less. This subdivision does not limit the authority of the board to award grants of funds from the account in excess of, or in addition to, the minimum grant amounts set forth in this subdivision, in accordance with the grant criteria adopted pursuant to Section 46205.

46402. Grants made pursuant to Sections 46400 and 46401 during a fiscal year shall equal 20 percent of the total revenues deposited or anticipated to be deposited in the account during that fiscal year.

CHAPTER 6. INSPECTIONS AND EMERGENCY ACTIONS

46500. (a) The board shall annually grant or allocate funds from the account to the state water board, as determined necessary by the board and consistent with legislative direction, to assist in the support of solid waste landfill permit inspection and enforcement programs carried out by regional water boards pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(b) The board shall apportion the funds generally to reflect population, number of solid waste landfills, and the weight of solid waste disposed of within a regional water board's jurisdiction.

46501. The state water board shall expend its annual apportionment made pursuant to Section 46500 exclusively for the inspection of solid waste landfills, enforcement of the solid waste landfill's solid waste facilities permits, and enforcement of waste discharge requirements by the regional water boards.

46502. The funds apportioned pursuant to Section 46500 are in addition to any other funds available for the purposes of Section 46501.

46503. The board shall grant or allocate funds pursuant to Section 46500 in an amount which equals, in any fiscal year, 5 percent of the total revenues deposited, or anticipated to be deposited, in the account during the fiscal year.

46504. The board may allocate not more than 10 percent of the total revenues deposited, or anticipated to be deposited, in the account during the fiscal year to carry out the solid waste landfill permit and inspection program pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

46505. Upon application by the state water board or at the discretion of the board, the board may allocate funds from the account to the state water board to prepare or implement a closure plan, or a postclosure maintenance plan for a solid waste landfill, if the owner and the operator of the solid waste landfill have failed to comply with an order issued by a regional water board requiring the preparation or implementation of a closure plan or postclosure maintenance plan.

46506. Upon application by the state water board or at the discretion of the board, the board may allocate funds from the account to the state water board to take emergency corrective action

if the solid waste landfill owner and operator have failed to comply with a corrective action order issued by a regional board.

46507. (a) If the regional water board expends any funds pursuant to Sections 46505 or 46506, the owner and operator of the solid waste landfill shall pay the board an amount equal to the amount expended, a reasonable amount for interest, and the costs of contract administration

(b) Costs incurred by the state water board pursuant to this article shall be recoverable in a civil action by the board or, upon the request of the board pursuant to Section 40432, by the Attorney General. Any amounts recovered shall be deposited in the account.

CHAPTER 7. THE SOLID WASTE DISPOSAL SITE CLEANUP AND MAINTENANCE ACCOUNT

46800. The Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund is continued in existence as the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund.

46801. (a) Every operator of a solid waste landfill required to have a solid waste facilities permit pursuant to Chapter 3 (commencing with Section 44001) of part 4 shall pay an annual fee to the state board pursuant to Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code on all solid waste disposed at each disposal site. The fee shall be established by the state board and shall be based on the amount, by weight or by a volumetric equivalent, as determined by the state board, of solid waste disposed at each disposal site so that total receipts of approximately twenty million dollars ($20,000,000), are collected each calendar year.

(b) Notwithstanding subdivision (a), the state board shall, as necessary, adjust the rate of the fees annually so that the balance in the account each July 1 does not exceed one hundred million dollars ($100,000,000).

46802. The state board may exempt from all fees any operator of a solid waste landfill that receives less than a monthly average of five tons per operating day of solid waste.

46803. Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to subdivision (a) of Section 46801.

46804. The state board shall adopt rules and regulations to carry out Sections 46801, 46802, and 46803, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

46805. Subject to Section 46806, the state board may spend not more than 5 percent of total revenues deposited or anticipated to be deposited in the account during a fiscal year for the administration of this chapter during that fiscal year.

46806. All money in the account is available, upon appropriation

by the Legislature, only for purposes of this chapter and for the purposes of Article 5 (commencing with Section 45400) of Chapter 1 of Part 5.

46807. All money received by the state board pursuant to this chapter shall be deposited in the account.

46808. Upon repeal of this article, the account shall be dissolved and all money in the account shall be distributed to the solid waste landfill operators which have paid annual fees to the state board during the effective life of the account. Each operator shall receive an amount based upon the proportion that operator's total fees bear to the total funds paid into the account during its effective life. Any money thereafter received in repayment of loans made pursuant to this chapter shall be distributed to operators according to the same formula.

46809. Any distributions received pursuant to Section 40808 may only be used for any of the following activities related to solid waste landfills:

(a) Closure and postclosure planning and maintenance.

(b) Preventative or corrective actions to protect human health or the environment.

(c) Enforcement activities.

(d) Programs to prevent the disposal of hazardous waste in landfills.

46810. Except as provided in Section 46300, the board shall not make grants or loan guarantees until the unencumbered balance in the account is at least two million dollars ($2,000,000).

46811. (a) Any operator of a solid waste landfill that pays a fee pursuant to this chapter, may impose, as necessary, on its users an administrative fee of not more than 5 percent of the fees collected by the state board in the previous year.

(b) Administrative fees imposed pursuant to subdivision (a) shall reflect the actual costs of collecting and accounting for fees paid to the state board.

(c) 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.

PART 7. OTHER PROVISIONS

CHAPTER 13. HOUSEHOLD HAZARDOUS SUBSTANCE INFORMATION

Article 1. Legislative Findings and Definitions

47000. The Legislature finds and declares that, because hazardous substances are an integral part of daily life, it would benefit the public to have access to practical and consistent information concerning chemicals in daily life, products which contain hazardous substances, and proper procedures for the

disposal of hazardous substances. This information would improve the ability of all Californians to assist in protecting the state's natural resources from environmental degradation.

47001. The Legislature also finds that the disposal of hazardous substances by households can be injurious to sanitation workers, the general public, and wildlife and domestic animals, and can pose a threat to the environment.

47002. The Legislature, therefore, declares that the state should assist the efforts of local governments and other agencies to provide safer disposal methods for household hazardous waste and to provide public information on the proper disposal of hazardous substances commonly found in and around homes.

47003. For purposes of this chapter, "hazardous substance" means hazardous substance, as defined in Section 25316 of the Health and Safety Code.

Article 2. Public Information Program

47050. The board shall, in consultation with the advisory committee established pursuant to Article 4 (commencing with Section 47300), develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes. The program may include information, consistent with product labeling, on the proper use and storage of products which contain hazardous substances.

47051. The public information program shall be designed to provide uniform responses to public inquiries about household hazardous substances and to assist the efforts of local governments and other agencies to provide services related to household hazardous substances.

47052 The public information program shall include the development of pamphlets or other written materials which may be used by local governments and other agencies in conjunction with household hazardous waste collection or other programs which these agencies may offer. The written materials shall be prepared with the intent of promoting consistency in how these local programs define and handle household hazardous wastes.

Article 3. Household Hazardous Waste Management

47100. The board shall designate a household hazardous waste coordinator to advise and assist local governments and other agencies which offer programs for household hazardous waste management.

47101. The board shall provide technical assistance to local governments and other agencies which establish household hazardous waste management programs.

47102. The board shall adopt, in consultation with the State

Department of Health Services and the advisory committee established pursuant to Article 4 (commencing with Section 41450), guidelines for local governments and other agencies to provide community services related to the safe disposal of hazardous substances commonly found in and around homes.

47103. The guidelines required by this article shall include all the following elements:

(a) Development of a model operation plan for community household hazardous waste collection programs. The model operation plan shall include a description of proper procedures for hazardous waste handling, storage, transportation, and personnel training.

(b) The adoption of guidelines on the generic types of household hazardous substances which should be disposed of as hazardous waste and guidelines on the safe management of hazardous wastes generated by households which may be excluded from household hazardous waste collection programs but which may require some special handling.

47104. In adopting guidelines on which generic types of household hazardous substances should be disposed of as hazardous waste, the board shall consider such factors as toxicity, concentration of toxic ingredients in a product, and other appropriate factors The board shall also consider the appropriateness of excluding from any listing of household hazardous wastes specific categories of household products, including, but not limited to, products intended for human consumption, personal hygiene products, and other categories of household products intended for general consumer use

47105. The guidelines and operation plan prepared pursuant to this article shall, upon request, be made available to local governments, other agencies, and the public The board shall advise county health offices of the availability of these materials and of the informational materials developed pursuant to Article 2 (commencing with Section 41410).

47106. In developing the guidelines required by this article, the board shall, to the extent feasible, consult existing sources of information, including, but not limited to, household hazardous waste collection programs which have been operated in the state and in other states, industry, and academia

Article 4. Advisory Committee

47500. The board shall establish a nine-member advisory committee on household hazardous waste management to review and comment on the informational materials developed pursuant to Article 2 (commencing with Section 47050), to review and comment on the guidelines adopted by the board pursuant to Article 3 (commencing with Section 47100), and to perform other functions related to household hazardous waste management, as requested by the board.

47501. The membership of the advisory committee shall be as follows:

(a) A representative of county government, from a rural county, to be selected by the County Supervisors Association of California.

(b) A representative of city government, to be selected by the League of California Cities.

(c) A representative of a hazardous waste transfer station operation, to be selected by the State Department of Health Services.

(d) A representative of public information programs, to be selected by the League of Women Voters of California.

(e) A representative of publicly owned municipal landfill operations, to be selected by the board.

(f) A representative of product manufacturers, to be selected by the Chemical Specialties Manufacturers Association.

(g) A representative of waste haulers, to be selected by the Southern California Refuse Council and the Northern California Refuse Council.

(h) A representative of environmental organizations, to be selected by the League of Women Voters of California.

(i) A representative of paint and coatings manufacturers, to be selected by the National Paint and Coatings Association.

47502. The organizations selecting advisory committee members shall select individuals with experience in, or knowledge of, household hazardous waste management programs.

47503. The board shall provide staff to the advisory committee.

47504 If any of the appointing authorities for members of the advisory committee fails to make an appointment, the chairperson of the board shall make the appointment.

47505 The chairperson of the advisory committee shall be selected by the committee members. The committee shall meet at least twice a year. The chairperson shall call meetings of the committee after consultation with the board

47506. Advisory committee members shall serve without compensation, but they shall be reimbursed for expenses incurred in attending advisory committee meetings.

CHAPTER 2. FINANCES

48000. Each operator of a solid waste landfill required to have a solid waste facility permit shall, in addition to the fee imposed pursuant to Section 46801, pay a fee quarterly to the State Board of Equalization based on all solid waste disposed of at each disposal site on or after January 1, 1990. The fee shall be based on the amount, by weight or volumetric equivalent, as determined by the board, of solid waste disposed of at each disposal site, and is due within 25 days of the end of the calendar quarter. The first payment shall be received by the State Board of Equalization on or before April 25, 1990. The fee shall be set initially at fifty cents ($.50) per ton for waste disposed

of during the period of January 1, 1990, through June 30, 1990. The fee for waste disposed of during the period of July 1, 1990, through June 30, 1991, shall be set by the board at an amount sufficient to generate revenues equivalent to the approved budget for the 1990–91 fiscal year, including a prudent reserve, but shall not exceed seventy-five cents ($ 75) per ton. The fee for waste disposed of on July 1, 1991, and thereafter, shall be set annually by the board at an amount sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but not exceed one dollar ($1) per ton.

48001. The revenue from the fees paid pursuant to Section 41700 shall, after payment of refunds and administrative costs of collection, be deposited in the Integrated Waste Management Account, which is hereby created within the Solid Waste Management Fund.

48002 The state board shall adopt rules and regulations to carry out Section 48000, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

48003. The state board may not spend more than ½ percent of the total revenues deposited, or anticipated to be deposited in the account during a fiscal year for the administration of this chapter during that fiscal year, except that up to one hundred sixteen thousand dollars ($116,000) may be spent during fiscal year 1989–90.

48004. The money in the Integrated Waste Management Account shall be used by the board, upon appropriation by the Legislature, for the purposes of this division, except Part 6 (commencing with Section 46000), which shall be funded by fees pursuant to Section 46801.

48005. Unless otherwise specified, all money received by the board shall be deposited in the Integrated Waste Management Account and shall be used by the board, upon appropriation by the Legislature, for the purposes for which it was collected or, if not expressly specified for a particular purpose, for the purposes of this division, except Part 6 (commencing with Section 46000), which shall be funded by fees pursuant to Section 46801.

48006. The board may exempt from all fees any operator of a solid waste landfill that receives less than a monthly average of five tons per operating day of solid waste.

48007. Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

48008. (a) Any operator of a solid waste landfill that pays a fee pursuant to this chapter may impose, on its users an administrative fee of not more than 5 percent of the fees paid to the State Board of Equalization during the previous quarter pursuant to Section 48000.

(b) Administrative fees imposed pursuant to subdivision (a) shall reflect, to the extent feasible, the actual costs of collecting and accounting for fees paid to the State Board of Equalization.

48009. It is the intent of the Legislature that five million dollars

($5,000,000) be transferred each year through the annual Budget Act beginning with the 1990–91 fiscal year from the General Fund to the Waste Management Incentive Account, which is hereby created within the General Fund. These funds shall be designated for the purpose of offsetting revenue losses to the General Fund by tax credits which encourage private activity related to the goals and objectives of the Integrated Waste Management Program.

48010. Beginning June 30, 1991, and annually thereafter, the Controller shall transfer to the General Fund from the Waste Management Incentive Account an amount equal to the tax credits provided during the immediately prior calendar year pursuant to Section 23612.5 of the Revenue and Taxation Code. The estimated amount of the tax credits meeting this criteria shall be reported by the State Board of Equalization to the Controller and the Department of Finance by April 30 of each year.

CHAPTER 3 OTHER PROVISIONS

48500 If any provisions of this division or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

48501. In any civil action brought pursuant to this division in which injunctive relief is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunctive relief is not granted, or that the remedy at law is inadequate, and any form of injunctive relief shall be granted without those allegations and without that proof.

48502. Notwithstanding any other provision of law, the powers and duties of the State Department of Health Services pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, including those concerning the issuance of permits for hazardous waste disposal sites, enforcement activities related to the handling, transportation, storage, use, processing, and disposal of hazardous wastes, and the development of programs for the recycling and recovery of resources from hazardous wastes, shall not be assumed or duplicated by the board pursuant to its responsibilities, powers, and duties provided in this division.

PART 8. GARBAGE AND REFUSE DISPOSAL

CHAPTER 1. GARBAGE DISPOSAL DISTRICTS

Article 1 Definitions

49000. "District," as used in this chapter, means a district formed pursuant to this chapter or pursuant to any law which it supersedes.

Article 2. Formation

49005. Any portion or portions of a county, whether contiguous or noncontiguous, and whether the portion or portions include incorporated or unincorporated territory, may be formed into a garbage disposal district in the manner and under the proceedings set forth in this chapter, except that less than the whole of any city shall not be included in the district without unanimous consent of the governing body of the city and no parcel of noncontiguous territory which is less than a full subdivision or which contains less than 10 privately owned acres may be included in any district.

49006. (a) The board of supervisors may determine, by resolution, that a portion of the county is in need of facilities for the disposal of garbage and should be formed into a district.

(b) Upon making the determination under subdivision (a), the board of supervisors shall fix a time and a place for a hearing on the matter of the formation of the district, which time shall be not less than three weeks after the adoption of the resolution, and shall direct the clerk of the board to publish a notice once a week for three successive weeks in a newspaper which is circulated in the territory that is proposed to be organized into a district and which the board deems most likely to give notice to the inhabitants of the territory

49007. The notice shall state the fact that the board of supervisors has fixed the time and place, which shall be stated in the notice, for a hearing on the matter of the formation of a garbage disposal district.

49008 The notice shall describe the territory or shall specify the exterior boundaries of the territory proposed to be organized into a district. So far as practicable, the boundaries shall be the center lines of highways

49009. At any time prior to the time fixed for a hearing of the matter, any person interested may file with the clerk of the board written objections to the formation of the district

At the time and place fixed for the hearing or at any time to which the hearing may be continued, the board of supervisors shall consider and pass on all objections to the creation of the district, or to the inclusion of any territory in the district

At the hearing, the board of supervisors may exclude any territory that, in the opinion of the board of supervisors, would not be benefited by inclusion in the district.

49010. At the conclusion of the hearing, the board of supervisors shall either adopt an order abandoning the creation of the proposed district or shall, by resolution, order the matter of the creation of the district, within the boundary lines determined upon at the hearing, to be submitted to the voters registered in the proposed district at an election to be called for that purpose.

At the election only voters registered in the proposed district shall be permitted to vote.

49011. Election precincts shall be established by the board of

supervisors, and election boards composed of one inspector, one judge, and one clerk shall be named. At least one week prior to the election, notice of the election shall be given by publication in a newspaper of general circulation in the proposed district In other matters, the election shall be conducted in the manner ordered by the board of supervisors.

49012 (a) Within five days after the district formation election has been called, the board of supervisors shall transmit, by registered mail, a written notification of the election call to the executive officer of the local agency formation commission of the county or principal county in which the territory or major portion of the territory of the proposed district is located. The written notice shall include the name and a description of the proposed district and may be in the form of a certified copy of the resolution adopted by the board of supervisors.

(b) The executive officer of the local agency formation commission, within five days after being notified that a district formation election has been called, shall submit to the local agency formation commission, for its approval or modification, an impartial analysis of the proposed district formation.

(c) The impartial analysis shall not exceed 500 words in length and shall include a specific description of the boundaries of the district proposed to be formed

(d) The local agency formation commission, within five days after the receipt of the executive officer's analysis, shall approve or modify the analysis and submit it to the officials in charge of conducting the district formation election.

49013. (a) The board of supervisors or any member or members of the board authorized by the board, or any individual voter or bona fide association of citizens entitled to vote on the district formation proposition, or any combination of those voters and associations of citizens, may file a written argument for or a written argument against the proposed district formation.

(b) Arguments shall not exceed 300 words in length and shall be filed with the officials in charge of conducting the election not less than 54 days prior to the date of the district formation election

49014. (a) If more than one argument for or more than one argument against the proposed district formation is filed with the election officials within the time prescribed, the election officials shall select one of the arguments for printing and distribution to the voters.

(b) In selecting the arguments, the election officials shall give preference and priority in the order named to the arguments of the following:

(1) The board of supervisors or any member or members of the board authorized by the board.

(2) Individual voters or bona fide associations of citizens or a combination of those voters and associations.

49015. (a) The officials in charge of conducting the election shall

cause a ballot pamphlet concerning the district formation proposition to be voted on to be printed and mailed to each voter entitled to vote on the district formation question.

(b) The ballot pamphlet shall contain all of the following in the order prescribed:

(1) The complete text of the proposition.

(2) The impartial analysis of the proposition prepared by the local agency formation commission.

(3) The argument for the proposed district formation.

(4) The argument against the proposed district formation.

(c) The election officials shall mail a ballot pamphlet to each voter entitled to vote in the district formation election at least 10 days prior to the date of the election. The ballot pamphlet is "official matter" within the meaning of Section 10012 of the Elections Code.

49016. If at the election a majority of all those voting upon the question of creation of the district, and a majority of those voting thereon in each city is in favor of the formation of the district, the board of supervisors shall make an order forming the district and thereupon it is formed

The order shall contain the name of the district and a description of the boundaries, or otherwise indicate its territorial extent.

The order is conclusive evidence of the regularity of all prior proceedings, except the adoption and publication in full of the resolution of intention, and of the fact of the holding of the hearing on formation.

49017 (a) A district may be formed for the exclusive purpose of providing, maintaining, and operating a garbage and refuse disposal site. In forming a district for this limited purpose, the determination of the board of supervisors required by Section 44006 shall be that this is the exclusive purpose of the district. In all other matters a district shall be formed in the same manner as other districts under this chapter. On formation, the district shall have only those powers granted to districts by this chapter that are reasonably necessary to carry out the exclusive purpose.

(b) A district formed for the exclusive purpose of providing, maintaining, and operating a garbage and refuse disposal site may issue bonds and levy taxes therefor in the same manner as provided for bonds of garbage and refuse disposal districts pursuant to Article 7 (commencing with Section 44160) of Chapter 2, and may issue revenue bonds pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code).

Article 3 Administration

49018. The board of supervisors is the governing body of the district and may do any or all of the following:

(a) Make and enforce all rules and regulations necessary for the administration and government of the district, and for the collection

and disposal of garbage and other refuse matter in the district.

(b) Appoint agents and employees for the district sufficient to maintain and operate the property acquired for the purposes of the district.

(c) Acquire in the name of the county, by gift, purchase, condemnation, or otherwise, and own, control, manage, and dispose of, any interest in real or personal property necessary or convenient for the collection and disposal of the garbage or other refuse matter of the district.

(d) Perform all of the acts necessary or proper to accomplish the purposes of this chapter.

49019. (a) The board of supervisors may enter into contracts for the disposal of garbage and other refuse matter. Whenever the board enters into, or renews such a contract, it shall advertise for bids for the performance of the work in a newspaper of general circulation in the county. The advertisement shall be published pursuant to Section 6062 of the Government Code. If there is no newspaper of general circulation published in the county, the notice shall be given by posting in three public places for at least two weeks.

(b) All bidders shall be granted an opportunity to ascertain the details of the nature of the work to be done under the contract. The contract shall be let to the lowest responsible bidder. If no satisfactory bid is obtained, the board may reject all bids. If all bids are rejected, the board of supervisors may readvertise for bids or, without the necessity of readvertising, may enter into contracts for the disposal of garbage and other refuse for a term not to exceed six months on terms that are necessary or proper in the exercise of the district's powers.

49020. If an emergency occasioned by default of a contractor or other circumstances which would be detrimental to the public health, safety, or welfare of the inhabitants of the district, the board of supervisors may, without the necessity of advertising for bids, enter into contracts for the disposal of garbage and other refuse for a term not to exceed six months on terms that are necessary or proper, in the exercise of the districts' power.

Article 4. Taxation

49030. The board of supervisors shall levy a tax each year upon the taxable property in the district sufficient to defray the cost of the disposal of garbage and other refuse in the district, and of the maintenance of the district, and to meet other expenditures authorized by this chapter

The tax shall be levied and collected at the same time, and in the same manner, as general county taxes levied for county purposes and, when collected, shall be paid into the county treasury and used in furtherance of the purposes of this chapter.

49031 For any district in a county with a population of six million or more, the board of supervisors may prescribe and collect garbage

and refuse collection and disposal service fees for the purpose of defraying the cost of the disposal of garbage and refuse in the district, maintaining the district, and meeting other expenditures authorized by this chapter.

Subject to the additional requirements of Section 49032, fees and charges prescribed, revised, and collected pursuant to this section shall be prescribed, revised, and collected pursuant to Article 4 (commencing with Section 5470) of Chapter 6 of Part 3 of the Health and Safety Code.

49032 (a) Prior to adoption of the initial ordinances prescribing the fees provided for in Section 49031, the board of supervisors shall place before the voters of the district the question whether the district shall be authorized to prescribe fees. If the voters do not approve that authorization, a subsequent election to secure that approval shall not be held within one year of the date of the prior authorization election.

(b) The approval of the voters may be secured at a district or countywide election or by a ballot mailed to each registered voter of the district.

(c) The board of supervisors shall determine what majority of the voters voting on the proposition shall be required to approve the proposition

Article 5. Claims

49040 All claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein, or by other statutes or regulations expressly applicable thereto.

Article 6. Annexation

49050. The boundaries of any district may be altered, and outlying districts or territory, whether incorporated or unincorporated, and whether contiguous or noncontiguous, may be annexed pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 6 of the Government Code). However, no parcel of noncontiguous territory which contains less than 10 privately owned acres may be annexed to any district.

CHAPTER 2. GARBAGE AND REFUSE DISPOSAL DISTRICTS

Article 1. Definitions

49100. "District," as used in this chapter, means a district formed pursuant to this chapter or pursuant to any law which it supersedes.

Article 2. Formation

49110. Any contiguous portion or portions of a county, whether the portion or portions include incorporated or unincorporated territory, may be formed into a garbage and refuse disposal district in the manner and under the proceedings specified in this chapter However, no city, or any portion thereof, shall be included in the district without the consent of the governing body of the city adopted by a favorable vote of two-thirds or more of its members.

49111. (a) The board of supervisors may determine, by resolution, that a portion of the county is in need of a site for the disposal of garbage and refuse and should be formed into a district.

(b) Upon making the determination under subdivision (a), the board of supervisors shall fix a time and a place for a hearing on the matter of the formation of the district, which time shall be not less than three weeks after the adoption of the resolution. The board of supervisors shall also direct the clerk of the board to publish a notice once a week for three successive weeks in a newspaper which is circulated in the territory that is proposed to organize into a district and which the board deems most likely to give notice to the inhabitants of the territory.

49112. The notice shall state the fact that the board of supervisors has fixed the time and place, which shall be stated in the notice, for a hearing on the matter of the formation of a garbage and refuse disposal district.

49113. The notice shall describe the territory, or shall specify the exterior boundaries of the territory, proposed to be organized into a district.

49114. At any time prior to the time fixed for a hearing on the matter, any person interested may file with the clerk of the board of supervisors written objections to the formation of the district At the time and place fixed for the hearing or at any time to which the hearing may be continued, the board of supervisors shall consider and pass on all objections to the formation of the district or to the inclusion of any territory in the district. At the hearing, the board of supervisors may exclude any territory that, in the opinion of the board of supervisors, would not be benefited by inclusion in the district.

49115. At the final hearing the board of supervisors shall make those changes in the proposed boundaries that are advisable and shall define and establish the boundaries

49116. If, from the testimony given before the board of supervisors, it appears to the board of supervisors that the public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the board of supervisors. The name shall be descriptive of the functions of the district.

49117. The county clerk shall immediately file for record in the office of the county recorder of the county in which the land embraced in the district is situated, and also shall file with the Secretary of State, a certified copy of the order of the board of supervisors From and after the date of the filing of the certified copy with the Secretary of State, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter or necessarily incident thereto.

49118. No district shall be formed under this chapter after October 1, 1961.

Article 3 Board of Directors

49120. (a) Within 30 days after the filing with the Secretary of State of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed.

(b) The governing board of a district is a board of directors of not less than three members. The district board shall be appointed as follows:

(1) If the district includes only one incorporated city, two members of the governing body shall be selected by the board of supervisors and one member of the governing body shall be selected by the city council.

(2) If the district includes two or more cities, only one member of the governing body of the district shall be selected by the board of supervisors to represent the unincorporated area. The legislative body of each city within the district shall appoint one member to represent each incorporated city within the district. If the selection of members pursuant to this subdivision results in the governing body having an even number of members, those members may appoint an additional member from the district at large.

(c) A vacancy shall be filled in the same manner as an original appointment The person appointed shall reside within the area he or she represents.

49121. Any governing body authorized by Section 49120 to appoint a member to the district board may make the appointment from its own members.

49122. The members of the district board in office on September 15, 1961, shall, as soon as practicable thereafter, so classify themselves, by lot, that a majority of the members serve until January 1, 1963, and a minority of the members of the district board shall serve until January 1, 1965, or until the appointment of their successors or their resignation or termination of residence within the area they represent Thereafter, the term of office of each succeeding member of the district board shall be four years and each shall hold office until the appointment of his or her successor or his or her resignation or termination of residence within the area he or she represents.

49123. (a) Members of the district board may be reimbursed for their actual and necessary expenses incurred in the performance of

official business of the district as approved by the district board.

(b) Members of the district board may also receive not more than fifty dollars ($50) per diem for each day of actual attendance at the meetings of the board, with the per diem to be established by order of the board and entered upon its minutes. No member of the district board shall, however, receive more than one hundred dollars ($100) per diem in any calendar month.

(c) In addition to any other compensation received pursuant to this section, the chairperson of the district board and the secretary of the district board, if the secretary is a member of the district board, shall each receive monthly compensation as established by the district board.

Article 4. Powers and Duties

49130. The district board may do all of the following.

(a) Make and enforce all rules and regulations necessary for the administration and government of the district and for the operation and maintenance of the garbage and refuse disposal site acquired by the district.

(b) Appoint agents, employees, and experts for the district sufficient to maintain and operate the property acquired for the purposes of the district.

(c) Enter into contracts with other public agencies which may be necessary or proper to accomplish the purposes of the district.

(d) Acquire, in the name of the district, by gift, purchase, condemnation, or otherwise and own, control, manage, dispose of, and exchange, any interest in real or personal property.

(e) Perform all acts necessary or proper to accomplish the purposes of this chapter.

(f) Maintain and operate a garbage disposal site and facilities and fix and collect fees for the use thereof.

(g) Borrow money and incur indebtedness and guarantee the performance of its legal or contractual obligations.

49131. The district board may designate any depository for the custody of any or all the money collected or received for district purposes pursuant to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

A depository shall give security sufficient to secure the district against possible loss and shall pay the warrants drawn by the district for demands against the district under the rules that the district board prescribes.

Article 5. Taxation

49140. At least 15 days before the first day of the month in which the board of supervisors of the county in which the district is situated is required by law to levy the amount of taxes required for county purposes, the district board shall furnish the board of supervisors and

county auditor of the county an estimate in writing of the amount of money necessary for district's purposes during the next ensuing fiscal year.

The county tax collector shall collect the district taxes at the same time and in the same manner as the county taxes are collected. Unless the governing board has designated any depository pursuant to Section 49131, all money collected for district purposes shall be paid into the county treasury and paid out on warrants of the county auditor drawn on the county treasurer, upon order of the district board.

The amount of money necessary for the district's purposes may include a cash-basis fund.

49141 The district board may also include in its estimate prepared pursuant to Section 49140 an unappropriated reserve to cover expenditures that have not been provided for, or that have been insufficiently provided for, or for unforeseen requirements.

The money in any unappropriated reserve fund so established may be made available for appropriation by a four-fifths vote of the members of the district board at any regular or special meeting of which all members have had reasonable notice.

In addition, the district board may further provide, by resolution, for transfers or revisions of unencumbered funds within the general district expenditures provided for during any fiscal year where, in the opinion of the district board, the transfer or revision is necessary for purposes of the district.

49142. The board of supervisors of the county in which the district is situated shall, at the time of levying county taxes, levy a tax to be known as the "_____ garbage and refuse disposal district tax," sufficient to raise the amount reported to it by the district board, upon property of the district in the county.

The board of supervisors shall determine the rate of the tax by deducting 5 percent for anticipated delinquencies from the total assessed value of the taxable property of the district within the county as it appears on the assessment roll of the county, and then dividing the sum reported to it by the district board by the remainder of the total assessed value.

49143. For purposes of the district, the board of supervisors shall levy a tax of not more than fifteen cents ($0.15) on each one hundred dollars ($100) of taxable property of the district in the county.

49144. The district board may establish and maintain a cash-basis fund for the purpose of defraying district expenses between the beginning of a fiscal year and the time of distribution of tax receipts in a fiscal year The cash-basis fund shall not exceed 60 percent of the estimated expenditures for a fiscal year.

Article 6. Claims

49150. All claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4

(commencing with Section 940) of Division 3 6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

Article 7. Bonds

49160 No general obligation bonds shall be issued by the district unless the issuance thereof is approved by the electors of the district at a special election as provided in this article. If the district board finds that it is necessary to incur a bonded indebtedness to obtain funds with which to carry out the purposes of the district, it may submit the proposition to the voters of the district. For that purpose, a special election shall be called by resolution.

49161 The resolution shall state all of the following:

(a) The general objectives and purposes for which it is proposed to incur an indebtedness.

(b) A general description of all property to be acquired or damaged and work to be executed through the expenditure of the funds secured by the issuance and sale of the bonds.

(c) An estimate of the cost of the proposed work.

(d) The amount of the bonds proposed to be issued.

(e) The number of years beyond which the all of the bonds are to run.

(f) The rate of interest or a maximum rate of interest to be paid.

(g) The date of the election.

(h) The election precincts, polling places, and election officers.

49162. For purposes of the bond election, the district board may consolidate into one precinct several precincts established for general election purposes and describe the precinct by reference to the general election precincts.

49163. An election board consisting of one inspector, one judge and one clerk shall be appointed by the district board for each precinct.

49164. Only voters registered in the district are eligible to vote at the bond election.

49165. A resolution calling the election shall be published once a week for three successive weeks in a newspaper having a general circulation in the district and designated by the district board. No other notice of the election is required

49166 If two-thirds of the votes cast are in favor of incurring the bonded indebtedness as proposed, bonds of the district for the amount stated in the resolution calling the election shall be issued and sold.

49167. The validity of the bonds after their issuance shall not be questioned in any court except on the ground that the provisions of this chapter authorizing their issuance are unconstitutional, or that the required hearing regarding the formation of the district was not regularly held or proper notice of it was not given

49168. The district board shall prescribe, by resolution, the form

of the bonds and interest coupons. The bonds shall be payable at the times and at a place to be fixed by the district board and designated in the bonds, together with interest on all sums unpaid on that date until all of the indebtedness has been paid. The term of the bonds issued shall not exceed 40 years.

49169. The bonds shall be issued in the denominations that the district board determines, except that no bond shall be of a denomination less than one hundred dollars ($100) or greater than one thousand dollars ($1,000).

The bonds shall be payable on the day and at the place fixed in the bonds, and with interest at the rate specified in the bonds, which rate shall not be in excess of 8 percent per annum and shall, after the first year, be payable semiannually.

49170. The bonds shall be signed by the chairperson of the district board and countersigned by the county auditor, and the seal of the district board shall be affixed. The interest coupons of the bonds shall be numbered consecutively and signed by the county auditor by his or her engraved or lithographed signature.

49171. If any officer whose signature or countersignature appears on the bonds ceases to be an officer before the delivery of the bonds to the purchaser, his or her signature or countersignature shall be as valid as if he or she had remained in office until the delivery of the bonds.

49172. The district board may issue and sell bonds of the district at not less than par value, and the proceeds shall be placed in the treasury of the county.

49173. All premiums and accrued interest received shall be paid into the fund to be used for the payment of principal of, and interest on, the bonds and the remainder of the proceeds of the sale shall be paid into the construction fund of the district. Proper records of the transactions shall be placed upon the books of the county treasurer

49174 (a) The funds in the construction fund shall be applied exclusively to the purposes and objects mentioned in the resolution calling the bond election.

(b) Payments from the construction fund shall be made upon demands authorized by the district board, and shall be prepared, presented, and audited in the same manner as demands upon funds of the county.

49175. If the proposition of issuing bonds submitted at the bond election fails to receive the requisite number of votes, the district board may, after expiration of six months after that election, call or order another bond election, either for the same objects and purposes, or for any other object or purpose of the district.

49176. If bonds have been issued by the district and the proceeds of the sale have been expended and the district board, by resolution passed by a vote of two-thirds of all its members, determines that the public interest or necessity of the district demands the issuance of additional bonds for carrying out any of the objects of the district, the district board may again submit to the voters the question of issuing

additional bonds in the same manner as for a first issue. All provisions of this chapter for the issuance and sale of bonds, and for the expenditure of proceeds, apply to the issuance of additional bonds.

49177. Bonds and interest thereon shall be paid by revenue derived from an annual tax upon the property in the district, and all the property in the district shall be and remain liable to be taxed for those payments.

The bonds and the interest thereon shall not be taxable in this state.

49178. (a) An issue of bonds is hereby defined to be the aggregate principal amount of all of the bonds authorized to be issued in accordance with a proposal submitted to and approved by the electors of the district, but no indebtedness is deemed to have been contracted until bonds have been sold and delivered and then only to the extent of the principal amount of the bonds so sold and delivered.

(b) The district board issuing bonds may, in its discretion, divide the aggregate principal amount of the issue into two or more divisions or series and fix different dates for the bonds of each separate division or series. If any authorized issue is divided into two or more divisions or series, the bonds of each division or series may be made payable at the time or times fixed by the district board, separate and distinct from the time or times for the payment of bonds of any other division or series of the same issue.

49179. Whenever a district has issued bonds, in its annual statement to the board of supervisors as to the amount of money needed for district purposes during the next ensuing fiscal year pursuant to Section 44140, the district board shall include, in addition thereto, the amount necessary to pay the principal of, and interest on, those bonds that will become due before the time for making the next general tax levy

49180 If the district board fails to furnish to the board of supervisors a statement of the amount of money necessary to pay the principal of, and interest on, the bonds as required by Section 49179, the board of supervisors shall ascertain that amount and shall levy it and cause it to be collected.

49181. The principal of, and interest on, the bonds shall be paid by the treasurer of the county in the manner prescribed by law for the principal of, and interest on, the bonds of the county.

Article 8. Revenue Bonds

49190. A district formed pursuant to this chapter is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and the provisions of that law are applicable to that district.

Article 9. Change of Boundaries

49195. The boundaries of any district may be altered, and outlying contiguous territory, whether incorporated or unincorporated, may be annexed pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 1 of the Government Code).

CHAPTER 3. FRANCHISE BY COUNTIES

49200. Every franchise or permit for the collection, disposal, or destruction, or any combination thereof, of garbage, waste, offal, and debris, shall be granted by the board of supervisors only under the terms and conditions of this chapter.

49201 (a) Any county may, by resolution adopted by the board of supervisors, call for bids for the granting of a franchise or permit, exclusive or otherwise, for the collection, disposal, or destruction, or any combination thereof, of garbage, waste, offal, and debris, according to the terms and conditions set forth in the resolution, for a period of time not to exceed 25 years.

(b) After adoption of the resolution pursuant to subdivision (a), the board of supervisors shall cause to be published once a week for two successive weeks a notice which shall set forth all of the terms and conditions in the resolution and the time, date, and place for the receiving and opening of sealed bids, which shall not be sooner than four full weeks from date of the first publication of the notice.

(c) Upon examination by the board of supervisors of the bids, the franchise or permit may be awarded to the lowest qualified bidder. The board of supervisors may postpone the granting of the franchise or permit from time to time until it has had a full and complete opportunity to examine the merits of each bid.

49202. The successful bidder shall file with the board of supervisors, upon grant of the franchise or permit, a bond in favor of the county in an amount and under the terms and conditions prescribed by the board of supervisors

49203 The county may, in the resolution and advertised notice, impose terms and conditions other than those specified in this chapter if they are not in conflict with this chapter.

49204. A bidder may in his or her franchise or permit bid set forth any propositions, terms, and conditions that the bidder may desire to offer, or receive the benefit from, which may be in addition to, or in conflict with, those specified in the resolution or advertised notice calling for bids, if they are not in conflict with this chapter.

49205. The board of supervisors which, prior to July 1, 1980, adopted an ordinance governing the granting of franchises or permits for the collection, disposal, or destruction, or any combination thereof, of garbage, waste, offal, and debris, and which granted franchises or permits pursuant to that ordinance covering

defined zones or areas of the county, may extend the term of any of those franchises or permits for only one additional period not exceeding 25 years without advertising or calling for bids as required by Section 49201, if all of the following conditions exist:

(a) (1) The county franchise or permit ordinance contains rules and regulations for the protection of the public health and welfare and provides that the board of supervisors may control the rates to be charged customers by the franchise or permitholders.

(2) Notwithstanding any provision in a county ordinance, the board of supervisors shall not increase the rates to be charged to customers by franchise or permitholders without first calling and holding a public hearing on the proposed increase in rates. Publication of notice of the hearing required by this paragraph shall be made by the board of supervisors pursuant to Section 6066 of the Government Code

(b) The franchise or permit proposed to be extended was granted in strict compliance with the requirements for calling and advertising for bids and award to the lowest qualified bidder pursuant to Section 49201, and was otherwise granted in strict compliance with this chapter.

(c) The franchise or permit proposed to be extended was granted on a nonexclusive basis so that the board of supervisors is not precluded from granting additional franchises or permits to cover the same areas if, in the judgment and discretion of the board of supervisors, the public interest will be served thereby.

(d) The county franchise or permit ordinance authorizes the county auditor or any other qualified public accountant to audit periodically the books and records of the franchise or permitholders.

CHAPTER 4. CITY GARBAGE DISPOSAL CONTRACTS

49300. The legislative body of any incorporated city may contract for the collection or disposal, or both, of garbage, waste, refuse, rubbish, offal, trimmings, or other refuse matter under the terms and conditions that are prescribed by the legislative body of the city by resolution or ordinance

CHAPTER 5. GARBAGE AND REFUSE DUMPS

49400. No city, county, district, or public or municipal corporation shall acquire and operate, or cause to be acquired and operated, a dump or site for the disposal of garbage or refuse, or a transfer station or collection point for garbage or refuse, within a city without the consent of the city council or within the unincorporated area of a county without the consent of the board of supervisors.

CHAPTER 6. SOLID WASTE ENTERPRISES

Article 1. Definitions

49500. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

49501. "Exclusive solid waste handling services" means any action by a local agency, whether by franchise, contract, license, permit, or otherwise, whereby the agency itself or one or more other local agencies or solid waste enterprises has the exclusive right to provide solid waste handling services of any class or type within all or any part of the territory of the local agency.

49502 "Local agency" means any county, city, or district having the authority to provide solid waste handling services either by the agency itself or by authorizing or permitting other local agencies or solid waste enterprises to provide solid waste handling services.

49503. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes

49504. "Solid waste enterprise" means any individual, partnership, joint venture, unincorporated private organization, or private corporation regularly engaged in the business of providing solid waste handling services.

49505 "Solid waste handling services" means the collection, transportation, storage, transfer, or processing of solid wastes for residential, commercial, institutional, or industrial users or customers.

Article 2. Legislative Findings

49510. The Legislature finds and declares as follows:

(a) Although local agencies are authorized to furnish solid waste handling services, in extensive parts of the state solid waste enterprises are furnishing all or substantial portions of necessary solid waste handling services.

(b) It is in the public interest to foster and encourage solid waste enterprises so that, at all times, there will continue to be competent enterprises willing and financially able to furnish needed solid waste handling services.

Article 3. Continuation of Services

49520. If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been provided for more than three previous years, the solid waste enterprise may continue

to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.

If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of the contract or franchise or five years, whichever is less.

49521. A solid waste enterprise providing solid waste handling services is subject to this chapter only under both of the following conditions:

(a) The services of the solid waste enterprise are in substantial compliance with the terms and conditions of the franchise, contract, license, or permit, and meet the quality and frequency of services required by the local agency in other areas not served by the solid waste enterprise

(b) The rates charged by the enterprise may be periodically reviewed and set by the local agency.

49522. Nothing in this chapter affects the right of a city following annexation to terminate for cause a franchise, contract, license, or permit held by a solid waste enterprise authorized by the county.

49523. Any local agency or solid waste handling enterprise may contract, upon mutually satisfactory terms, for the termination of all or any part of the business of the solid waste enterprise before the expiration of the period specified in Section 49520.

CHAPTER 7. BURNING GARBAGE

Article 1 General Provisions

49600. No person shall operate in any city or town any crematory for the destruction by fire heat of garbage, ashes, offal, or other refuse matter, except as provided in this chapter.

49601. No crematory described in Section 49600 shall be operated in this state except in a manner which will prevent the propagation of disease through contamination of the atmosphere of any city or town by the gases or fumes arising from the fires or ovens of the crematory.

49602. Every person who burns by fire heat or destroys by cremation any garbage, ashes, offal, or other refuse matter in violation of this article is guilty of a misdemeanor.

Article 2 Cremation of Animal Refuse

49620. Any person who destroys, or who attempts to destroy, the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop by fire within one-fourth of a mile of any city, town, or village, except in a crematory whose construction and

operation are satisfactory to the board of health of the city or the health officer of the town, is guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than one year or by fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 23. Section 45002 of the Revenue and Taxation Code is amended to read:

45002. The collection and administration of the fee referred to in Section 45051 shall be governed by the definitions contained in Part 6 (commencing with Section 46000) of Division 30 of the Public Resources Code, unless expressly superseded by the definitions contained in this part.

SEC. 24. Section 45009 of the Revenue and Taxation Code is amended to read:

45009. "Fee payer" means any person liable for the payment of a fee imposed by Section 46801 of the Public Resources Code

SEC. 25. Section 45051 of the Revenue and Taxation Code is amended to read:

45051. The fee imposed pursuant to Section 46801 of the Public Resources Code shall be administered and collected by the board in accordance with this part.

SEC. 26 Section 45101 of the Revenue and Taxation Code is amended to read:

45101. Every person who operates a solid waste landfill required to have a solid waste facilities permit pursuant to Section 46801 of the Public Resources Code shall register with the board.

SEC. 27. Section 45151 of the Revenue and Taxation Code is amended to read:

45151. The fee collected and administered under Section 45051 is due and payable to the board annually on or before July 1 of each year Each fee payer, on or before March 1 of each year, shall prepare a report for the preceding calendar year, in the form prescribed by the board, showing the information required to be reported by Section 46801 of the Public Resources Code and any other information that the board deems necessary to carry out this part.

The fee payer shall deliver the report to the office of the board on or before March 1 of each year. The fee payer shall deliver a remittance of the amount of tax assessed pursuant to Section 46801 of the Public Resources Code to the office of the board on or before the following July 1.

SEC. 28. Section 45855 of the Revenue and Taxation Code is amended to read:

45855. Any information regarding solid wastes which is available to the board shall be made available to the California Integrated Waste Management Board.

SEC. 29. Section 45901 of the Revenue and Taxation Code is amended to read:

45901. All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Section 45051 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 Treasurer to be deposited in the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund.

SEC. 30. Section 45981 of the Revenue and Taxation Code is amended to read:

45981. (a) The board shall provide any information obtained under this part to the California Integrated Waste Management Board.

(b) The California Integrated Waste Management Board and the board may utilize any information obtained pursuant to this part to develop data on the generation or disposal of solid waste within the state. Notwithstanding any other provision of this chapter, the California Integrated Waste Management Board may make waste generation and disposal data available to the public

SEC. 31. Section 45982 of the Revenue and Taxation Code is amended to read·

45982. Neither the California Integrated Waste Management Board, nor any person having an administrative duty under Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code shall disclose the business affairs, operations, or any other information pertaining to a fee payer which was submitted to the board in a report or return required by this part, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by Section 45981 or this section. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

SEC. 32. (a) The Legislature finds and declares by this act that it has expressly repealed and not recodified Articles 1 (commencing with Section 66700), 3 (commencing with Section 66730), 4 (commencing with Section 66740), and 5 (commencing with Section 66750) of Chapter 1, Articles 2 (commencing with Section 66780), 3 (commencing with Section 66785), and 3.5 (commencing with Section 66788) of Chapter 2, and Article 3 (commencing with Section 66796.45) of Chapter 3 of Title 7.3 of the Government Code.

(b) Except as expressly provided in subdivision (a), the Legislature declares that the recodification of the balance of Title 7.3 (commencing with Section 66700) of the Government Code by this act is a continuation of, and not a change to, existing law

(c) The Legislature declares that by this act it has recodified all of Chapters 1 (commencing with Section 4100) to 3 (commencing with Section 4300), inclusive, of Part 2 (commencing with Section

4100) of Division 5 of the Health and Safety Code and that all provisions are a continuation of, and not a change to, existing law. In the event of any conflict or inconsistency between the provisions of Parts 1 (commencing with Section 40000) to Part 7 (commencing with Section 47000), inclusive, and Part 8 (commencing with Section 48000) of Division 30, as enacted by this act, the provisions of Parts 1 to 7, inclusive, shall prevail.

(d) On the effective date of this section, the California Integrated Waste Management Board shall strictly implement and enforce the provisions of this act. All articles expressly repealed by this act shall, on the effective date of this section, have no force or effect.

SEC. 33. Any section of any act enacted by the Legislature during the 1989 calendar year which takes effect on or before January 1, 1990, and which amends, amends and renumbers, adds, or repeals and adds a section which is repealed by Sections 3 to 21, inclusive, of this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

SEC. 34 (a) Notwithstanding any other provision of this act, until a sufficient number of members are appointed to the California Integrated Waste Management Board pursuant to Chapter 3, (commencing with Section 40400) of Part 1, of Division 30 of the Public Resources Code and take office to transact the business of the board, as described in Section 40410 of the Public Resources Code, the former California Waste Management Board shall perform the duties of the California Integrated Waste Management Board, as prescribed in this act.

(b) Except as provided in Section 40434 of the Public Resources Code, the California Integrated Waste Management Board succeeds to and is vested with all of the powers, duties, funds, officers, and employees of the California Waste Management Board.

SEC 35. It is the intent of the Legislature that, if this bill and SB 1260 are both enacted and become effective January 1, 1990, and this bill is enacted after SB 1260, that the provisions of Division 30 (commencing with Section 40000), as added to the Public Resources Code by this bill, and Division 30 (commencing with Section 40100), as added to the Public Resources Code by SB 1260, form a single, unified California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40400) of the Public Resources Code).

Therefore, if both this bill and SB 1260 are enacted and this bill is enacted last, this bill does not prevail over SB 1260 and the provisions of both bills shall become operative in a single, unified Division 30 (commencing with Section 40000) of the Public Resources Code

SEC. 36. The California Integrated Waste Management Recycling Board may use not more than six hundred thousand dollars ($600,000) in the 1989–90 fiscal year and not more than one million two hundred thousand dollars ($1,200,000) in the 1990–91 fiscal year from the Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund, if those respective amounts are

appropriated in the Budget Act for those fiscal years from the Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund, for initial startup costs incurred pursuant to Chapter 3 (commencing with Section 40400) and Chapter 4 (commencing with Section 40500) of Part 1 of Division 30 of the Public Resources Code. Any funds made available from the Solid Waste Disposal Site Cleanup and Maintenance Account for the purposes specified in this section shall be a loan, which shall be repaid to the account, with interest calculated at the rate the funds would have earned in the Pooled Money Investment Account as fee revenue becomes available.

SEC. 37. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1096

An act to add Division 30 (commencing with Section 40100) to the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature declares that it is incumbent upon the state to demonstrate a leadership role in implementing the integrated waste management hierarchy of actions specified in Section 40051 in order to assist in accomplishing the goals set forth in this division.

(b) It is the intent of the Legislature to place high priority on implementing state programs that accomplish the following objectives:

(1) Promote changes to manufacturing and consumption habits that result in the reduction of generation of waste.

(2) Increase the procurement of recycled materials by the state.

(3) Improve markets for recyclable materials.

(4) Conduct research and development to improve the technology of recycled materials manufacturing processes

(5) Inform and educate the public about the integrated waste management hierarchy.

(c) The responsibility for implementation of the integrated waste management hierarchy is borne equally by the government, business and individual citizens. To define the critical role of the state program to the success of local implementation of integrated waste management programs, the Legislature hereby declares the need to identify specific state program actions to reduce the amount of waste generated, enhance the markets for recycled products, increase recycled products procurement by the state, define the role of business and industry in changing wasteful manufacturing practices, and to implement a comprehensive public information and education program to achieve the goals of integrated waste management.

SEC. 2. Division 30 (commencing with Section 40100) is added to the Public Resources Code, to read:

DIVISION 30. WASTE MANAGEMENT

PART 1. INTEGRATED WASTE MANAGEMENT

CHAPTER 2 DEFINITIONS

40100. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

40110. "Board" means the California Waste Management Board.

40115. "City" or "county" includes city and county.

40121. "Disposal facility" or "facility" means any facility or location where disposal of solid waste occurs.

40122. "Disposal site" or "site" includes the place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the landfill disposal of solid wastes. "Disposal site" includes solid waste landfill, as defined in Section 41318.

40160. "Operator" means the person to whom the approval to operate a disposal site, transfer/processing station, or collection system is granted.

40170. "Person" includes an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

40172. "Processing" means the reduction, separation, recovery, conversion, or recycling of solid waste.

40180. "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. "Recycling" does not include transformation, as defined in Section 40201.

40190. "Segregated from other waste material" means any of the following:

(a) The placement of recyclable materials in separate containers.

(b) The binding of recyclable material separately from the other waste material.

(c) The physical separation of recyclable material from other waste material.

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include hazardous waste.

40192. "Solid waste disposal" or "disposal" means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

40194. "Solid waste facility" includes a disposal facility, a disposal site, and a solid waste transfer or processing station.

40200. (a) "Transfer or processing station" or "station" includes those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport and those facilities utilized for transformation.

(b) "Transfer or processing station" or "station" does not include any of the following:

(1) A facility whose principal function is to receive, store, separate, convert or otherwise process, in accordance with state mimimum standards, manure.

(2) A facility whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal.

(3) The operations premises of a duly licensed waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with regulations adopted by the board.

40201. "Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

PART 3. STATE PROGRAMS

CHAPTER 1. STATE SOURCE REDUCTION PROGRAM

42000. A Source Reduction Advisory Committee is hereby established in the board which consists of seven members who have demonstrated expertise is source reduction.

42001. The committee shall recommend specific actions to the

board and the Legislature to reduce the volume of materials generated in the state. The committee shall develop specific recommendations for submittal to the board and for consideration by the Legislature.

42002. Recommendations developed by the committee shall include, but are not limited to, the following:

(a) Packaging and product design improvements.

(b) Development of product durability standards.

(c) Methods for increasing recycled feedstock use.

(d) Reducing toxicity of packaging and products.

(e) Evaluation of new technology developments.

42003. The Source Reduction Advisory Committee shall consist of the following representatives:

(1) One member representing the product packaging industry appointed by the Governor.

(2) One member representing the durable goods manufacturing industry appointed by the Governor.

(3) One member representing the nondurable goods manufacturing industry appointed by the Senate Rules Committee.

(4) One member representing the marketing/advertising industry appointed by the Senate Rules Committee.

(5) One member representing consumers appointed by the Speaker of the Assembly.

(6) One member representing an environmental group appointed by the Speaker of the Assembly.

(7) The chair of the board or his or her designee, who shall act as the chair of the committee.

42004. The Source Reduction Advisory Committee shall meet monthly for 12 months beginning in January 1991. Following the final meeting, the committee shall meet as frequently as necessary to summarize the findings of the committee and submit a report to the board on or before June 30, 1992, with recommendations for action to achieve source reduction goals.

42005. The board shall consider the recommendations of the committee and adopt any recommendations that it determines are appropriate. Recommendations adopted by the board shall be forwarded to the Legislature and the Governor within six months of formal adoption by the board and in a manner to be prescribed by the board.

42006. The Source Reduction Advisory Committee shall be reimbursed at a rate of one hundred dollars ($100) per day for each day of meeting, not to exceed four hundred dollars ($400) per month, plus expenses for travel calculated at the current per diem reimbursement structure for civil service employees of the state.

42007. In the event of the vacancy, replacement appointees may be appointed by the designated appointing power to serve the remainder of the term of office.

CHAPTER 2. RECYCLED MARKET DEVELOPMENT COMMISSION

42100. The Recycling Market Development Commission is hereby created in the board. The commission shall make the recommendations for expansion of markets for recyclable materials annually to the Governor and the Legislature and shall include the progress of markets development for recyclable materials.

42101. The commission shall consist of the following members:

(a) The chairperson of the board, or his or her designee, who shall serve as chair of the commission.

(b) The director, or his or her designee, of the Department of Commerce.

(c) One member, appointed by the Governor, who shall represent private manufacturing businesses.

42102. The commission shall meet at least quarterly or more frequently as determined by the board.

42103. The commission shall perform the following tasks:

(a) Establish a direct liaison with the private manufacturing industries in the state to promote increased utilization of recycled feedstock in manufacturing processes.

(b) Assist local governments in the inclusion of recycling activities into county Overall Economic Development Plans.

(c) Promote utilization of all available financial resources for expansion of recycling industry capacity.

(d) Review the research and development programs administered by the board and advise the board on such activities.

(e) Review state, local, and private industry product and materials procurement practices and recommend improvements to such practices.

42104. The commission shall report its recommendations to the Legislature and the Governor, specifying actions to be taken to accomplish the tasks assigned to the commission.

42105. The board shall provide staff support to the California Markets Development Commission.

CHAPTER 3. MARKET DEVELOPMENT ZONES

Article 1. General Provisions

42140. (a) The Legislature finds and declares that the health, safety, and welfare of the people of California depend upon the development, stability, and expansion of domestic markets for the postconsumer wastes collected by recycling within the state. Therefore, the Legislature finds and declares that the purpose of this act is to stimulate the recycling of postconsumer waste materials generated in California as raw materials used as feedstock by private business, industry, and commerce.

42141. Nothing in this chapter shall be construed to infringe upon regulations relating to civil rights, equal employment rights, equal

opportunity rights, or fair housing rights of any person or any environmental protection or public health law.

42142. The following definitions govern the construction of this chapter:

(a) "Applicant" means a person, city, county, or city and county applying for designation as a Recycling Market Development Zone.

(b) "Eligible area" means a geographic area meeting the criteria described in subdivision (d).

(c) "Postconsumer waste material" means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, and disposition and which does not include secondary waste material.

(d) "Recycling market development zone" or "zone" means any single or joint, contiguous parcels of property that, based on the determination of the board, meets at least the following criteria:

(1) The area has been zoned an appropriate land use for the development of commercial, industrial, or manufacturing purposes.

(2) The area is identified in the countywide integrated waste management plan as part of the market development section.

(3) The area is located in a city with an existing postconsumer waste collection infrastructure.

(4) The area may be used to establish commercial, manufacturing, or industrial processes which would produce end products that consist of not less than 50 percent recycled materials.

(e) "Secondary waste material" means industrial byproducts which would otherwise go to disposal facilities and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.

Article 2. Designation of Zones

42145. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary in order to assist in attracting private sector recycling investments to the area.

42146. Any parcel of property designated as a recycling market development zone shall retain this designation for 10 years.

42147. The local governing body, or any person through the local governing body, may apply to the board for designation as a recycling market development zone.

42148. On or before July 1, 1991, the board shall adopt regulations and guidelines concerning the necessary contents of each application for designation and, in the state integrated waste management plan, shall determine the maximum number of recycling market development zones to be designated pursuant to this chapter.

42149. The board may designate or redesignate recycling market development zones for persons applying for that designation.

42150. If there are more applications for designation than the number of recycling market development zones to be designated, the board shall select the applicants who shall receive the designation of a recycling market development zone based on a comparison of the applications submitted and an indication that the applicant's proposals include effective, innovative and comprehensive regulatory tax, and other incentive programs to attract private sector investment in the proposed recycling market development zone.

42151. For the purpose of Section 42150, "regulatory incentives" include, but are not limited to, all of the following:

(a) The suspension or relaxation of locally originated or modified building codes, zoning laws, and general plans.

(b) The elimination or reduction of fees for applications, permits, and local government services, and the establishment of a streamlined local permit process.

42152. For purposes of Section 42150, "tax incentives" include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

42153. For purposes of Section 42150, "other incentives" may include, but are not limited to, all of the following:

(a) The provision for expansion of infrastructure.

(b) Provisions for increased amounts of recyclable feedstock.

42154. The board shall consider the amount of remaining landfill capacity when evaluating applications for recycling market development zones.

42155. In evaluating an application for designation of a recycling market development zone, the board shall not deny the application solely because of technical deficiencies. The board shall provide applicants with an opportunity to correct technical deficiencies. An application shall be denied if technical deficiencies are not corrected within two weeks.

42156. Nothing in this chapter prohibits an applicant from seeking designation of an enterprise zone by the Department of Commerce and receiving economic incentives as defined in Section 7073 of the Government Code.

42157. In evaluating an application for designation of a recycling market development zone, the board shall consult with the Department of Commerce.

42158. Nothing in this section shall be interpreted to limit the authority of local governments to make land use decisions within their jurisdiction.

CHAPTER 4. RECYCLED-CONTENT HIGH GRADE, BLEACHED PRINTING AND WRITING PAPERS PROGRAM

Article 1. Definitions

42200. The following definitions govern the construction of this chapter.

42201. "Department" means Department of General Services.

42202. "Recycled-content high grade, bleached printing and writing papers" means all paper and woodpulp products containing postconsumer waste and secondary waste materials, as defined in this section. "Postconsumer waste" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include fibrous waste generated during the manfacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

"Recycled paper product" means a paper product with not less than 50 percent of its total weight consisting of secondary and postconsumer waste with not less than 10 percent of its total weight consisting of postconsumer waste.

Article 2. Purchases

42210. On and after January 1, 1991, the department shall ensure that at least 25 percent of all high grade, bleached printing and writing papers purchased for state agencies is made from recycled-content high grade, bleached printing and writing papers, as defined, allowing for the following conditions:

(a) The suppliers of recycled-content high grade, bleached printing and writing papers bid within 5 percent of the lowest bids by suppliers of high grade, bleached printing and writing papers made from virgin material.

(b) The recycled-content high grade, bleached printing and writing papers meet the specifications for state purchases of high grade, bleached printing and writing papers established by the department pursuant to Section 42212.

(c) The suppliers of recycled-content high grade, bleached printing and writing papers make shipment to the department within a reasonable time period, as determined by the department.

42211. The percentage of recycled-content high grade, bleached printing and writing papers purchased for state agencies shall be calculated in reams and used on an annual basis and shall increase to:

(a) Thirty percent on and after January 1, 1994.

(b) Thirty-five percent on and after January 1, 1997.

(c) Forty percent on and after January 1, 2000.

42212. The department shall revise its specifications for high grade, bleached printing and writing papers by January 1, 1991. The revised specifications shall be based on the mean average of the numerical standards for printing opacity, brightness level, and cross-machine tear strength for all recycled-content high grade, bleached printing and writing papers available in the state. The department shall establish specifications which deviate from this average by not more than 5 percent.

42213. The department shall submit to the board the numerical standards and calculations used in determining its specifications for high grade, bleached printing and writing papers within 30 days of establishing the specifications.

42214. The department shall review its specifications at least once every two years to determine whether they discriminate against recycled-content high grade, bleached printing and writing papers available in the state. If it is determined that discrimination exists, the department shall establish new specifications according to the criteria in Section 42212.

42215. The department shall inform every supplier of recycled-content high grade, bleached printing and writing papers that had submitted bids to sell such papers to the state within the 12 months preceding a bidding period for high grade, bleached printing and writing papers that the state is accepting bids for high grade, bleached printing and writing papers. The name of each supplier contacted, address, and telephone number shall be submitted to the board within 30 days following the close of each bidding period. The department shall make that information available to any other supplier upon request.

Article 3. Certification

42220. The department shall, on or before March 1 of each year, certify the number of reams of high grade, bleached printing and writing papers made from virgin material purchased for use by state agencies during the preceding calendar year and the number of reams of recycled-content high grade, bleached printing and writing papers used during the preceding calendar year.

42221. The certification of the department shall be submitted to the board on or before March 31 of each year following the reporting year.

42222. If the department is unable to meet the 25 percent purchasing requirement for recycled-content high grade, bleached printing and writing papers within any reporting period, the department shall so certify and provide specific reasons for failing to meet the 25 percent purchasing requirement. This certification shall be submitted to the board by April 30 of each year following the reporting year.

CHAPTER 5. COMPOST MARKET PROGRAM

Article 1. Definitions

42230. The following definitions govern the construction of this chapter.

42231. "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are sources separated from the municipal solid waste stream.

Article 2 Compost Market Program

42240 The Department of General Services and the board, in consultation with other affected state agencies, shall, on or before January 1, 1991, promulgate regulations for the purchase of compost, co-compost, and chemically fixed sewage sludge by the State of California. The regulations shall designate the state minimum operating standards and product quality standards. The regulations shall be designed to maximize the use of compost, co-compost, and chemically fixed sludge without jeopardizing the safety and health of the citizens of the state or the environment.

42241 On or after January 1, 1991, the Department of Transportation shall use compost in place of, or to supplement, petroleum-based commercial fertilizers in the state's highway landscape maintenance program.

42242. On or after January 1, 1991, the Department of Forestry and Fire Protection, the Department of Parks and Recreation, and the Department of General Services, in cooperation with the board, shall identify and evaluate uses for compost, co-compost, and chemically fixed sewage sludge in public land restoration projects, state landscaping projects, and park and recreational area maintenance programs. The results of the evaluation shall be submitted to the board by March 31, 1992.

42243. On or after January 1, 1993, the Department of Forestry and Fire Protection, the Department of Parks and Recreation, and the Department of General Services shall initiate programs to restore public lands that use compost, co-compost, and chemically fixed sewage sludge and shall use those products wherever possible.

42244. On or after January 1, 1991, the board shall evaluate compost, co-compost, and chemically fixed sewage sludge for use as solid waste landfill cover materials or for use as extenders for currently used cover material. Compost, co-compost, or chemically fixed sewage sludge products, when used as a substitute for or mixed with currently approved cover material, shall possess all the physical characteristics required in the definition of a cover material. The results of the evaluation shall be reported in accordance with the reporting requirements of the evaluation shall be reported in accordance with the reporting requirements of Section 42246.

42245. On or after January 1, 1992, based on the results of the

evaluation conducted in accordance with Section 42243, the board may, on a case-by-case basis, approve the use of compost, co-compost, and chemically fixed sewage sludge that meet the performance standards for cover material, be used as up to 25 percent of landfill cover materials or landfill cover extenders.

42246. Any procuring agency that prepares a request for bid for commercial fertilizers or soil amendment products shall document its determination that the use of a compost, co-compost, or chemically fixed sewage sludge would jeopardize public health or safety or would jeopardize the intended result of the project.

42247. The board shall report on the implementation of this chapter in accordance with the reporting requirements specified in Section 42950.

CHAPTER 6. PLASTIC RECYCLING PROGRAM

Article 1. Definitions

42360. "Postconsumer plastic" means a finished plastic product which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Postconsumer plastic" does not include manufacturing and fabrication scrap.

42361. "Recycled secondary plastic product" means any product comprised of at least 75 percent plastic material, of which the plastic component contains at least 25 percent secondary material.

42362. "Recycled postconsumer plastic product" means any product comprised of the maximum technologically feasible percentage of postconsumer plastic.

42363. "Secondary plastic material" means any plastic scrap material generated as a byproduct of a manufacturing or fabrication process for finished or unfinished plastic products.

Article 2. Plastic Recycling Program

42370. The board shall review the existing purchasing guidelines of the Office of Procurement of the Department of General Services, to identify impediments to the increased procurement of recycled products and report those impediments to the Director of the Department of General Services.

42371. The Office of Procurement, in cooperation with the board, shall develop and adopt specifications for the procurement of recycled secondary and postconsumer plastic products by July 1, 1992. The board shall review and comment on the specifications before adoption and the comments shall become part of the record of the adoption procedure under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

42372. The Office of Procurement, whenever the price is competitive for the purpose intended, shall procure recycled

secondary and postconsumer plastic products instead of plastic products made from virgin resins. The preference shall be extended to the bidder whose products contain the highest percentage of secondary and postconsumer plastic materials, to the extent that the quality of the product is equal to that of the virgin resin counterpart and that the price is equal to or less than the virgin resin product.

42373. By July 1, 1992, the board shall perform a study to identify methods to increase the utiliztion of recyclable plastics in manufacturing of new products. The report shall identify laws, regulations, and institutional barriers to the development of markets for recyclable plastics. The results of the study shall be included in the report required pursuant to Section 42950.

CHAPTER 7. RETREADED TIRE PROGRAM

Article 1. Definitions

42400. The following definitions govern the construction of this chapter.

42401. "Retreaded tire" means any tire that utilizes an existing casing for the purpose of vulcanizing new tread to such casing which meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

Article 2. Retreaded Tire Program

42410. The board shall evaluate current state and federal quality standards for retreaded tires and identify the obstacles for an increased market for retreads. The results of this evaluation and the activities that the board will undertake to increase the use of retreaded tires shall be included in the reporting requirements specified in Section 42950.

42411. The Department of General Services and the board, in consultation with representatives of the California retreading industry, may promulgate regulations for the purchase of retreaded tires by the State of California. The regulations shall designate the state minimum quality standards for retreaded tires. The regulations shall be designed to maximize the use of retreads without jeopardizing the safety of the occupants of the vehicle or the intended end use of the tire.

42412. On or before July 1, 1991, and to the extent that existing stock shall be utilized first, all tires for use on state vehicles issued for short-term use through Fleet Administration shall, at the next required installation of tires, be equipped with retreaded tires.

42413. Emergency vehicles, as defined in Section 165 of the California Vehicle Code are exempt from this provision.

42414. The number of retreaded tires purchased annually by the Department of General Services during each fiscal year shall be

tabulated and forwarded to the board by August 31, 1992, and by August 31 of every subsequent year. This information shall be included in the reporting requirements specified in Section 42950.

42415. On or before July 1, 1993, the board, in consultation with the Department of General Services, shall perform a study to determine if the retreads, procured by the Department of General Services, have met all quality and performance criteria of a new tire. The results of this study and any recommendations to expand, revise, or curtail the program shall be included in the reporting requirements specified in Section 42950.

42416. On or before July 1, 1991, the board shall, in consultation with the retreading industry, develop a procedure to estimate the number of retreads sold in California. This information, in addition to other facts compiled on utilization of retread tires, shall be used to evaluate the effectiveness of this program. The results of this evaluation shall be included in the reporting requirements specified in Section 42950.

CHAPTER 8. RECYCLED LEAD-ACID BATTERY PROGRAM

42440. For the purposes of this chapter, "lead-acid battery" means any battery which is primarily composed of both lead and sulfuric acid, with a capacity of six volts or more, and which is used for any of the following purposes:

(a) As a starting battery which is designed to deliver a high burst of energy necessary to crank an engine until it starts.

(b) As a motive power battery which is designed to provide the sources of power for propulsion or operation.

(c) As a stationary standby battery which is designed to be used in systems where the battery acts as a source of emergency power, serving as a backup in case of failure or interruption in the flow of power from the primary source.

42441. "Recycled lead-acid battery" means any lead-acid battery which contains a minimum percentage of postconsumer recovered lead. The required minimum percentage of postconsumer recovered lead shall be determined by the board in consultation with the Market Development Commission.

42442. On or before January 1, 1991, all lead-acid batteries purchased by any state agency for, and, at the next required installation of a battery in, an automobile or light truck owned or operated by the state agency, the battery shall be a recycled lead-acid battery, to the extent that all existing stock of nonrecycled batteries have been utilized.

42443. The number of recycled lead-acid batteries purchased each fiscal year by the Department of General Services shall be tabulated and forward annually to the board by August 31, 1992, and every subsequent fiscal year. This information shall be included in the reporting requirements specified in Section 42950.

CHAPTER 9. TECHNICAL ASSISTANCE PROGRAM

Article 1. Enforcement Agency Training and Assistance

42500. The board shall provide periodic training to enforcement agencies regarding changes in state or federal regulations, new technologies affecting solid waste landfill operations, and other matters which will enhance the enforcement agencies' ability to carry out their enforcement responsibilities.

42501. The board shall provide ongoing technical assistance and guidance to enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(a) Technical studies and reports.

(b) Copies of innovative facility operation plans.

(c) Investigative findings and analyses of new waste management practices and procedures.

Article 2. Waste Evaluations

42510. To the extent that resources are available for this purpose, the board shall provide technical assistance to the public and private sector in the form of government and business waste evaluations, upon the request for that assistance.

42511. The waste evaluations shall be designed to accomplish the following objectives:

(a) A thorough review and analysis of the processes followed by the government agency, business, or manufacturer and an identification of procedural changes which would reduce the amount of waste generated by the agency, business, or industry.

(b) A thorough review and analysis of the waste stream of individual offices or subunits of government, business, or manufacturing to determine what materials currently disposed of could reasonably be segregated for the purpose of recycling.

(c) Recommendations of specific methods to segregate recyclables from the waste stream and make other organizational improvements to facilitate recycling.

(d) Identification of potential markets for the segregated recyclables.

(e) Review current procurement practices to evaluate potential substitution of recycled products for virgin products.

(f) An evaluation of cost-saving benefits of source reduction and recycling in terms of waste collection costs avoided due to changes in consumption and disposal practices.

(g) Review of product and package design procedures and practices and identification of possible methods to increase the recycled content and recyclability of those products and packages.

Article 3. Plastic Recycling Assistance

42520. The board shall establish a Plastics Recycling Information Clearinghouse. This clearinghouse shall provide information to postconsumer plastics collectors, reprocessors, and recyclers about programs collecting postconsumer plastics, availability of postconsumer plastics, and recent advances in postconsumer plastics recycling technology.

Article 4. Assessment of Costs of Waste Management Options

42530 The following definitions govern the construction of this article:

(a) "Opportunity cost of land" means the cost a landowner incurs by not being able to rent or sell the land for other purposes.

(b) "Quantity-based user fee" means a waste management services user fee which varies according to the quantity of waste disposed.

42531. On or before January 1, 1991, the board shall undertake a study to develop a uniform cost accounting methodology to evaluate the costs of integrated waste management program options. The methodology shall include, to the extent feasible, all costs incurred for the design and operation of the option, including, but not limited to, site acquisition, the opportunity cost of land, purchase of capital equipment, operation, closure, postclosure maintenance and liability, environmental monitoring, and the cost of environmental impacts, in order to provide standardized units of cost comparison among options.

42532. Local jurisdictions that have developed a methodology for assessment of costs for solid waste options that accomplishes all of the methodologies specified in Section 42531 shall have the option of utilization of such methodology.

42533. It is the policy of the state to encourage the use of quantity-based user fees. To the extent that quantity-based users fees assist in promoting source reduction, local governments are encouraged to establish such billing systems that structure costs based on quantity of waste generated, such as variable can rates for residential waste.

42534. The board shall review the tax incentive provisions related to the integrated waste management program on an annual basis to determine if the combination of credits and deductions offered to business and individuals is effective in encouraging participation in goal-related activities as outlined in Section 42535. Recommendations for continuing or discontinuing the tax incentive provisions, and adding new features shall be included in the reporting requirements specified in Section 42950.

42535. The board shall evaluate the costs and benefits of integrated waste management. The evaluation shall include the tax costs and revenue benefits derived from tax credits and other source

reduction, recycling, and resource conversion incentive programs. The evaluation shall include the effects of incentive programs on state and local government tax revenues and collection procedures, the effects on economic development and job creation, and the impacts on municipal solid waste management costs and revenues.

On or before March 31, 1995, the board shall report on the results of the evaluation for inclusion in the biennial report specified.

Article 5. City and County Integrated Waste Management Plans

42540. The board shall provide technical assistance to counties and cities to assist in development, revision, amendment, and implementation of local city source reduction and recycling elements and countywide integrated waste management plans. Assistance rendered, at the discretion of the board, includes, but is not limited to, all of the following:

(a) Developing regulations for the implementation of the city source reduction and recycling elements and the countywide integrated waste management plans.

(b) Conducting waste characterization studies on a city, county, district, regional, or statewide basis, or any combination thereof.

(c) Developing annual baseline data for measurement of the effectiveness of local plans in achieving statewide goals.

(d) Conducting studies on issues or problems that impact the ability of local government, the state, or business and industry in achieving individual or collective goals for integrated waste management.

(e) Developing mechanisms to implement market development recommendations recommended by the board.

(f) Providing technical and general information deemed appropriate to assist state and local governments achieve the objectives of integrated waste management elements and plans.

CHAPTER 10. OFFICE PAPER RECOVERY PROGRAM

42560. "Recycled-content high grade, bleached printing and writing papers" means any of the following papers:

(a) Offset printing, mimeograph, and duplicator paper.

(b) Stationery, bond, and office paper.

(c) High-speed copier paper.

(d) Envelopes without plastic address windows.

(e) Form bond, including computer paper and carbonless forms.

(f) Book papers.

(g) Ledger, cover stock, and cotton fiber papers having a secondary wastepaper, as defined in Section 42204, or postconsumer wastepaper, as defined in Section 42203, content of at least 50 percent by weight.

42561. On or before January 1, 1991, the board shall initiate a high grade white office paper recovery assistance program for state and

local agencies and private businesses.

42562. The high grade white office paper recovery assistance program shall include the following elements:

(a) Staff training materials designed to provide training to local program coordinators and instruction to personnel of state and local agencies and private businesses who would participate in high grade white office paper recovery programs.

(b) Public information materials designed to provide initial program startup support and periodic reinforcement to high grade white office paper recovery programs.

(c) Desk top collection containers designed for use by personnel within the office setting.

(d) Metal collection bins that meet State Fire Marshal's standards for overnight storage of flammable materials for use in intermediate storage of recovered paper.

(e) Staff assistance from the board to identify markets for collected materials, including model contracts for negotiation with local paper brokers.

42563 The board shall report on the implementation of the white office paper recovery program in the report specified in Section 42950.

CHAPTER 11. LOS ANGELES COUNTY PILOT LITTER PROGRAM

42580. (a) The board shall develop and implement a pilot litter cleanup and abatement project on highways in Los Angeles County. The pilot project shall be administered by the board in consultation with the California Department of Transportation and shall utilize to the maximum extent feasible, members of the California Conservation Corps to perform the specified litter collection activities To the maximum extent feasible, the pilot project shall be conducted in coordination with existing litter cleanup and abatement programs.

(b) The pilot litter cleanup and abatement project shall be conducted for a period of 12 months, commencing July 1, 1990, through June 30, 1991.

(c) The pilot litter cleanup and abatement project shall be funded, upon appropriation by the Legislature, from the Integrated Waste Management Account of the Solid Waste Management Fund in an amount not to exceed one million dollars ($1,000,000).

(d) The pilot litter cleanup and abatement project shall be structured to incorporate new innovations to alleviate problems associated with litter that accomplish the following objectives:

(1) Integrate recycling activities into the state highway litter cleanup program.

(2) Test and evaluate the feasibility and impact of utilization of degradable plastic bags for state highway litter abatement programs.

(3) Coordinate the statewide public information and education program, administered by the board, to increase the public's

awareness of the problems posed by indiscriminate littering.

(4) Conduct detailed litter composition analyses to identify, classify, and quantify litter components for consideration in the study of full disposal cost fees.

(5) Assess the impact of the cost for litter cleanup on local government, the state, appropriate federal agencies, business and manufacturers, and the public

(e) The board shall evaluate the effectiveness of the pilot litter cleanup and abatement program and report to the Legislature, not later than September 30, 1991, on the recommendations for continuation, expansion, or curtailment of the project.

CHAPTER 12 PUBLIC INFORMATION AND EDUCATION

42600. The board shall conduct a statewide public information and education program to encourage participation by the general public, business, government, and industry in all phases of integrated waste management. To the maximum extent possible, public information and education programs developed pursuant to this chapter shall be coordinated so as to not duplicate the efforts of other state agency public information programs. The public information and education program shall encourage participation in the board's integrated waste management programs. The board's program shall, at a minimum, include strategies and specific campaign activities to do all of the following:

(a) Encourage business and industry to reduce excess packaging of consumer products, to eliminate nonrecyclable contaminants from consumer goods, and to increase product durability. The board shall also promote waste handling practices which reduce waste generation by business and industry.

(b) Promote consumer tips to reduce waste generation through selective purchasing and to encourage recycling at home and work. The board shall also provide the public with information about safe waste transformation and landfill technologies.

(c) Foster local government procurement of products containing recycled materials, integration of recycling into the community waste management infrastructure, and public participation in local waste management decisionmaking.

(d) Implement a "Buy Recycled" campaign to encourage business, industrial, and residential consumers to purchase products manufactured with, or packaged in, recycled materials. To promote the "Buy Recycled" program, the board shall develop a directory of California vendors providing recycled products and shall work to dispel myths regarding the inferiority of recycled products.

42601. The board shall measure public information program effectiveness through research which establishes program benchmarks and tracks results. The results of such measurement shall serve as the basis for program modification.

42602. The board shall employ appropriate marketing techniques

to disseminate its message, including radio and television advertising. Nothing in this chapter shall prohibit the board from conducting paid advertising campaigns or from soliciting joint sponsorship of advertising campaigns by private industry.

42603. (a) The board, in cooperation with the State Department of Education, shall develop, produce, and disseminate supplementary materials to teach the concepts of source reduction, recycling, and integrated waste management in California schools.

(b) The board and the State Department of Education shall jointly develop requests for proposals to develop and pilot test separate supplementary materials for elementary, middle, and high schools. The department shall assist in the evaluation of contractor proposals for supplementary materials development contracts issued by the board, and shall advise the board during the development process to ensure that the materials are consistent with the science framework adopted by the State Board of Education. The department shall also participate in monitoring development contracts issued by the board.

(c) The department, in cooperation with the board, shall develop a teacher training and implementation plan to guide the placement of the supplementay materials in the schools. The plan shall project the phased implementation of elementary, middle, and high school programs following pilot testing. The board shall use the plan and consult with the department in developing its annual public information and education budget, and shall include sufficient funds for successful implementation.

42604. With the advice of the board, the California Community Colleges, California State University, and University of California shall focus teaching and research efforts to promote career development and technological advancement in integrated waste management.

42610. The State Board of Education shall include in the science framework appropriate language addressing the issue of integrated waste management in the ecology and environmental studies areas.

42611. The State Department of Education shall encourage the use of supplementary materials developed in cooperation with the California Waste Management Board to satisfy the teaching requirements of the science framework adopted by the State Board of Education.

CHAPTER 13. RESEARCH AND DEVELOPMENT PROGRAM

42650. The board may establish a comprehensive research and development program designed to identify, develop, and refine processes and technologies that will assist state and local governments and private industries to implement innovative resource management and waste reduction programs. Upon appropriation by the Legislature, the board is authorized to conduct research and development programs that include, but are not

limited to:

(a) Establishment of a recycling extension service within the board to serve as a central clearinghouse for recycling research information.

(b) Establishment of cooperative research and development facilities at universities and colleges in the state.

(c) Development of a research program to study the feasibility of using landfill mining technology to extend the life of existing landfills, recover valuable resources, and to reuse the reclaimed landfill in an environmentally sound manner.

(d) Establishment of a research program to identify educational and promotional methods that can effect environmentally positive changes in human behavior.

(e) Conducting studies into hazards posed by special wastes and by the ash and air emissions from incineration of waste.

(f) Evaluation of the potential for various materials recovery technologies, including materials recovery facilities, to handle significant portions of the waste stream safely and in an environmentally sound manner.

(g) Conducting research to develop statistical tools to establish computer-based databases on waste characteristics, special waste volumes, and county and regional waste capacities.

(h) Analyzing landfill encroachment problems and develop effective public policy tools to discourage landfill encroachment.

(i) The board shall submit the results of the research and development programs in the report required by Section 42952.

CHAPTER 14. REPORT TO THE LEGISLATURE

42950. Commencing March 31, 1991, and each March 31 of each odd-numbered year thereafter, the board shall submit a comprehensive report to the Legislature that reflects the progress on implementation of the Integrated Waste Management Act.

42951. The biennial report shall be organized to correlate with the activities undertaken at each level of the hierarchy specified in Section 40051.

42952. In addition to the information reflecting the actions undertaken in the previous two years, the biennial report shall contain a comprehensive state plan for action to be taken in the ensuing five years to establish appropriate priorities and implement appropriate programs for integrated solid waste management in the state. Included in the state plan shall be an evaluation of the effectiveness of this division and any recommendations for legislative change to make this division more effective.

SEC. 3. It is the intent of the Legislature, if this bill and AB 939 are both enacted and become effective January 1, 1990, and this bill is enacted after AB 939, that the provisions of Division 30 (commencing with Section 40100), as added to the Public Resources Code by this bill, and Division 30 (commencing with Section 40000),

as added to the Public Resources Code by AB 939, form a single, unified California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code).

Therefore, if both this bill and AB 939 are enacted and this bill is enacted last, this bill does not prevail over AB 939, and the provisions of both bills shall become operative in a single, unified Division 30 (commencing with Section 40000) of the Public Resources Code.

CHAPTER 1097

An act to amend Section 76000 of, and to add Section 76010 to, the Government Code, relating to justice facilities.

[Became law without Governor's signature. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 76000 of the Government Code is amended to read:

76000. (a) In each county, provided that the board of supervisors has adopted a resolution stating that the provisions of this section and Section 76001, 76002, 76004, 76005, 76006, 76008, 76009, or 76010 are necessary to the establishment of adequate facilities in the county, the following surcharges and penalties shall be collected, except that a resolution adopted pursuant to Section 76004 may limit the collection to the penalties specified in paragraph (2) or (3), as applicable, a resolution adopted pursuant to Section 76005, 76008, or 76010 shall limit the collection to the penalties specified in paragraph (2), and a resolution adopted pursuant to Section 76009 shall limit the collection to the penalties specified in paragraph (4):

(1) Except as limited by resolution pursuant to this subdivision, with respect to each fund established pursuant to Section 76001, 76002, 76004, or 76006, for every parking offense where a fine or forfeiture is imposed, a surcharge of one dollar and fifty cents ($1.50) shall be included in the fine or forfeiture.

The judges of the county shall increase the bail schedule amounts as appropriate to reflect the surcharge provided for by this subdivision.

In those cities, districts, or other issuing agencies which elect to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the surcharge provided for by this paragraph.

(2) With respect to each fund established pursuant to Section 76002, 76004, or 76005, except in the counties listed in paragraph (3),

and with respect to each fund established pursuant to Section 76008 or 76010, there shall be levied an additional amount of one dollar ($1) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the penalty established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 clause (C) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76002, 76004, 76005, 76008, or 76010.

(3) Except as provided in subdivision (h) of Section 76006, but notwithstanding any other provision of law, in Alameda, Contra Costa, Fresno, Kern, Los Angeles, Marin, Monterey, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, with respect to each fund established pursuant to Section 76001, 76004, or 76006, there shall be levied an additional amount of two dollars ($2) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the penalty established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 clause (C) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. These amounts shall be deposited with the county treasurer and placed in the funds established pursuant to Sections 76001, 76004, and 76006.

(4) With respect to each fund established pursuant to Section 76009, there shall be levied an additional amount of fifty cents ($0.50) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the penalty established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation 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 clause (C) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and

placed in the fund established pursuant to Section 76009.

(b) The surcharge and penalty increase imposed pursuant to this section shall continue so long as deposits to the funds are required pursuant to Section 76001, 76002, 76004, 76005, 76006, 76008, 76009, or 76010.

(c) No county, city and county, city, district or other issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges and penalty established in the resolution adopted pursuant to this section, except as otherwise agreed upon by the local governmental entities involved.

SEC. 2. Section 76010 is added to the Government Code, to read:

76010. (a) Notwithstanding any other provision of law, to assist the County of Kern in the funding of the county juvenile justice facilities, the board of supervisors, operative upon the adoption of a resolution stating that the provisions of this section and Section 76000 are necessary to the establishment of adequate county juvenile justice facilities in the county, may establish in the county treasury a County Juvenile Justice Facility Temporary Construction Fund. Deposits shall be made to this fund as follows.

(b) The county treasurer shall place in the fund one dollar ($1) for every ten dollars ($10) or fraction thereof for every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted 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 paragraph (C) of subdivision (3) of Section 258 of the Welfare and Institutions Code.

(c) The fund moneys together with any interest earned thereon shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. The moneys in the County Juvenile Justice Facilities Temporary Construction Fund shall be payable only for construction, reconstruction, expansion, improvement, operation, or maintenance of county juvenile justice or county juvenile justice rehabilitation facilities. The money in the fund may be used through any public agency funding mechanism, including, but not limited to, retirement of bonded indebtedness, loan repayments, and monthly payments involving lease-purchase programs, which reduce an obligation incurred in reliance upon the authority granted by this section.

(d) Deposits to the fund in accordance with this section shall continue through and including the 10th year after the initial calendar year in which the surcharge is collected, unless this date is extended by a later enacted statute prior to the expiration date.

SEC. 3. Sections 1 and 2 of this act shall not become operative if Senate Bill 870 is enacted repealing Chapter 12 (commencing with Section 76000) of, and adding Chapter 12 (commencing with Section 76010) to, Title 8 of the Government Code, and takes effect on or

before January 1, 1990.

CHAPTER 1098

An act to amend Section 11590 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11590 of the Health and Safety Code is amended to read:

11590. (a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

For persons convicted of an offense defined in Section 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357 or 11360.

(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.

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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1099

An act to amend Sections 1861.02 and 1861.03 of, and to add Article 5 (commencing with Section 755) to Chapter 1 of Part 2 of Division 1 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Article 5 (commencing with Section 755) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 5. Unlawful Practices

755. If at the time of the solicitation and issuance of a policy of life or disability insurance, or of a surety bond which by its terms continues until canceled, a person may lawfully receive commissions on it, that person, or in the event of that person's death, his or her estate or heirs may continue to receive commissions on it during the continuance in force or renewal of the policy or bond without being licensed under the provisions of Chapter 5 (commencing with Section 1621) of Part 2 if all of the following requirements are met:

(a) The recipient does not transact insurance in connection with the policy or bond while not so licensed.

(b) The payment is made pursuant to a contract entered into, before that solicitation and issuance, between the insurer paying or allowing the commission and that person.

756. When the premium on a policy insuring an employer is based upon the amount or segregation of the employer's payroll, and

the employer, personally or knowingly through his or her employee, procures a lower premium by willfully misrepresenting the amount or segregation, that misrepresentation is an unlawful act as to the employer.

In addition to any penalty provided by law, the employer in that case is liable to the state in an amount 10 times the difference between the lower premium paid and the premium properly payable. The commissioner shall collect the amount so payable and may bring a civil action in his or her name as commissioner to enforce collection unless the misrepresentation is made to, and the lower premium procured from the State Compensation Insurance Fund. In the latter case the liability to the state under this section shall be enforced in a civil action in the name of the State Compensation Insurance Fund and any amount so collected shall become a part of that fund.

757. When a statement of the amount or segregation of a payroll is materially false, and an insurer, through a person employed by it in a managerial capacity, accepts the statement as the basis for the premium on a policy, the acceptance is an unlawful act if the accepting employee knows of the falsity.

SEC. 2. Section 1861.02 of the Insurance Code, as added by Proposition 103, adopted by the electors on November 8, 1988, is amended to read:

1861.02. (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

(1) The insured's driving safety record.

(2) The number of miles he or she drives annually.

(3) The number of years of driving experience the insured has had.

(4) Such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without such approval shall constitute unfair discrimination.

(b) (1) Every person who (A) has been licensed to drive a motor vehicle for the previous three years and (B) has had, during that period, not more than one conviction for a moving violation which has not eventually been dismissed shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision.

(2) The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage Rates for Good Driver Discount policies shall be approved pursuant to this article.

(3) (A) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from requiring membership in the motor club as a condition precedent to obtaining insurance described in this subdivision.

(B) This subdivision shall not prevent an insurer which requires membership in a specified voluntary, nonprofit organization, which was in existence prior to November 8, 1988, as a condition precedent to applying for insurance issued to or through those membership groups, including franchise groups, from requiring such membership as a condition to applying for the coverage offered to members of the group, provided that it or an affiliate also offers and sells coverage to those who are not members of those membership groups.

(C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B).

(i) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(ii) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(iii) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

(c) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.

(d) This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with such regulations prior to that date, provided that no such application shall be approved prior to that date.

SEC. 2.5. Section 1861.02 of the Insurance Code, as added by Proposition 103, adopted by the electors on November 8, 1988, is amended to read:

1861.02. (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

(1) The insured's driving safety record.

(2) The number of miles he or she drives annually.

(3) The number of years of driving experience the insured has had.

(4) Such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without such approval shall constitute unfair discrimination.

(b) (1) Every person who meets the criteria of Section 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision.

(2) The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage. Rates for Good Driver Discount policies shall be approved pursuant to this article.

(3) (A) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from requiring membership in the motor club as a condition precedent to obtaining insurance described in this subdivision.

(B) This subdivision shall not prevent an insurer which requires membership in a specified voluntary, nonprofit organization, which was in existence prior to November 8, 1988, as a condition precedent to applying for insurance issued to or through those membership groups, including franchise groups, from requiring such membership as a condition to applying for the coverage offered to members of the group, provided that it or an affiliate also offers and sells coverage to those who are not members of those membership groups.

(C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B):

(i) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(ii) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall

not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(iii) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

(c) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.

(d) An insurer may refuse to sell a good driver discount policy insuring a motorcycle unless all named insureds have been licensed to drive a motorcycle for the previous three years

(e) This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with those regulations prior to that date, provided that no such application shall be approved prior to that date.

SEC. 3. Section 1861.03 of the Insurance Code is amended to read:

1861.03. (a) The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Civil Code Sections 51 through 53), and the antitrust and unfair business practices laws (Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) of Division 7 of the Business and Professions Code).

(b) Nothing in this section shall be construed to prohibit (1) any agreement to collect, compile and disseminate historical data on paid claims or reserves for reported claims, provided such data is contemporaneously transmitted to the commissioner, or (2) participation in any joint arrangement established by statute or the commissioner to assure availability of insurance.

(c) (1) Notwithstanding any other provision of law, a notice of cancellation or nonrenewal of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (A) nonpayment of premium; (B) fraud or material misrepresentation affecting the policy or insured; (C) a substantial increase in the hazard insured against.

(2) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from

issuing an effective notice of nonrenewal based solely on the failure of the insured to maintain membership in the motor club. This subdivision shall also not prevent an insurer which issues private passenger automobile coverage to members of groups that were in existence prior to November 8, 1988, whether membership, franchise, or otherwise, and to those who are not members of groups from issuing an effective notice of nonrenewal for coverage provided to the insured as a member of the group based solely on the failure of the insured to maintain that membership if (i) the insurer offers to renew the coverage to the insured on a nongroup basis, or (ii) to transfer the coverage to an affiliated insurer. The rates charged by the insurer or affiliated insurer shall have been adopted pursuant to this article. However, all of the following conditions shall be applicable to that insurance:

(A) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(B) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(C) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates subparagraphs (A), (B), or (C) shall be subject to the penalties set forth in Section 1861.14.

SEC. 4. (a) The Legislature finds and declares that the reenactment of Sections 755.2, 756, and 757 of the Insurance Code, which were repealed by Proposition 103, is in furtherance of the purpose of Proposition 103, within the meaning of subdivision (b) of Section 8 of Proposition 103. The Legislature determines that the repeal of Sections 755.2, 756, and 757 of the Insurance Code by Proposition 103 did not further the interests of consumers, was inconsistent with the purposes of that proposition, and was inadvertent.

(b) The Legislature further finds and declares that the amendments of Sections 1861.02 and 1861.03 of the Insurance Code proposed by this act are in furtherance of the purposes of Proposition 103 within the meaning of Section 8 of Proposition 103, by clarifying that membership organizations can continue to condition the right to apply for auto insurance on bona fide membership requirements

provided those requirements, are unrelated to driving record or insurance, and provided that membership in a motor club may not be based on residence in any area within the state.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 1861.02 of the Insurance Code proposed by both this bill and AB 451. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 1861.02 of the Insurance Code, and (3) this bill is enacted after AB 451, in which case Section 2 of this bill shall not 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:

Sections 755.2, 756, and 757 of the Insurance Code were inadvertently repealed by the adoption of Proposition 103 by the voters. In order to protect consumers by continuing the state policy of permitting persons to receive compensation rightfully belonging to them, and prohibiting an employer from misrepresenting the payroll in order to get a lower insurance premium, it is necessary for this act to take effect immediately. In addition, in order to clarify that membership organizations can continue to condition the right to apply for auto insurance on bona fide membership requirements provided those requirements are unrelated to driving record or insurance at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 1100

An act to add Section 1012.5 to the Code of Civil Procedure, relating to documents.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 1012.5 is added to the Code of Civil Procedure, to read:

1012.5 (a) The Legislature finds that the use of facsimile transmission (FAX machines) has become commonplace in business and government. Currently, there are over 2.5 million FAX machines in the nation and the legal profession owns approximately 12 percent of these machines. Across the nation, courts are starting to address the use of FAX machines in the judicial system as a means of transmitting documents to the courts and to lawyers and litigants.

Use of FAX transmission of documents may alleviate congestion in and around courthouses, promote savings in the time spent by

attorneys in filing documents with the courts and with other attorneys and litigants, and ultimately, will result in a savings to the legal consumer.

Therefore, the Judicial Council shall conduct pilot projects to encompass cases filed in three or more superior courts and three or more municipal or justice courts from January 1, 1990, to June 30, 1991, to determine how best to implement the use of facsimile transmission of documents in the judicial system and to assess the extent of savings due to implementation of FAX transmission. Moreover, the Judicial Council shall report to the Legislature on the results of these pilot projects and its specific proposals for implementation.

(b) The Judicial Council shall determine the effectiveness of these pilot projects by conducting a survey of attorneys, judicial officers, clerks of court, and process servers registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, to determine whether the pilot project is effective in: (1) reducing courthouse congestion, (2) increasing courthouse filings by FAX to at least 25 percent of all filings in those courts participating in the pilot projects, (3) producing a time savings of at least 50 percent of the time normally required to file documents with the court, and (4) producing a savings in costs billed to the client.

(c) The Judicial Council shall report to the Legislature on these pilot projects and make its recommendations on any changes in law needed to promote uniform, efficient, and effective service or filing of legal documents by FAX on or before December 31, 1991. The report shall include a compilation of data, proposed standards, rules, or statutes for: (1) the types of facsimile machines, including personal computers with facsimile modems, that are suitable for use by the courts in receiving legal documents for filing, (2) the quality of paper to be used to ensure the permanency of court records, (3) the readability of documents sent by facsimile transmission, (4) the service and filing of documents which require an original signature, (5) the service on other parties to the action of legal documents by FAX, (6) the filing with the court of originals of documents first filed by FAX, (7) if necessary, modification of time periods for service and filing of documents by FAX, and (8) the cost to the courts for the equipment, supplies, additional staff, and administrative costs associated with the filing of legal documents by FAX and how these costs should be recovered.

(d) Notwithstanding any other provision of law, the Judicial Council may adopt rules of court for use in the pilot project counties to facilitate the purposes of the pilot project and to provide an appropriate experiment. Any rules of court adopted by the Judicial Council pursuant to this subdivision shall not affect the requirements for personal or substituted service of the summons and complaint or any other opening paper.

CHAPTER 1101

An act to amend Section 2455 of, and to add Section 2454.5 to, the Business and Professions Code and to amend an initiative act entitled "An act to establish a board of osteopathic examiners, to provide for their appointment, and to prescribe their powers and duties; to regulate the examination of applicants, who are graduates of osteopathic schools, for any form of certificate to treat disease, injuries, deformities, or other physical or mental conditions; to regulate the practice of those so licensed, who are graduates of osteopathic schools; to impose upon said board of osteopathic examiners all duties and functions, relating to graduates of osteopathic schools, holding or applying for any form of certificate or license, heretofore exercised and performed by the board of medical examiners of the State of California under the provisions of the state medical practice act, approved June 2, 1913, and acts amendatory thereof" approved by electors November 7, 1922, by amending Section 1 thereof, relating to the Board of Osteopathic Examiners, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 2454.5 is added to the Business and Professions Code, to read:

2454.5. In order to ensure the continuing competence of licensed osteopathic physicians and surgeons, the board shall adopt and administer standards for the continuing education of those licensees. The board shall require each licensed osteopathic physician and surgeon to demonstrate satisfaction of the continuing education requirements as a condition for the renewal of a license at intervals of not less than one year nor more than three years.

SEC. 2. Section 2455 of the Business and Professions Code is amended to read:

2455. The amount of fees and refunds is that fixed by the following schedule for any certificate issued by the Board of Osteopathic Examiners. All other fees and refunds for any certificate issued by the Board of Osteopathic Examiners and which are not prescribed in this schedule, are prescribed in Section 2456.

(a) Each applicant for an original or reciprocity Physicians and Surgeons Certificate shall pay an application fee in a sum not to exceed two hundred dollars ($200) at the time his or her application is filed. If the applicant's credentials are insufficient, or if he or she does not take the examination, the board may retain a sum equal to the actual cost of processing the application, not to exceed one hundred fifty dollars ($150) and the remainder of the fee is returnable upon application.

(b) The oral and practical examination fee shall not exceed two hundred dollars ($200) nor be less than fifty dollars ($50).

(c) The annual tax and registration fee, unless otherwise provided, shall be set by the board on or before November 1 of each year for the ensuing calendar year at a sum as the board determines necessary to defray the expenses of administering this chapter, under the Osteopathic Act, relating to the issuance of certificates to those applicants, which sum, however, shall, not exceed two hundred dollars ($200) nor be less than twenty-five dollars ($25).

(d) The board shall set an annual tax and registration fee in an amount less than that levied pursuant to subdivision (c) which shall be paid by any applicant who indicates to the board in writing that he or she does not intend to practice under the Osteopathic Act during the renewal period covered by that annual tax and registration fee.

(e) The fee for failure to pay the annual tax and registration fee shall be 50 percent of the renewal fee but not more than one hundred dollars ($100).

SEC. 3. Section 1 of the act cited in the title is amended to read:

Section 1. A self-sustaining Board of Osteopathic Examiners to consist of five members and to be known as the "Board of Osteopathic Examiners of the State of California" is hereby created and established. The Governor shall appoint the members of the board, each of whom shall have been a citizen of this state for at least five years next preceding his or her appointment. Each of the members shall be appointed from among persons who are graduates of osteopathic schools who hold unrevoked licenses or certificates to practice in this state. The Governor shall fill by appointment all vacancies on the board. The term of office of each member shall be three years; provided, that of the first board appointed, one shall be appointed for one year, two for two years, and two for three years, and that thereafter all appointments shall be for three years, except that appointments to fill vacancies shall be for the unexpired term only. The Governor shall have power to remove from office any member of the board for neglect of duty, for incompetency, or for unprofessional conduct. Each member of the board shall, before entering upon the duties of his or her office, take the constitutional oath of office. All fees collected on behalf of the Board of Osteopathic Examiners and all receipts of every kind and nature, shall be reported at the beginning of each month for the month preceding, to the Controller and at the same time the entire amount must be paid into the State Treasury and shall be credited to a fund to be known as the Board of Osteopathic Examiners Contingent Fund, which fund is hereby created. The contingent fund shall be for the use of the Board of Osteopathic Examiners and out of it and not otherwise shall be paid all expenses of the board. Each member of the board shall receive a per diem and expenses as provided in Section 103, provided the fees and other receipts of the board are sufficient to meet this expense

The Governor shall appoint the members of the board within 30 days after this act takes effect. The board shall be organized within 60 days after the appointment of its members by the Governor by electing from its number a president, vice president, and a secretary who shall also be the treasurer, who shall hold their respective positions during the pleasure of the board. The board shall hold one meeting during the first quarter of each calendar year at a time and place designated by the board with power of adjournment from time to time until its business is concluded. Special meetings of the board may be held at such time and place as the board may designate. Notice of each regular or special meeting shall be given twice a week for two weeks next preceding each meeting in one daily paper published in the City of San Francisco, one published in the City of Sacramento, and one published in the City of Los Angeles which notice shall also specify the time and place of holding the examination of applicants The secretary of the board upon an authorization from the president of the board, or the chairperson of the committee may call meetings of any duly appointed committee of the board at a specified time and place and it shall not be necessary to advertise those committee meetings. The board shall receive through its secretary applications for certificates to be issued by the board and shall, on or before the first day of January in each year transmit to the Governor a full report of all its proceedings together with a report of its receipts and disbursements.

The office of the board shall be in the City of Sacramento. Suboffices may be established in Los Angeles and San Francisco and records as may be necessary may be transferred temporarily to those suboffices. Legal proceedings against the board may be instituted in any one of the three cities.

The board may from time to time adopt rules as may be necessary to enable it to carry into effect the provisions of this act. It shall require the affirmative vote of three members of the board to carry any motion or resolution, to adopt any rules, pass any measure or to authorize the issuance or the revocation of any certificate. Any member of the board may administer oaths in all matters pertaining to the duties of the board and the board shall have authority to take evidence in any matter cognizable by it. The board shall keep an official record of its proceedings, a part of which record shall consist of a register of all applicants for certificates under this act together with the action of the board upon each application.

The board shall have the power to employ legal counsel to advise and assist it in connection with all matters cognizable by the board or in connection with any litigation or legal proceedings instituted by or against the board and may also employ clerical assistance as it may deem necessary to carry into effect this act. The board may fix the compensation to be paid for those services and may incur other expense as it may deem necessary; provided, however, that all of that expense shall be payable only from the fund hereinbefore provided for and to be known as the Board of Osteopathic Examiners

Contingent Fund.

CHAPTER 1102

An act to amend Sections 11352, 11379, and 11379.5 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11352 of the Health and Safety Code is amended to read:

11352. (a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison for three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

SEC. 2. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport 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), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (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 state prison for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

SEC. 3. Section 11379.5 of the Health and Safety Code is amended to read:

11379.5. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport phencyclidine or any of its analogs 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, or its precursors as specified in subparagraph (A) or (B) of paragraph (2) of subdivision (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 state prison for a period of three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1103

An act to amend Sections 50668.5, 50808, 50884, and 51345 of, and to add and repeal Sections 50714, 50771.3, and 50895 of, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. 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 residential hotels and motels. 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. The department shall ensure that the local public entity or nonprofit corporation applying for fund commitments for loans to owner-occupants notifies the local legislative body of the application prior to a funding award. 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. If it is determined by the department that the local public entity or nonprofit corporation is no longer capable of making or managing these loans, the department may, at its sole discretion, revoke that delegation of responsibility or cancel the funding commitment to the local public entity or nonprofit corporation, or both. The department's regulations shall include procedures and standards for certification and decertification.

(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. Notwithstanding the requirements of Section 50663, rental housing developments and owner-occupied units assisted by the program may be located anywhere in the state

(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. The department, by regulation, may specify unit loan limits for loans made for owner-occupied housing and the circumstances under which it may grant exceptions to, or variances from, these limits.

(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) (A) In the case of loans made for rental housing developments, eligible costs shall include those costs relating to (i) real property acquisition, including refinancing of existing debt to the extent necessary to reduce debt service to a level consistent with the provision of affordable rents and the fiscal integrity of the project; (ii) rehabilitation or reconstruction, including the conversion of nonresidential structures to residential use; (iii) 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; (iv) necessary and related onsite improvements; (v) reasonable administrative expenses in connection with the planning and execution of the project, as determined by the department; (vi) reasonable consulting costs; (vii) rent-up costs; (viii) seismic rehabilitation improvements; and (ix) 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.

(B) In the case of loans made for owner-occupied housing, eligible costs shall include those costs relating to (i) rehabilitation work expenses; (ii) cost of room additions necessary to alleviate overcrowding; (iii) costs of general property improvements 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, to the extent that they are necessary to correct unsafe, unhealthy, or unsanitary conditions; (iv) costs related to necessary architectural, engineering, and other technical consultants; (v) costs of preliminary reports, title policies, credit reports, appraisal reports, and fees for recording documents related to the department's loans; (vi) costs of building permits and other government fees; and (vii) if in conjunction with other rehabilitation work, costs for improvements related to making the housing accessible to the handicapped.

(C) Notwithstanding the provisions of Section 53130 which limit the use of allocated proceeds with respect to project operating costs, and Sections 53131 and 53133, the department may set aside or use any amounts available in the fund to establish a rental housing development default reserve for the purpose of curing or avoiding a sponsor's defaults on the terms of any loan or other obligation which jeopardizes the financial integrity of a rental housing development or the department's security in the rental housing development. The payment or advance of funds by the department pursuant to this subparagraph shall be solely within the discretion of the department and no sponsor shall be entitled to or have any right to payment of these funds. Funds advanced pursuant to this subparagraph shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand.

(D) Notwithstanding the provisions of Section 53130 which limit the use of allocated proceeds with respect to project operating cost, or Sections 53131 and 53133, the department may set aside or use proceeds in the fund in an amount not to exceed 3 percent of the amount of encumbrances for loans for owner-occupied housing to establish an owner-occupied housing default reserve for the purpose of curing or avoiding an owner's default on the terms of any loan or other obligation which jeopardizes the department's security in the owner-occupied housing. The payment or advance of funds by the department pursuant to this subparagraph shall be solely within the discretion of the department, and no homeowner shall be entitled to, or have any right to payment of, these funds. Funds advanced pursuant to this subparagraph shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand. Interest payments from loans for owner-occupied

housing shall be allocated by the department into this reserve to replace the allocated proceeds until the percent established by the department is achieved solely with interest payments.

(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.

In the case of limited equity housing cooperatives, the provisions of this paragraph shall apply, except that tenants whose incomes, upon recertification, exceed the limit specified in Section 50079.5

shall not be required to vacate their units. Instead, and upon six months' notice, these tenants shall be required to pay rent in an amount equal to the market rate rent for comparable units, as determined by the department. When a tenant's income exceeds the limit specified in Section 50079.5, the next available membership share for occupancy in a comparable unit shall be sold to a household with an income at or below this limit.

(3) When operating income as defined by the department is greater than operating expenses, debt service, deposits required for reserve accounts, payments pursuant to paragraph (6) of subdivision (b) if elected by the sponsor, approved annual distributions, and any other disbursements approved by the department, these excess funds shall be paid into an account established in the fund. Funds in this account shall be appropriated to the department for use to assist rental housing developments funded pursuant to this section with proceeds of bonds issued pursuant to Chapter 27 of the Statutes of 1988, Chapter 30 of the Statutes of 1988, or Chapter 48 of the Statutes of 1988, subject to the following requirements:

(i) Excess funds in the account shall be allocated first into the rental housing development default reserve established pursuant to subparagraph (C) of paragraph (5) of subdivision (b). The balance of this default reserve shall not exceed the maximum level of funding established by regulations adopted by the department.

(ii) After the rental housing development default reserve is fully funded with these excess funds, the department shall use all additional excess funds in the account for payment of either unforeseen capital improvements, the cost of which would jeopardize the fiscal integrity and affordability of a rental housing development, or to further reduce rents in a rental housing development. The department may adopt regulations which specify the procedures and standards for application for, and use of, these funds. Those payments used for capital improvements shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand

(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 and to amend the maximum loan amounts per unit established in regulations adopted pursuant to Section 50670, 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 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 July 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.

(h) For purposes of this section, "rental housing development" means a single family house or a multifamily structure or structures containing two or more dwelling units, including efficiency units. One or more of the dwelling units in a rental housing development shall be rented or leased or otherwise occupied as a primary residence by a person or household who is not the owner of the structure or structures. For the purposes of this section, motels operated pursuant to subdivision (b) of Section 50669, residential hotels, group or congregate homes, and limited equity housing cooperatives are rental housing developments. Except for motels, the limitations concerning types of residents and minimum number of units set forth in subdivision (b) of Section 50669 shall not apply.

(i) "Affordable rent" for the purposes of this section shall be established by the department in the regulations authorized by subdivision (g). However, the initial rents shall be established by the department based on a designated family size for each unit size, and those initial rents shall not exceed 30 percent of 50 percent of the area median income adjusted by that designated family size for units restricted to occupancy by very low income households; or 30 percent of 60 percent of area median income adjusted by that designated family size for units restricted to occupancy by low-income households. In establishing affordable rent levels, the department shall make provision in its regulations for projects serving the physically and mentally handicapped persons.

SEC. 1.5. Section 50714 is added to the Health and Safety Code, to read:

50714. The department may adopt, amend, or repeal emergency regulations to implement this chapter with respect to financial assistance allocated pursuant to Section 53130. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning, or purposes, of Section 11346.1 of the Government Code. This authority shall remain in effect until June 30, 1990.

This section shall remain in effect only until June 30, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1990, deletes or extends that date.

SEC. 2. Section 50771.3 is added to the Health and Safety Code, to read:

50771.3. The department may adopt, amend, or repeal emergency regulations to implement this chapter with respect to loans made with funds allocated pursuant to Section 53130. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning, or purposes, of Section 11346.1 of the Government Code. This authority shall remain in effect until June 30, 1990.

This section shall remain in effect only until June 30, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1990, deletes or extends that date.

SEC. 3. Section 50808 of the Health and Safety Code is amended to read:

50808. For the purpose of providing grants to recipients for the development of emergency shelters for the homeless utilizing funds transferred to the Emergency Housing and Assistance Fund pursuant to Section 53130, the department shall not award more than five hundred thousand dollars ($500,000) to any eligible recipient under each application.

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 May 1, 1990.

SEC. 5. Section 50895 is added to the Health and Safety Code, to read:

50895. The department may adopt, amend, or repeal emergency regulations to implement this chapter with respect to loans made with funds allocated pursuant to Section 53130. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the

public peace, health, safety, or general welfare within the meaning, or purposes, of Section 11346.1 of the Government Code. This authority shall remain in effect until June 30, 1990.

This section shall remain in effect only until June 30, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1990, deletes or extends that date.

SEC. 6. Section 51345 of the Health and Safety Code is amended to read:

51345. (a) The agency shall administer a home purchase assistance program in accordance with this chapter. The purpose of the home purchase assistance program is to assist first-time homebuyers to utilize existing mortgage financing available pursuant to this part or Division 4 (commencing with Section 800) of the Military and Veterans Code with the additional financial resources made available pursuant to Part 8 (commencing with Section 53130).

(b) Home purchase assistance under this chapter shall include, but not be limited to: (1) an interest rate subsidy to reduce the interest rate , (2) a deferred-payment, low-interest, second-mortgage loan to reduce the principal and interest payments, and (3) downpayment assistance to make financing affordable to first-time homebuyers.

(c) The amount of home purchase assistance shall not exceed the amount necessary to make the total debt financing affordable to eligible households, but in no case shall the interest rate subsidy reduce the effective interest rate to the borrower below 3 percent per annum, nor shall the deferred-payment, low-interest, second-mortgage loan exceed 49 percent of the total debt financing necessary to purchase the home.

(d) The amount of home purchase assistance shall be a second-mortgage loan secured by a deed of trust of second priority to the primary financing provided by the agency or the Department of Veterans Affairs. The term of the home purchase assistance shall not exceed the term of the primary loan.

(e) The amount of home purchase assistance shall be due and payable at end of term or upon sale of the home or refinancing. If there are insufficient proceeds from the sale to reimburse the borrower for the amount of the borrower's share of the original downpayment, the principal and interest due on the home purchase assistance shall be reduced by that amount. In no case shall the amount of principal and interest due and payable by the borrower on the primary financing be reduced for this purpose. The borrower may refinance the mortgages on the home provided the principal of and accrued interest on the second mortgage loan securing the home purchase assistance are repaid in full. All repayments shall be deposited in the fund.

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:

This act extends regulatory authority necessary to implement the Housing and Homeless Bond Act of 1988 and the California Earthquake and Housing Rehabilitation Bond Act of 1988, and makes necessary changes to vital housing programs. These housing programs fulfill immediate and critical housing needs throughout California. It is therefore necessary that this act take immediate effect.

CHAPTER 1104

An act to amend Sections 728, 820, 3500, 3500.5, 3501, 3502, 3503, 3504, 3505, 3509, 6886, 6894.2, 6894.6, 6895, 6899, 6911, 6913, 6923, 6926.7, 7508.1, 7508.5, 7510.1, 7546.13, 7547.1, 7547.4, 7553.5, 7590.1, 7596.3, 7596.4, and 7599.25 of, to amend and renumber Sections 116, 117, 6868.7, 6893.1, 6893.2, and 6894.18 of, to amend the headings of Article 5 (commencing with Section 6886) and Article 9 (commencing with Section 6920) of Chapter 8 of, and Article 7 (commencing with Section 7597) of Chapter 11.6 of, Division 3 of, to add Sections 6911.1, 6926.13, 7512 13, and 7553.7 to, and to repeal Sections 6894.17, 6956.1, and 7546 1 of, the Business and Professions Code, to amend Sections 1010 and 1014 of the Evidence Code, to amend Sections 1373 and 8751.1 of the Health and Safety Code, and to amend Sections 10177 and 11512 8 of the Insurance Code, relating to consumer affairs, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 116 of the Business and Professions Code is amended and renumbered to read:

489. Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480, may without a hearing deny an application upon such a ground, if within one year previously, and after proceedings conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, such agency has denied an application from the same applicant upon the same ground.

SEC 1.3. Section 117 of the Business and Professions is amended and renumbered to read:

493. Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been

convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

SEC. 1.5. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department which delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) "Psychotherapist" means a physician specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage, family, and child counselor, a psychological assistant, marriage, family, and child counselor registered intern, or associate clinical social worker.

(2) "Sexual contact" means the touching of an intimate part of another person.

(3) "Intimate part" and "touching" have the same meaning as defined in subdivision (d) of Section 243.4 of the Penal Code.

(4) "The course of a prior treatment" means the period of time during which a patient first commences treatment for services which a psychotherapist is authorized to provide under his or her scope of practice or which the psychotherapist represents to the patient as being within his or her scope of practice until such time as the psychotherapist-patient relationship is terminated.

SEC. 1.7. Section 820 of the Business and Professions Code is amended to read:

820. Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made

available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

SEC. 1.8. Section 3500 of the Business and Professions Code is amended to read:

3500. In its concern with the growing shortage and geographic maldistribution of health care services in California, the Legislature intends to establish in this chapter a framework for development of a new category of health manpower—the physician assistant.

The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants where such delegation is consistent with the patient's health and welfare.

This chapter is established to encourage the utilization of physician assistants by physicians, and to provide that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. It is also the purpose of this chapter to allow for innovative development of programs for the education of physician assistants.

SEC. 1.9. Section 3500.5 of the Business and Professions Code is amended to read:

3500.5. This chapter shall be known and cited as the Physician Assistant Practice Act.

SEC. 2. 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 assistants which has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Committee" or "examining committee" means the Physician Assistant Examining Committee.

(f) "Regulations" means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(g) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity; for visual field defects; for color blindness; and depth perception.

SEC 2.1. Section 3502 of the Business and Professions Code is amended to read:

3502. Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations of the board when such services are rendered under the supervision of a licensed physician or physicians approved by the board.

Notwithstanding any other provision of law, a trainee may perform those medical services as set forth by the regulations of the board when those services are rendered within the scope of an approved program.

No medical services may be performed under this chapter in any of the following areas:

(a) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

(b) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training or orthoptics.

(c) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(d) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

This section shall not be construed in a manner which shall preclude the performance of routine visual screening as defined in Section 3501.

SEC. 2.2. Section 3503 of the Business and Professions Code is amended to read:

3503. No person other than one who has been licensed to practice as a physician assistant or authorized to practice on interim approval under Section 3517 shall practice as a physician assistant or in a similar capacity to a physician and surgeon or hold himself or herself out as a "physician assistant," or shall use any other term indicating or implying that he or she is a physician assistant.

SEC. 2.3. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician Assistant Examining Committee of the Board of Medical Quality Assurance. The committee shall consist of nine members.

SEC. 2.4 Section 3505 of the Business and Professions Code is amended to read:

3505. The members of the committee shall include one member of the board, a physician representative of a California medical school, an educator participating in an approved program for the training of physician assistants, one physician who is an approved supervising physician of a physician assistant and who is not a member of any division of the board, three physician assistants, and two public members.

Each member of the committee shall hold office for a term of four years expiring on January 1st, and shall serve until the appointment and qualification of a successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. No member shall serve for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired terms.

The Governor shall appoint the licensed members qualified as

provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 2.5. Section 3509 of the Business and Professions Code is amended to read:

3509. It shall be the duty of the committee to:

(a) Establish standards and issue licenses of approval for programs for the education and training of physician assistants.

(b) Make recommendations to the board concerning the scope of practice for physician assistants.

(c) Make recommendations to the board concerning the formulation of guidelines for the consideration of applications by licensed physicians to supervise physician assistants and approval of such applications

(d) Require the examination of applicants for licensure as a physician assistant who meet the requirements of this chapter.

SEC. 2.7. Section 6868.7 of the Business and Professions Code is amended and renumbered to read.

6864.1. Notwithstanding any other provision of law, the bureau shall not release the home address or home phone number of any licensee or registrant, other than to a governmental agency or law enforcement agency, unless the bureau has received a written request for that information. When a threat of physical harm is made or communicated to the bureau concerning a licensee or registrant, the bureau shall immediately notify the registrant or licensee of the threat and the name of the person making the threat.

All applications for registration, or licensure pursuant to this chapter shall contain a statement, printed in 18 point type, consisting of the following language:

"WARNING—READ BEFORE FILLING OUT THIS APPLICATION"

The address and phone number which you give may be either that of your employer, that of your business, or your home address and phone number. Pursuant to the California Public Records Act, whichever address and phone number you give, may be given to other governmental or law enforcement agencies, as well as given to anyone who requests it, including, but not limited to, debtors from whom you have attempted to collect a past due account."

SEC. 3. The heading of Article 5 (commencing with Section 6885) of Chapter 8 of Division 3 of the Business and Professions Code is amended to read:

Article 5. Applications; Examinations; Grounds for Denial, Suspension, and Revocation; Qualification Certificates

SEC. 4. Section 6886 of the Business and Professions Code is amended to read:

6886. Except as in this chapter otherwise provided, an applicant for a qualification certificate shall:

(a) Be at least 18 years of age.

(b) Not be subject to denial pursuant to Section 480.

(c) Have been actively engaged in the collection agency business for at least one year in this state or two years in another state during the five years next preceding the date on which his application is filed.

(d) Pass the examination required.

(e) Pay the required application and examination fees to the chief.

SEC. 5. Section 6893.1 of the Business and Professions Code is amended and renumbered to read:

6928. When considering the denial, suspension, revocation, or reinstatement of a license, registration, or certificate, the director, in evaluating the rehabilitation of the applicant, licensee, registrant, certificate holder or petitioner and his or her present eligiblity for a license, registration, or certificate, shall consider the following criteria:

(a) The nature and severity of the act or crime under consideration as grounds for denial, suspension or revocation.

(b) Evidence of any act committed subsequent to the act or crime under consideration as grounds for denial which also could be considered as grounds for denial, suspension or revocation under Section 480.

(c) The time that has elapsed since commission of the act or crime referred to in subdivision (a) or (b).

(d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of any rehabilitation submitted by the applicant.

SEC. 6. Section 6893.2 of the Business and Professions Code is amended and renumbered to read:

6885. (a) An applicant is not eligible for examination until he or she has filed a complete application accompanied by the appropriate fee.

(b) The application shall be (1) in writing stating the true name and full residence address of the applicant, (2) accompanied by a recent photograph, two classifiable sets of fingerprints, and a certificate in support of experience, (3) signed by the applicant, and (4) verified by the bureau. In addition to the information or documents required by this chapter, the chief may require the submission of any other information, evidence, statements, or documents he or she may deem necessary.

(c) Complete applications shall be filed in person at, or mailed to, the bureau's Sacramento office not later than 20 days prior to the next scheduled examination date. An applicant who fails to file within the above time period may, in the bureau's discretion, be

scheduled to take the following scheduled examination.

SEC. 7. Section 6894.2 of the Business and Professions Code is amended to read:

6894.2. (a) Every person required to be registered pursuant to Section 6894 shall file with the chief an application for registration within 15 days after the commencement of employment.

(b) Each person licensed under this chapter shall notify the chief in writing within 15 days after the commencement of employment by him or her of any person registered under this article. The notice shall be on a form prescribed by the chief. A violation of this subdivision by a licensee constitutes grounds for the suspension or revocation of his or her license.

SEC. 8. Section 6894.6 of the Business and Professions Code is amended to read:

6894.6. Employees of a licensee who are engaged exclusively in sales or stenographic, typing, filing or other clerical activities shall not be required to register under this article.

This exemption shall not include those persons whose duties include accounting for receipts or disbursements or trust moneys, preparation of bank deposits or reconciliations, or other functions of responsibility for the financial transactions of the licensee.

SEC. 9. Section 6894.17 of the Business and Professions Code is repealed.

SEC. 10. Section 6894.18 of the Business and Professions Code is amended and renumbered to read:

6914.6. After any license has been revoked or has expired, the licensee shall not sell or assign any claim or account in his or her possession for collection other than to return or reassign the uncollected accounts to the customers or their order, and the licensee shall not charge or receive any fee or compensation for the return or assignment of any such claim or account; and no licensee shall charge or receive any fee or commission on any moneys received or collected subsequent to the revocation or expiration of his or her license, but all those moneys shall be forthwith remitted to the owners of the accounts on which the moneys were paid. The commission of any of the above-mentioned prohibited acts shall be deemed to constitute carrying on business within the meaning of Section 6871, but this section shall not be construed to prohibit a bulk sale after termination of license of all of the business, assets and goodwill of a licensee as a unit, including the right to solicit reassignment of all uncollected accounts.

SEC. 11. Section 6895 of the Business and Professions Code is amended to read:

6895. The applicant for a license shall file with the chief a bond in the penal sum of ten thousand dollars ($10,000) upon notification by the chief that an applicant's fictitious business name has been approved. During the period in which the license is active, the licensee shall maintain a bond which reflects the name and address of the licensee as shown in the records of the bureau.

The bond shall run to the people of the State of California and shall be executed and acknowledged by the applicant or licensee as principal and by an admitted surety insurer as surety.

The chief shall keep the bond on file for a period of four years following termination of any bond filed under this chapter.

SEC. 12. Section 6899 of the Business and Professions Code is amended to read:

6899. The bond shall be continuous in form and remain in full force and effect and shall run concurrently with the license period and for any renewals thereof, as provided in Section 995.440 of the Code of Civil Procedure, unless terminated or canceled by action of the surety as provided by law or unless terminated or canceled as provided in this chapter.

SEC. 13. Section 6911 of the Business and Professions Code is amended to read:

6911. The license is not transferable.

SEC. 14. Section 6911.1 is added to the Business and Professions Code, to read:

6911.1. In the event of the loss or destruction of a license, the licensee may file with the chief a written statement executed under penalty of perjury explaining the loss or destruction and pay the duplicate license fee prescribed. Thereupon the chief shall issue a duplicate license.

SEC. 15. Section 6913 of the Business and Professions Code is amended to read:

6913. The acquisition of more than 10 percent of the voting stock or shares in any corporation or unincorporated association by any person shall be grounds for revocation or suspension of any and all licenses of the corporation or unincorporated association if the director, after proceedings had in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code finds that the person:

(a) Has been convicted of a crime substantially related to the qualifications, functions, or duties of the corporation or association.

(b) Has committed any act which would justify refusal of permission to take the collection agency examination and to issue a qualification certificate under Section 6886.1.

Every licensed corporation and unincorporated association shall file with the chief a written report of any transfer, issuance, cancellation or redemption of stock or memberships amounting to 10 percent or more of the total voting stock or memberships then outstanding within 30 days after the transfer, issuance, cancellation or redemption.

SEC. 16. The heading of Article 9 (commencing with Section 6920) of Chapter 8 of Division 3 of the Business and Professions Code is amended to read:

Article 9. Conduct of Business

SEC. 17. Section 6923 of the Business and Professions Code is amended to read:

6923. Except as herein otherwise provided no person shall be in charge of any licensed office or agency if the person has ever had a license revoked for cause or has ever been disqualified from further employment in the collection agency business pursuant to Article 10 (commencing with Section 6925) or was a partner, managing employee, officer, director, trustee or stockholder of a partnership, corporation or unincorporated association a license of which has been revoked for cause.

SEC. 18. Section 6926.13 is added to the Business and Professions Code, to read:

6926.13. (a) In the pursuit of collection, an account may be referred to an attorney for his or her evaluation and possible legal action. On the date when such an account is so referred, the collection agency shall indicate the date of referral and the name of the attorney on the debtor account record in a clear and concise manner.

(b) All clerical work delegated by the attorney of record shall be under the direction and control of that attorney. Should an attorney delegate clerical work to a person on the payroll of a collection agency, the delegation shall be in writing and shall specifically set forth the work to be done.

(c) If litigation is initiated by the attorney, there shall be no further contract with the debtor or his or her attorney except by those individuals who have been specifically authorized and delegated by the agency's attorney in writing.

SEC. 19. Section 6926.7 of the Business and Professions Code is amended to read·

6926.7. The acceptance of claims by collection agencies shall be limited to debts arising out of contracts, express or implied, or other claims reduced to judgment.

SEC. 21. Section 6956.1 of the Business and Professions Code is repealed.

SEC. 22. Section 7508.1 of the Business and Professions Code is amended to read:

7508.1. The director may assess administrative fines for the following prohibited acts:

(a) Knowingly making any false report to his or her employer or client for whom information was being obtained. The fine shall be one hundred dollars ($100) for the first violation, and five hundred dollars ($500) for each violation thereafter.

(b) Using any identification to indicate registration as a repossessor, other than the bureau-issued registration card, except an employer identification card issued by the repossession agency which has met bureau approval. A bureau-issued registration card shall be carried by those individuals specified by Section 7506.3, and

shall be shown on demand to any bureau employee or law enforcement officer. The fine shall be twenty-five dollars ($25) for each violation.

(c) Using an alias in connection with the official activities of the licensee's business. A notice of warning shall be issued for the first violation. Thereafter the fine shall be twenty-five dollars ($25) for each violation.

(d) Appearing as an assignee party in any court proceeding involving claim and delivery, replevin, or other possessory court action, action to foreclose a chattel mortgage, mechanic's lien, materialman's lien, or any other lien. This section shall not prohibit a licensee from appearing as a defendant in any of the preceding actions. The fine shall be one hundred dollars ($100) for each violation.

SEC. 23. Section 7508.5 of the Business and Professions Code is amended to read:

7508.5. The director may assess administrative fines against a repossession agency employee for the following acts, in addition to those imposed pursuant to any other section in this article. The fine shall be twenty-five dollars ($25) for each of the following violations:

(a) Knowingly submit a false report to his or her employer.

(b) Submitting a report to a client without authorization by his or her employer.

(c) Failing to carry a bureau-issued identification card and failing to show that card upon demand to a bureau employee or a law enforcement officer.

(d) Failing to register.

(e) Failing to return his or her registration card to the employer upon termination.

SEC. 24. Section 7510.1 of the Business and Professions Code is amended to read:

7510.1. The director may suspend or revoke a repossession agency license, a qualification certificate, or registration issued under this chapter if the director determines that the licensee or the licensee's manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, partners, employees, or its manager, has:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provisions of this chapter.

(c) Violated any rule of the director adopted pursuant to authority contained in this chapter.

(d) Been convicted of a felony or any crime substantially related to the repossession agency business including illegally using, carrying, or possessing a deadly weapon.

(e) Committed or permitted any employee to commit any act while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an

application for a license.

(f) Unlawfully committed assault, battery, or kidnapping, or used force or violence on any person.

(g) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(h) Been convicted of a violation of Section 148 of the Penal Code, resisting or obstructing a public officer.

(i) Committed any act which is a ground for denial of an application for license under this chapter.

(j) Committed any act prohibited by Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code.

(k) Committed any act in the course of the licensee's business constituting dishonesty or fraud, including, but not limited to:

(1) Knowingly making a false statement relating to evidence or information obtained in the course of employment, or knowingly publishing a slander or a libel in the course of business.

(2) Using illegal means in the collection or attempted collection of a debt or obligation.

SEC. 25. Section 7512.13 is added to the Business and Professions Code, to read:

7512.13. As used in this chapter, "firearm permit" includes "firearms permit," "firearms qualification card," "firearms qualification," and "firearms qualification permit."

SEC. 26. Section 7546.1 of the Business and Professions Code is repealed.

SEC. 27. Section 7546.13 of the Business and Professions Code is amended to read:

7546.13. The registration of a security guard shall be automatically suspended if the guard is convicted of any crime which is substantially related to the functions, duties, and responsibilities of a security guard. The automatic suspension shall be effectuated by the mailing of a notice of conviction and suspension of license to be sent by the bureau to the registered guard at his or her address of record. A copy of the notice shall be sent to the private patrol operator employing the guard with notice that the employer shall suspend any and all employment of the guard forthwith. The notice shall contain a statement of preliminary determination by the director or his or her designee that the crime stated is reasonably related to the functions, duties, and responsibilities of a security guard. Upon proper request by the guard, a hearing shall be convened within 60 days of the request, before the private security disciplinary review committee, as specified in Section 7517.2, for a determination as to whether the automatic suspension shall be made permanent or whether the registration shall be revoked or the guard otherwise disciplined.

In enacting this provision, the Legislature finds and declares that registered guards convicted of the commission of crimes reasonably related to the functions, duties, and responsibilities of a security

guard shall be subject to automatic suspension of their license and that summary suspension is justified by compelling state interests of public safety and security within the meaning of the California Supreme Court's decision in Eye Dog Foundation v. State Board of Guide Dogs for the Blind, 67 Cal. 2d 536.

SEC. 28. Section 7547.1 of the Business and Professions Code is amended to read:

7547.1. The bureau shall issue a firearms permit when all of the following conditions are satisfied:

(a) The applicant is a licensee, a qualified manager of a licensee, or a registered uniformed security guard.

(b) A certified firearms training instructor has certified that the applicant has successfully completed a written examination prepared by the bureau and training course in the carrying and use of firearms approved by the bureau.

(c) The applicant has filed with the bureau a classifiable fingerprint card, a completed application for a firearms permit on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(d) The bureau has determined, after investigation, that the carrying and use of a firearm by the applicant, in the course of his or her duties, presents no apparent threat to the public safety, or that the carrying and use of a firearm by the applicant is not in violation of the Penal Code.

(e) The applicant has produced evidence to the firearm training facility that he or she is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status shall be that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(f) The application is accompanied by the application fees prescribed in this chapter.

SEC. 29. Section 7547.4 of the Business and Professions Code is amended to read:

7547.4. If a firearms permit is denied, the denial of the permit shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a review by a disciplinary review committee to contest the denial, the review shall be requested of the director within 30 days following notice of the issuance of the denial. However, no review or hearing shall be granted to an individual who is otherwise prohibited by law from carrying a firearm.

SEC. 30. Section 7553.5 of the Business and Professions Code is

amended to read:

7553.5. (a) A baton training facility shall issue a bureau-developed baton permit to any person who successfully completes a baton training course as described in Section 7553 and possesses a valid security guard registration card issued pursuant to Article 3.2 (commencing with Section 7544) or who has made application for that registration card. The permit is valid only when the holder possesses a valid guard registration card.

(b) The bureau shall issue baton permits to a baton training facility, in good standing, upon request and upon payment of the fees as set forth in this chapter.

(c) Each baton training facility shall submit to the bureau, on forms as prescribed by the director, no later than five working days following the issuance of a permit for each person, the name, address, bureau registration or license number, date of birth, and baton permit number of each person issued a permit.

SEC. 31. Section 7553.7 is added to the Business and Professions Code, to read:

7553.7. In the event of the loss, theft, or destruction of a baton permit, a permitholder may request the bureau to issue a replacement permit. The request shall be in writing, shall state the circumstances surrounding the loss, theft, or destruction of the permit and the name of the instructor, training facility, and date of instruction relating to the issuance of the original baton permit. The request shall be accompanied by a five dollar ($5) replacement fee. The bureau may issue a replacement baton permit upon verification of successful baton training.

SEC. 32. Section 7590.1 of the Business and Professions Code is amended to read.

7590.1. The following terms as used in this chapter have the meaning expressed in this article:

(a) "Person" means any individual, firm, company, association, organization, partnership, or corporation.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

(d) "Bureau" means the Bureau of Collection and Investigative Services.

(e) "Chief" means the Chief of the Bureau of Collection and Investigative Services.

(f) "Employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions.

(g) "Employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control.

(h) "Employer-employee relationship" means an individual who works for another and where the individual's name appears on the payroll records of the employer.

(i) "Licensee" means a business entity, whether an individual,

partnership, or corporation licensed under this chapter.

(j) "Qualified manager" means an individual who is in active control, management, and direction of the licensee's business, and who is in possession of a current and valid qualified manager's certificate pursuant to this chapter.

(k) "Registrant" means any person registered or who has applied for registration under this chapter.

(*l*) "Branch office" means any location, other than the principal place of business of the licensee, which is licensed as set forth in Article 11 (commencing with Section 7599.20).

(m) "Branch office manager" means an individual designated by the qualified manager to manage the licensee's branch office and who has met the requirements as set forth in Article 11 (commencing with Section 7599.20).

(n) "Alarm system" means an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention and to which police are expected to respond.

(o) "Alarm agent" means a person employed by an alarm company operator whose duties include selling on premises, altering, installing, maintaining, moving, repairing, replacing, servicing, responding, or monitoring an alarm system, or a person who manages or supervises a person employed by an alarm company to perform any of the duties described in this subdivision or any person in training for any of the duties described in this subdivision.

(p) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles; any dirk, dagger, pistol, revolver, or any other firearm; any knife having a blade longer than five inches; any razor with an unguarded blade; or any metal pipe or bar used or intended to be used as a club.

(q) "Firearms permit" means a permit issued by the bureau, pursuant to Article 6 (commencing with Section 7596), to a licensee, a qualified manager, or an alarm agent, to carry an exposed firearm while on duty.

(r) (1) "Advertisement" means:

(A) Any written or printed communication for the purpose of soliciting, describing, or promoting the licensed business of the licensee, including a brochure, letter, pamphlet, newspaper, periodical, publication, or other writing.

(B) A directory listing caused or permitted by the licensee which indicates his or her licensed activity.

(C) A radio, television, or similar airwave transmission which solicits or promotes the licensed business of the licensee.

(2) "Advertisement" does not include any of the following:

(A) Any printing or writing used on buildings, vehicles, uniforms, badges, or other property where the purpose of the printing or writing is identification.

(B) Any printing or writing on communications, memoranda, or any other writings used in the ordinary course of business where the

sole purpose of the writing is other than the solicitation or promotion of business.

(C) Any printing or writing on novelty objects used in the promotion of the licensee's business where the printing of the information required by this chapter would be impractical due to the available area or surface.

(s) "Residential sales agreement" means and includes an agreement between an alarm company operator and an owner or tenant for the purchase of an alarm system to be utilized in the personal residence of the owner or tenant.

(t) "Firearm permit" means and includes "firearms permit," "firearms qualification card," "firearms qualification," and "firearms qualification permit."

SEC. 33. Section 7596.3 of the Business and Professions Code is amended to read:

7596.3. The director shall issue a firearms permit when all of the following conditions exist:

(a) The applicant is a licensee, a qualified manager of a licensee, a designated branch office manager of a licensee, or a registered alarm agent

(b) The applicant has filed with the bureau a classifiable fingerprint card, a completed application for a firearms permit on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(c) A certified firearms training instructor certifies that the applicant has successfully completed the bureau-approved training course in the carrying and use of firearms.

(d) The applicant has provided the bureau with evidence that the applicant has completed a course in the exercise of the powers to arrest.

(e) The bureau has determined, after investigation, that the carrying and use of a firearm by the applicant, in the course of his or her duties, presents no apparent threat to the public safety, or the carrying and use of a firearm by the applicant is not in violation of the Penal Code.

(f) The applicant has produced evidence to the firearm training facility that he or she is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status shall be that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(g) The application is accompanied by the fee prescribed in this chapter.

SEC. 34. Section 7596.4 of the Business and Professions Code is amended to read:

7596.4. If a firearms permit is denied, the denial of the permit shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a review by the Alarm Company Operator Disciplinary Review Committee or a hearing to contest the denial, the review or hearing shall be requested within 30 days of the issuance of the denial.

A review or hearing shall be held pursuant to Section 7591.19. However, no review or hearing shall be granted to an individual who is otherwise prohibited by law from carrying a firearm

SEC. 35. The heading of Article 7 (commencing with Section 7597) of Chapter 11.6 of Division 3 of the Business and Professions Code is amended to read:

Article 7. Prohibited Acts and Citations for Firearms and Nonlethal Weapons

SEC. 36. Section 7599.25 of the Business and Professions Code is amended to read:

7599.25. Each branch office registration shall be managed and supervised by a designated branch office manager. However, each registered branch office and designated branch office manager shall be under the active management supervision of the qualified manager of the licensee. A branch office may be managed for 120 days from the date of initial application for registration under the direction of the qualified manager of the licensee.

SEC. 37. Section 1010 of the Evidence Code is amended to read.

1010. As used in this article, "psychotherapist" means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 9040) of Chapter 17 of Division 3 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing such service issued by the state.

(e) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage, family, and

child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code.

(k) There is no privilege under subdivisions (h), (i), and (j) in any criminal proceeding.

SEC. 38. Section 1014 of the Evidence Code is amended to read:

1014. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the psychotherapist at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code or a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word "persons" as used in this subdivision includes partnerships, corporations, associations and other groups and entities.

SEC. 39. Section 1373 of the Health and Safety Code is amended to read

1373. (a) A plan contract may not provide an exception for other coverage where the other coverage is entitlement to Medi-Cal

benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal benefits.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal benefits.

(b) A plan contract which provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract which provides coverage to family members or dependents of the subscriber or enrollee shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or enrollee covered and to each minor child placed for adoption from and after the moment the child is placed in the physical custody of the covered subscriber or enrollee for adoption. No such plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or enrollee covered as required by this subdivision.

(d) Every plan contract which provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for such information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(e) A plan contract which provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any,

as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the commissioner.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of such services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Health Services or pursuant to a waiver of licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover such services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law or, any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act, (i) any marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, or (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, or (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, the certificate holder being expressly authorized by law to perform these

services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage, family, and child counselor" means a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or license holder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations which offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (subs. (5), Sec. 300e-1, 42 U.S.C.).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services which are alternatives to inpatient care and which are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract which provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement which are requisite to the commencement of benefits.

SEC. 39.5. Section 8751.1 of the Health and Safety Code is amended to read:

8751.1. In addition to the requirements of Section 8751, the funds may be invested and reinvested and kept invested in investments of the type and in the manner as provided in Chapter 1 (commencing with Section 16000), Chapter 2 (commencing with Section 16200) and Chapter 4 (commencing with Section 16400), of Part 4 of Division 9 of the Probate Code.

SEC. 40. Section 10177 of the Insurance Code is amended to read.

10177. A self-insured employee welfare benefit plan may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of such services, and provision may be made therein for payment of all or a portion of the amount of charge for such services without requiring that the employee first pay such expenses. No such plan shall prohibit the employee from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage, family, and child counselor who is the holder of a certificate or license under Section 4980.50 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, such certificate or license holder being expressly authorized by law to perform such services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family, and child counselor" shall mean a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

A self-insured employee welfare benefit plan, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage in nongroup contracts may not include a lifetime waiver for that coverage with respect to any employee. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 41. Section 11512.8 of the Insurance Code is amended to read:

11512.8. A hospital service contract may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of such services, and provision may be made therein for payment of all or a portion of the amount of charge for such services without requiring that the employee first pay such expenses.

No such contract shall prohibit the subscriber from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, to perform the particular services covered under the terms of the contract, such certificate or license holder being expressly authorized by law to perform such services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience. For the purposes of this section, "marriage, family, and child counselor" shall mean a licensed marriage, family, and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

A hospital service contract, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage in nongroup contracts may not contain a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

CHAPTER 1105

An act to amend Sections 4370.5 and 7007 of, and to add Sections 4350.5 and 4353 to, the Civil Code, to amend Sections 259, 412.20, 1011, 1276, 1277, and 1278 of, and to add Section 412.21 to, the Code of Civil Procedure, and to amend Section 273.6 of the Penal Code, relating to courts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 4350.5 is added to the Civil Code, to read:

4350.5. As used in this part, other than Title 1 (commencing with Section 4000), the terms "husband" and "wife" refer to persons who are lawfully married to each other and to persons who were previously lawfully married to each other.

SEC. 2. Section 4353 is added to the Civil Code, to read:

4353. In any action for legal separation or dissolution or annulment of a marriage, the court has continuing jurisdiction to award community property or community debts to the parties that has not been previously awarded by a judgment therein. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community asset omitted or not awarded by the judgment. In these cases, the court shall equally divide the omitted or unawarded community asset, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset.

SEC. 3. Section 4370.5 of the Civil Code is amended to read:

4370.5. (a) The court may make an award under this chapter where the making of the award, and the amount of the award, is just and reasonable under the circumstances of the respective parties.

(b) In determining what is just and reasonable under the circumstances, the court shall take into consideration both of the following:

(1) The need for the award to enable each party, to the extent practical, to have sufficient financial resources to adequately present his or her case, taking into consideration to the extent relevant the circumstances of the respective parties described in subdivision (a) of Section 4801.

(2) The extent to which the conduct of each party and the attorney furthers or frustrates the policy of the law to promote settlement of litigation, and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney fees and costs pursuant to this paragraph is in the nature of a sanction. In making an award pursuant to this paragraph, the court shall take into consideration all evidence concerning the parties' incomes, assets, and abilities. The court shall

not impose a sanction pursuant to this paragraph that imposes an unreasonable financial burden upon the party against whom the sanction is imposed.

(c) The court may order payment of the award from any type of property, whether community or separate, principal or income.

SEC. 4. Section 7007 of the Civil Code is amended to read:

7007. (a) The superior court has jurisdiction of an action brought under this part.

(b) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.

(c) The action may be brought in the county in which the child resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

(d) The superior court has jurisdiction in an action under this part to change the name of a minor or adult child for whom a parent and child relationship is established pursuant to Section 7010, upon application in accordance with Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure. The procedure for a change of name shall conform to those provisions, except that the application for the change of name may be included with the petition filed under this part and except as provided in Sections 1277 and 1278 of the Code of Civil Procedure.

SEC. 5 Section 259 of the Code of Civil Procedure is amended to read:

259. Subject to the supervision of the court every court commissioner shall have power to do all of the following:

(1) Hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(2) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(3) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(4) Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose

under the laws of this or any other state or country.

(5) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of the party appearing at the hearing where the action is either uncontested or the other party or parties are in default. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

(6) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary alimony, costs and attorneys' fees, and issues of fact in contempt proceedings in divorce, maintenance, and annulment of marriage cases.

(7) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of paragraph (5) above.

(8) Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This paragraph does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

(9) Provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which the commissioner resides.

(10) Authenticate with the official seal the commissioner's official acts.

SEC. 6. Section 412.20 of the Code of Civil Procedure is amended to read:

412.20. (a) Except as otherwise required by statute, a summons shall be directed to the defendant, signed by the clerk and issued under the seal of the court in which the action is pending, and it shall contain:

(1) The title of the court in which the action is pending.

(2) The names of the parties to the action.

(3) A direction that the defendant file with the court a written pleading in response to the complaint within 30 days after summons is served on him or her.

(4) A notice that, unless the defendant so responds, his or her default will be entered upon application by the plaintiff, and the plaintiff may apply to the court for the relief demanded in the complaint, which could result in garnishment of wages, taking of money or property, or other relief.

(5) The following statement in boldface type: "You may seek the advice of an attorney in any matter connected with the complaint or this summons. Such attorney should be consulted promptly so that your pleading may be filed or entered within the time required by this summons."

(6) The following introductory legend at the top of the summons above all other matter, in boldface type, in English and Spanish:

"Notice! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read information below."

(b) Each county may, by ordinance, require that the legend contained in paragraph (6) of subdivision (a) be set forth in every summons issued out of the courts of that county in any additional foreign language, if the legend in the additional foreign language is set forth in the summons in the same manner as required in that paragraph.

(c) A summons in a form approved by the Judicial Council is deemed to comply with this section.

SEC. 7. Section 412.21 is added to the Code of Civil Procedure, to read:

412.21. (a) Commencing on July 1, 1990, in an action for dissolution of marriage, legal separation, or annulment of marriage, the summons shall additionally contain temporary restraining orders set forth in this section. Upon the filing of a petition for dissolution of marriage, legal separation, annulment of marriage, or domestic violence by the petitioner and issuance of the summons and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary restraining order shall be in effect against both parties until the final decree is entered or the petition is dismissed, or until further order of the court:

(1) Enjoining both parties from harassing, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of the other party.

(2) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(3) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days prior to incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party. However, nothing in the restraining order shall preclude the parties from using community property to pay reasonable attorney's fees in order to retain legal counsel in the action.

(4) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children.

The restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political

subdivision unless that law enforcement agency has received a copy of the order pursuant to the provisions of this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.

The summons shall state on its face that the order thereon is enforceable in any place in this state by any law enforcement agency that has received mailed notice thereof, by any other law enforcement agency that has received the order, or by any officer who has been shown the order. Any willful and knowing violation of the order by removing a child from the state without the written consent of the other party or an order of the court shall be punishable as provided in Section 278.5 of the Penal Code. Any willful and knowing violation of any of the other orders in the summons shall be punishable as provided in Section 273.6 of the Penal Code.

Nothing in this subdivision shall preclude either party from applying to the court for further temporary orders, an expanded temporary ex parte order, or modification or revocation of the order.

The automatic granting of these ex parte orders is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.

(b) In an action under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, the summons shall additionally contain the temporary restraining orders set forth in this subdivision. Upon the filing of a petition hereunder by petitioner and issuance of the summons and upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary restraining order shall be in effect against the parties until the final decree is entered or the petition is dismissed, or until further order of the court:

(1) Enjoining the parties from harassing, molesting, attacking, striking, threatening, sexually assaulting, battering, or disturbing the peace of another party.

(2) Restraining all parties from removing from the state any minor child or children for whom the action seeks to establish a parent and child relationship, without the prior written consent of the other party or an order of the court.

The restraining order is enforceable in any place in this state, but is not enforceable by a law enforcement agency of a political subdivision unless that law enforcement agency has received a copy of the order pursuant to the provisions of this subdivision, has otherwise received a copy of the order, or the officer enforcing the order has been shown a copy of the order.

The summons shall state on its face that the order thereon is enforceable in any place in this state by any law enforcement agency that has received mailed notice thereof, by any other law enforcement agency that has received the order, or by any officer who has been shown the order. Any willful and knowing violation of the order by removing a child from the state without the written consent of the other party or an order of the court shall be punishable

as provided in Section 278.5 of the Penal Code. Any willful and knowing violation of any of the other orders in the summons shall be punishable as provided in Section 273.6 of the Penal Code.

Nothing in this subdivision shall preclude either party from applying to the court for further temporary orders, an expanded temporary ex parte order, or modification or revocation of the order.

The automatic granting of these ex parte orders is not a court determination or competent evidence in any proceeding of any prior history of the conduct so proscribed occurring between the parties.

(c) The restraining orders issued under this section are confidential and the court shall order as part of the restraining order that any person who discloses the existence of a temporary restraining order, except for the purpose of enforcing the restraining order or orders as provided herein, is subject to the penalties provided under Section 1218. Each and every disclosure shall constitute a separate violation of this subdivision. If this subdivision or the application thereof to any person or circumstances is held invalid that invalidity shall not affect other provisions or applications of this section and to this end the provisions of this section are severable.

SEC. 8. Section 1011 of the Code of Civil Procedure is amended to read:

1011. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

(a) If upon an attorney, service may be made at the attorney's office, by leaving the notice or other papers in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or with a person having charge thereof. When there is no person in the office with whom the notice or papers may be left for purposes of this subdivision at the time service is to be effected, service may be made by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office, or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age, if the attorney's residence is in the same county with his or her office, and, if the attorney's residence is not known or is not in the same county with his or her office, or being in the same county it is not open, or there is not found thereat any person of not less than 18 years of age, then service may be made by putting the notice or papers, enclosed in a sealed envelope, into the post office or a mail box, subpost office, substation, or mail chute or other like facility regularly maintained by the Government of the United States directed to the attorney at his or her office, if known and otherwise to the attorney's residence, if known. If neither the attorney's office nor residence is known, service may be made by delivering the notice or papers to the clerk of the court, or to the judge where there is no clerk, for the attorney.

(b) If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of eight in the morning and six in the evening, with some person of not less than 18 years of age. If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court or the judge, if there is no clerk, for that party.

SEC. 9. Section 1276 of the Code of Civil Procedure is amended to read:

1276. All applications for change of names shall be made to the superior court of the county where the person whose name is proposed to be changed resides either (a) by petition signed by the person or, if the person is under 18 years of age, by one of the person's parents, if living, or if both parents are dead, then by the guardian of the person and, if there is no guardian, then by some near relative or friend of the person or (b) as provided in subdivision (d) of Section 7007 of the Civil Code.

The petition or pleading shall specify the place of birth and residence of the person, his or her present name, the name proposed, and the reason for the change of name, and shall, if neither parent of the person is living, name, as far as known to the person proposing the name change, the near relatives of the person, and their place of residence.

In an action for a change of name commenced by the filing of a petition:

(a) If the person whose name is proposed to be changed is under 18 years of age and the petition is signed by only one parent, the petition shall specify the address, if known, of the other parent if living.

(b) If the person whose name is proposed to be changed is 12 years of age or over, has been relinquished to an adoption agency by his or her parent or parents, and has not been legally adopted, the petition shall be signed by the person and the adoption agency to which the person was relinquished. The near relatives of the person and their place of residence shall not be included in the petition unless they are known to the person whose name is proposed to be changed.

SEC. 10. Section 1277 of the Code of Civil Procedure is amended to read:

1277. (a) Where an action for a change of name is commenced by the filing of a petition, the court shall thereupon make an order reciting the filing of the petition, the name of the person by whom it is filed and the name proposed, and directing all persons interested in the matter to appear before the court at a time and place specified, which shall be not less than four or more than eight weeks from the

time of making the order, to show cause why the application for change of name should not be granted. A copy of the order to show cause shall be published pursuant to Section 6064 of the Government Code in a newspaper of general circulation to be designated in the order published in the county. If no newspaper of general circulation is published in the county, a copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the county in which the court is located, for a like period. Proof shall be made to the satisfaction of the court of this publication or posting, at the time of the hearing of the application.

Four weekly publications shall be sufficient publication of the order to show cause. If the order is published in a daily newspaper, publication once a week for four successive weeks shall be sufficient.

Where a petition has been filed for a minor and the other parent, if living, does not join in consenting thereto, the petitioner shall, not less than 30 days prior to the hearing, serve notice of the time and place of the hearing or a copy of the order to show cause on the other parent pursuant to Section 415.10 or 415.40 of the Code of Civil Procedure.

(b) Where application for change of name is brought as part of an action under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, whether as part of a petition or cross-complaint or as a separate order to show cause in a pending action thereunder, service of the application shall be made upon all other parties to the action in a like manner as prescribed for the service of a summons, as is set forth in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2. Upon the setting of a hearing on the issue, notice of the hearing shall be given to all parties in the action in a like manner and within the time limits prescribed generally for the type of hearing (whether trial or order to show cause) at which the issue of the change of name is to be decided.

SEC. 11. Section 1278 of the Code of Civil Procedure is amended to read:

1278. (a) Except as provided in subdivision (b), the application shall be heard at the time designated by the court, only if objections are filed by any person who can, in those objections, show to the court good reason against the change of name. At the hearing, the court may examine on oath any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name, or dismissing the application, as to the court may seem right and proper.

If no objection is filed the court may, without hearing, enter the order that the change of name is granted.

(b) Where the application for a change of name is brought as part of an action under Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, the hearing on the issue of the change of name shall be conducted pursuant to statutes and rules of court governing those proceedings, whether the hearing is conducted upon an order to show cause or upon trial.

SEC. 12. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any willful and knowing violation of any of the court orders set forth in this subdivision, when obtained pursuant to Section 4359, 4458, 4516, 7020, or 7021 of the Civil Code, subdivision (e) or (f) of Section 412.20 of the Code of Civil Procedure, Section 527.6 of the Code of Civil Procedure, or Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure shall be a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in a physical injury, the person shall be imprisoned in the county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the orders under subdivision (a) or (d).

(d) A second or subsequent conviction for a violation of an order issued pursuant to subdivision (a) occurring within seven years of a prior conviction for a violation of such an order and involving an act of violence or "a credible threat" of violence as defined in subdivision (b) of Section 139 is punishable by imprisonment in the county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(e) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to the provisions listed in subdivisions (a), (b), and (d).

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1106

An act to amend Section 651 of the Harbors and Navigation Code, relating to navigation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 651 of the Harbors and Navigation Code is amended to read:

651 As used in this chapter, unless the context clearly requires a different meaning:

(a) "Department" means the Department of Boating and Waterways.

(b) "Director" means the Director of Boating and Waterways.

(c) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except either of the following:

(1) A seaplane on the water

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(d) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(e) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(f) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of

the vessel to the lessee for a period of 30 consecutive days or more.

(g) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(h) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(i) "Waters of this state" means any waters within the territorial limits of this state

(j) "Person" means an individual, partnership, firm, corporation, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(k) "Operator" means the person on board who is steering the vessel while underway.

(*l*) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto

(m) "Use" means operate, navigate, or employ.

(n) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(o) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(p) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(q) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(r) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(s) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(t) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(u) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

SEC. 1.3. Section 651 of the Harbors and Navigation Code is amended to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Department" means the Department of Boating and Waterways

(b) "Director" means the Director of Boating and Waterways.

(c) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except either of the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(d) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(e) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(f) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends,

rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(g) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(h) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel

(i) "Waters of this state" means any waters within the territorial limits of this state.

(j) "Person" means an individual, partnership, firm, corporation, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(k) "Operator" means the person on board who is steering the vessel while underway.

(*l*) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(m) "Use" means operate, navigate, or employ.

(n) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(o) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(p) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(q) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(r) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(s) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(t) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(u) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 1.5. Section 651 of the Harbors and Navigation Code is amended to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Alcohol" means any form or derivative of ethyl alcohol (ethanol).

(b) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) "Chemical test" means a test which analyzes an individual's breath, blood, or urine, for evidence of drug or alcohol use.

(d) "Controlled substance" means controlled substance as defined in Section 11007 of the Health and Safety Code.

(e) "Department" means the Department of Boating and Waterways

(f) "Director" means the Director of Boating and Waterways.

(g) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except either of the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(h) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(i) "Intoxicant" means any form of alcohol, drug, or combination thereof.

(j) "Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

(k) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(*l*) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more

(m) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(n) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(o) "Waters of this state" means any waters within the territorial limits of this state.

(p) "Person" means an individual, partnership, firm, corporation, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(q) "Operator" means the person on board who is steering the vessel while underway.

(r) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(s) "Use" means operate, navigate, or employ.

(t) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(u) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(v) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(w) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(x) "Manufacturer" means any person engaged in any of the following·

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(y) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(z) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(aa) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities

(bb) "Recreational vessel" means a vessel which is being used only for pleasure.

This section shall become operative January 1, 1992.

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

SEC. 3. Sections 1.3 and 1.5 of this bill incorporate amendments to Section 651 of the Harbors and Navigation Code proposed by both this bill and SB 1119. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 651 of the Harbors and Navigation Code, and (3) this bill is enacted after SB 1119, in which case Section 1 of this bill shall not become operative.

CHAPTER 1107

An act to amend Sections 25682, 25684, 25686.5, and 25686.8 of, and to repeal Section 25368 of, the Public Resources Code, relating to energy resources.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 25368 of the Public Resources Code is repealed.

SEC. 2. Section 25682 of the Public Resources Code is amended to read:

25682. For purposes of this chapter:

(a) "Account" means the Energy Technologies Research, Development, and Demonstration Account.

(b) "Alternative sources of energy" includes, but is not limited to, geothermal, hydroelectric power equal to or less than 5 megawatts, photovoltaics, wind, biomass, cogeneration, solar thermal, fuel cells, and energy efficiency measures.

(c) "Loan" means the contractual financing of a qualifying project under the program, and in which the recipient of the loan repays the loan amount, plus accrued interest regardless of the commercial success of the project. Loans are generally to be provided to those projects that include energy technology systems that are relatively close to full commercialization, represent demonstrations of the technology, and have high probability of generating net positive cash flows sufficient to repay the loan and the

accrued interest within five years from the performance determination date of the contract.

(d) "Repayable research contract" means the contractual award made to a qualifying project under the program, and in which the recipient of the award is obligated to repay up to the full amount of the award, plus accrued interest if the project, or invention developed as a result of the project award, results in the generation of net positive cash flows. Repayable research contracts are to be provided to those projects that are in the latter stages of technology development and have a moderate probability of generating net positive cash flows sufficient to repay the award and the accrued interest within five years from the performance determination date of the contract.

(e) "Primary research contract" means the contractual award made to a qualifying project under the program, and in which the recipient of the award is obligated to repay up to the full amount of the award, plus accrued interest if the project, or invention developed as a result of the project award, results in the generation of net positive cash flows. Primary research contracts are to be provided to those projects that are in the early stages of technology development and have a low probability of generating net positive cash flows sufficient to repay the award and the accrued interest within five years from the performance determination date of the contract.

(f) "Performance determination date" means the date at which the commission renders a written decision on the success of the project in meeting the goals and objectives established in the contract for the project.

SEC. 3 Section 25684 of the Public Resources Code is amended to read:

25684. The commission shall make loans and repayable research contracts, and may provide primary research contracts funding from the account for the purposes of making energy technologies more efficient and cost-effective, and to develop new cost-effective alternative sources of energy. The commission shall select recipients through a procedure using an invitation for bids or a request for proposals. Each invitation for bids and request for proposals shall specify the criteria to be used in selecting projects for financing. The criteria shall include, but not be limited to, all of the following factors:

(a) The potential of the project to reduce consumption and increase the efficiency of nonrenewable energy sources and systems.

(b) The financial, technical, and management strength of the project applicant.

(c) The near-term and long-term feasibility of the project.

(d) The ability of the project technology to be used on other applications throughout California.

(e) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(f) The potential of the project for reducing adverse

environmental impacts.

(g) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(h) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(i) The need of the project for state financing.

(j) The ability of the project to garner private investment.

(k) The investment payback period for the project.

(*l*) The probability of success in overcoming the risk of the project.

(m) The potential for stimulating small business competition in the field of alternative energy development.

(n) The ability of the project to generate needed community economic development for participating local jurisdictions.

(o) The extent of the applicant's financial participation.

(p) The degree of innovation of the project.

(q) Whether the project is in general agreement with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

SEC. 4. Section 25686.5 of the Public Resources Code is amended to read:

25686 5. At the commencement of each fiscal year, at least 70 percent of the money in the account shall be made available for loans or repayable research contracts for projects and the remainder shall be made available for primary research contracts funding under this chapter for that fiscal year. The commission may make less than 70 percent of the money in the account at the commencement of each fiscal year available for loans, or repayable research contracts, if it determines, through a four-fifths vote of the commission, that the public interest and objectives of this chapter will be better served through increased primary research contracts funding. In no instance, however, shall the amount of funds available for loans or repayable research contracts be less than 50 percent of the money in the account at the commencement of each fiscal year.

SEC. 5. Section 25686.8 of the Public Resources Code is amended to read:

25686.8. Any loan made from the account shall not be greater than 80 percent of the total project cost. Any repayable research contract or primary research contracts funding shall not be greater than 50 percent of the total project cost. The commission may provide a loan which exceeds that limit if it determines, through a four-fifths vote of the commission, that a major state contribution is essential to ensure project success.

CHAPTER 1108

An act to amend Section 12092 of the Government Code, relating to economic opportunity.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 12092 of the Government Code is amended to read:

12092. (a) There is in state government a Department of Economic Opportunity Advisory Commission, which consists of 11 members. Two shall be appointed by the Rules Committee of the Senate, two shall be appointed by the Speaker of the Assembly, and seven shall be appointed by the Governor. Of the Governor's seven appointments, one shall be a representative of organized labor, one shall be a representative of the business community, one shall be a member of the State Community Action Association, one shall be a low-income person from northern California, one from central California, and two from southern California. The term of each member shall be four years.

(b) The commission shall advise the director on program development, establishment of goals, and priorities in combating poverty. It shall also review departmental performance and make recommendations to the director and the Governor for improvement. The director shall serve as executive secretary to the commission, and shall provide any staff and resources he or she deems essential.

(c) Each member of the commission shall be reimbursed for travel and other business-related expenses pursuant to the rules of the Department of Personnel Administration. In addition, effective July 1, 1990, each member shall receive a daily allowance in the amount specified in Section 11564.5 for each day that the member attends a meeting of the commission. The purpose of the stipend is to encourage and permit low-income persons to serve on the commission. This subdivision shall only be operative in a fiscal year for which the annual budget act for that fiscal year appropriates funds for the purposes of this subdivision.

CHAPTER 1109

An act to amend Sections 15373.1, 15373.2, 15373.8, and 15373.9 of, to add Section 15373.07 to, and to add Article 4.5 (commencing with Section 15373.51) and Article 5.5 (commencing with Section 15373.91) to Chapter 2.5 of Part 6.7 of Division 3 of Title 2 of, the Government Code, relating to rural economic development, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 15373.07 is added to the Government Code, to read:

15373.07. The department shall adopt regulations necessary to implement and make specific Article 4.5 (commencing with Section 15373.51) and Article 5.5 (commencing with Section 15373.91) as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3, 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 agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 pursuant to subdivision (e) of Section 11346.1.

SEC. 2. Section 15373.1 of the Government Code is amended to read:

15373.1. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "County" means either of the following:

(1) A county with both 200,000 or less in population according to the 1980 Federal Census and an average annual unemployment rate equal to or greater than the state's 1984 annual average unemployment rate as determined by the Employment Development Department.

(2) A county with both 600,000 or less in population according to the 1980 Federal Census and an average annual unemployment rate of 130 percent or greater than the state's 1984 annual average unemployment rate as determined by the Employment Development Department.

(b) "Department" means the Department of Commerce.

(c) "Fund" means the Rural Economic Development Fund.

(d) "Local agency" means any of the following:

(1) A county as defined in subdivision (a).

(2) Any city within a county as defined in subdivision (a).

(3) A county that is not defined in subdivision (a) or a city which is outside of an urbanized area as designated by the United States Bureau of the Census from the 1980 Federal Census and which is within that county.

(e) "Panel" means the Rural Economic Development Infrastructure Panel.

SEC. 3. Section 15373.2 of the Government Code is amended to read:

15373.2. (a) In order to carry out this chapter, there is hereby created in the State Treasury the Rural Economic Development Fund.

(b) The fund shall receive state funds appropriated to it, repayment of loans and interest on those loans pursuant to this chapter, interest which accrues to the moneys in the fund pursuant to subdivision (c), fees or charges pursuant to subdivision (d), and penalties prescribed by the panel.

(c) (1) 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. The moneys resulting from this investment shall be used to support the three rural small business assistance and development centers previously established through the department and the Employment Development Department. The department shall grant these interest moneys to the centers upon request to provide for the continued operation of the centers.

(2) If sufficient interest moneys are not available at a time when the centers require additional funds, the department shall lend the centers necessary funds from the Rural Economic Development Fund, if the expected interest earnings from the fund will repay the loans. Funds received under this subdivision shall not be considered when the department reviews and approves applications pursuant to Article 4 (commencing with Section 15397.3). Each center shall receive a maximum of one hundred thousand dollars ($100,000) each fiscal year.

(3) Interest earnings in excess of three hundred thousand dollars ($300,000) per fiscal year shall be available for expenditure by the department pursuant to this chapter. Those expenditures shall include the costs associated with the provision of ongoing legal counsel to the Infrastructure Review Panel, created pursuant to Article 5 (commencing with Section 15373.6) and reimbursement of expenses incurred by designated panel members while in the conduct of official panel business. The interest earnings may also be used by the department for administrative support and local assistance costs of activities consistent with the purposes of this chapter.

(4) In addition to centers specified in paragraph (1), centers which are located in a county subject to this chapter may also be funded from interest earnings in an amount not to exceed two hundred thousand dollars ($200,000) annually for all additional

centers, if there are sufficient funds available after support is provided for the three existing rural centers, and after the funding of other priorities established by this chapter.

(d) In order to defray costs to the department for administration of Article 5 (commencing with Section 15373.6), the department may impose reasonable charges on all applications, and approved loans. 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 include, but are not limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, removal and storage for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(e) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated to, and shall remain available for expenditure by, the department for the purposes of this chapter only until July 1, 1994, and on that date any remaining funds shall revert to the Special Account for Capital Outlay.

(f) Unless deemed appropriate by the local agency, no money in the fund shall be used in lieu of any existing state infrastructure financing program, including, but not limited to, the State Transportation Improvement Program or the Clean Water Bond Program.

SEC. 3.5. Section 15373.2 of the Government Code is amended to read:

15373.2. (a) In order to carry out this chapter, there is hereby created in the State Treasury the Rural Economic Development Fund.

(b) The fund shall receive state funds appropriated to it, repayment of loans and interest on those loans pursuant to this chapter, interest which accrues to the moneys in the fund pursuant to subdivision (c), fees or charges pursuant to subdivision (d), and penalties prescribed by the panel.

(c) (1) 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. The moneys resulting from this investment shall be used to support the three rural small business assistance and development centers previously established through the department and the Employment Development Department. The department shall grant these interest moneys to the centers upon request to provide for the continued operation of the centers.

(2) If sufficient interest moneys are not available at a time when the centers require additional funds, the department shall lend the centers necessary funds from the Rural Economic Development Fund, if the expected interest earnings from the fund will repay the loans. Funds received under this subdivision shall not be considered when the department reviews and approves applications pursuant to Article 4 (commencing with Section 15397.3). Each center shall receive a maximum of one hundred thousand dollars ($100,000) each

fiscal year.

(3) Interest earnings in excess of three hundred thousand dollars ($300,000) per fiscal year shall be available for expenditure by the department pursuant to this chapter. The expenditures of these interest earnings in excess of three hundred thousand dollars ($300,000) shall include the costs associated with the provision of ongoing legal counsel to the Infrastructure Review Panel, created pursuant to Article 5 (commencing with Section 15373.6) and reimbursement of expenses incurred by designated panel members while in the conduct of official panel business. The interest earnings in excess of three hundred thousand dollars ($300,000) may also be used by the department for administrative support and local assistance costs of activities consistent with the purposes of this chapter.

(4) In addition to centers specified in paragraph (1), centers which are located in a county subject to this chapter may also be funded from interest earnings in an amount not to exceed two hundred thousand dollars ($200,000) annually for all additional centers, if there are sufficient funds available after support is provided for the three existing rural centers, and after the funding of other priorities established by this chapter.

(5) If sufficient interest earnings are available after support is provided to centers specified in paragraphs (1) and (4), and to other priorities established by this chapter, an amount not to exceed seventy-five thousand dollars ($75,000) annually may be used for support of the California Main Street Program (Chapter 8 (commencing with Section 15399)). Services rendered as a result of this increased support shall be targeted for Main Street Demonstration and Self-Initiated Cities in counties subject to this chapter.

(d) In order to defray costs to the department for administration of Article 5 (commencing with Section 15373.6), the department may impose reasonable charges on all applications, and approved loans. 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 include, but are not limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, removal and storage for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(e) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated to, and shall remain available for expenditure by, the department for the purposes of this chapter only until July 1, 1994, and on that date any remaining funds shall revert to the Special Account for Capital Outlay.

(f) Unless deemed appropriate by the local agency, no money in the fund shall be used in lieu of any existing state infrastructure financing program, including, but not limited to, the State Transportation Improvement Program or the Clean Water Bond

Program.

SEC. 4. Section 15373.8 of the Government Code is amended to read:

15373.8. (a) (1) The panel shall meet regularly to conduct its business and to review and approve projects pursuant to this article for funding from the Rural Economic Development Fund. The panel shall make a decision on any application within 90 days after a local agency submits the application to the department. This financing shall be in the form of loans and grants.

(A) Loans shall be limited to a maximum of one million dollars ($1,000,000) per project. The terms of any approved loan shall be specified in a loan agreement between the local agency and the panel. Repayment of loans shall begin within nine months of the date of the loan and shall be made semiannually. Each loan shall be for a term not to exceed 15 years from the date of loan disbursement. The local agency shall pay interest at a rate specified in the loan agreement which shall not exceed 2 percent less than the rate earned by the state Surplus Money Investment Fund. Penalties, if established by the panel, shall be uniformly applied. Any loan or grant approved for a local agency shall not be considered debt within the meaning of Section 18 of Article XVI of the California Constitution.

(B) Grants shall be limited to two hundred fifty thousand dollars ($250,000) per project and shall be made only if a local agency demonstrates an inability to repay a loan or similar extraordinary circumstances. In no event shall more than 20 percent of the available moneys in the fund in any fiscal year be allocated as grants for purposes of funding projects under this section.

(2) Subject to paragraph (3), a local agency which submits an application pursuant to Section 15373.9 may, at the time the application is submitted, request the panel to approve a loan amount, term, interest rate, beginning payment, or frequency of repayment which differs from the requirements of paragraph (1). The panel may approve the request or may change and approve the request only if all of the following exist:

(A) The local agency provides sufficient documentation to the panel that the local agency or special district responsible for repaying the loan will be unable to repay a loan under the conditions specified in paragraph (1).

(B) The loan is equal to or less than one million dollars ($1,000,000) or the loan is for more than one million dollars ($1,000,000) and the local agency provides sufficient documentation of special circumstances.

(3) The panel shall not approve a loan in an amount of more than two million dollars ($2,000,000), nor shall it approve a loan which provides for an indefinite deferral of the repayment of principal and interest, or for a term for more than 50 years. The panel shall make a decision on any request made pursuant to paragraph (2) at the time the panel makes a decision on the loan application.

(b) Loans and grants may be made to a local agency for projects which meet the criteria specified in Section 15373.9, for the purpose of assisting in financing public improvements, including, but not limited to, sewer and water facilities, streets, storm drains, bridges, and related costs, such as engineering design. Funds may be used for the development of new facilities, or the rehabilitation, alteration, expansion, or improvement of existing facilities.

(c) Preliminary design work, including a cost estimate for the project, shall be completed before a loan or grant is awarded. Costs for preliminary design work, project cost estimates, planning, preliminary engineering, and other costs necessary for preparation of the application may be reimbursed from a loan or grant, subject to approval by the panel.

(d) Any county which does not meet the definition of a county provided for under subdivision (a) of Section 15373.1 may apply for a loan or grant under this article only with respect to an unincorporated area outside of an urbanized area as designated by the United States Bureau of the Census from the 1980 Federal Census.

(e) Projects financed under this article shall meet all of the following requirements:

(1) Be associated with either an expansion, retention, relocation, or new location of an identified private sector firm. This firm shall be a manufacturing, service, research and development, production, assembly, warehousing, or industrial distribution facility. Commercial business activity, as well as tourist and recreation facilities, which are found by the panel to significantly increase permanent private sector employment and substantially improve the economic prosperity of an area may also qualify the project.

(2) Directly lead to the creation or retention of permanent private sector jobs within the applicant's jurisdictional boundaries. Projects shall also create at least one full-time job for every fifty thousand dollars ($50,000) in loan funds received except in the case of research and development facilities in which the economic job creation standard shall be set by the panel.

(f) Loans and grants may also be made, pursuant to this article and under criteria established by the department, to local agencies in high unemployment areas to develop infrastructure for industrial parks or other sites for businesses where there is no specific business already committed to the project, when the department determines that there is little likelihood of business expansion into the community prior to the development of the parks or sites, and that the loan or grant has a high probability of leading to the creation or retention of permanent private sector jobs within the applicant's jurisdictional boundaries. The loan or grant cannot exceed two hundred fifty thousand dollars ($250,000). Notwithstanding subparagraph (A) of paragraph (1) of subdivision (a) of this section, repayment of any loan directed towards a specific business expansion, retention, relocation, or new location shall begin when

the industrial park or other development has enough occupancy to produce adequate revenues for repayment. The amount and the timing of the repayment shall be specified in the loan agreement between the local agency and the panel.

(g) Priority shall be given to those projects which create jobs in communities with particularly high levels of unemployment and declining resource-based economics. Consideration shall be given to other community factors in awarding loans and grants, including, but not limited to, those communities which are facing local government fiscal crises, a high poverty rate, or which exhibit an active commitment to diversifying and expanding their economic base. To the extent possible, loans and grants shall be equitably distributed throughout the various rural regions of the state.

(h) Financing shall not be provided for projects which would result in increased production or availability of goods, materials, or services where sufficient capacity exists in the community to meet current and future demands

(i) Loans or grants may not finance projects which would either affect the relocation of any substantial operations of the company from one area of the state to another, or result in the abandonment of any substantial operations of the company within other areas of the state, unless completion of the project or operation of the facility is reasonably necessary to prevent the relocation of any substantial operations of the company from an area within the state to an area outside the state.

(j) The proceeds of repayment of loan principal and the payment of interest prior to July 1, 1994, shall be deposited in the fund. The proceeds of repayment of loan principal and the payment of interest on and after July 1, 1994, shall be deposited in the Special Account for Capital Outlay.

SEC. 5. Section 15373.9 of the Government Code is amended to read:

15373.9. A local agency may submit an application to the department for loan or grant funds pursuant to this article. A local agency may submit an application on behalf of a special district. Any application shall include information concerning the project which shall do all of the following:

(a) Demonstrate community need for economic development.

(b) Demonstrate financial need for state assistance.

(c) Demonstrate financial source of loan repayment and interest.

(d) Provide evidence of firm financial commitment on the part of the business or enterprise associated with the project.

(e) Provide evidence of site control, including any leases, easements, covenants, or encumbrances which may affect the project.

(f) Demonstrate that the applicant has the ability to administer the project and state assistance requirements.

(g) Demonstrate that the project is consistent with a city, county, or city and county general plan.

(h) Demonstrate that the project will comply with the California Environmental Quality Act as set forth in Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 6. Article 4.5 (commencing with Section 15373.51) is added to Chapter 2.5 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 4.5. Rural Economic Development Grant Program

15373.51. (a) There is hereby established within the department the Rural Economic Development Grant Program. Grants shall be made from the Rural Economic Development Fund, and in any fiscal year shall total not more than the lesser of 10 percent of the balance of the fund or seven hundred thousand dollars ($700,000).

(b) The purpose of the program is to encourage economic development, including tourism promotion and business attraction and retention activities.

(c) Eligible applicants shall be local agencies, as defined in this chapter, or other public agencies or nonprofit organizations principally involved in economic development or tourism promotion.

15373.52. (a) Eligible applicants shall submit grant proposals to the department's Office of Local Development. The director of the office shall approve or deny all applications within 45 days after the grant application is deemed complete by the department.

(b) Grant funds shall be used to fund projects which lead to both of the following:

(1) Retention or creation of permanent jobs.

(2) Increased local tax revenue.

15373.53. (a) Grant awards shall range from twenty thousand dollars ($20,000) to fifty thousand dollars ($50,000) and shall be awarded to applicants on a competitive basis.

(b) The highest priority shall be given to projects which lead to the most employment and tax revenue. In calculating tax revenue and employment, the department shall take into consideration the size and economic distress of the locality.

(c) Priority shall be given to applications which accomplish one or more of the following:

(1) Effectively identify and address significant economic needs within the local economy.

(2) Facilitate a specific business development project leading to the creation of permanent private sector jobs.

(3) Support community-specific or industry-specific business retention or expansion efforts.

(4) Promote a regional business or tourism development activity.

(5) Encourage public-private cooperative efforts in economic development.

15373.54 Eligible uses for grant funds shall be all those identified in subdivision (d) of Section 15373.5. All restrictions and

requirements of that section shall also apply to grants awarded under the program prescribed by this chapter.

SEC. 7. Article 5.5 (commencing with Section 15373.91) is added to Chapter 2.5 of Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

Article 5.5. Rural Revolving Loan Program

15373.91. There is hereby established within the department the Rural Revolving Loan Program.

15373.92. (a) The purpose of the program is to provide fully collateralized loans to encourage the expansion, new location, and retention of existing businesses within rural areas of the state.

(b) Eligible applicants shall be for-profit small businesses.

(c) Eligible projects shall consist of manufacturing, warehousing, or product distribution, and shall be located within the jurisdiction of a local agency.

(d) Loan funds shall only be used for any or all of the following:

(1) Acquisition of real property.

(2) Take-out financing for the construction or rehabilitation of a structure owned and occupied by the borrower.

(3) Purchase of machinery and equipment by the borrower to be used solely at the project location.

(e) The loan amounts shall range from fifty thousand dollars ($50,000) to three hundred fifty thousand dollars ($350,000). The term of the loan shall be 20 years for the financing of real property or structures, and seven years for the financing of machinery or equipment. The interest rate for loans shall be set at the rate earned by the state Surplus Money Investment Fund at the time of the loan commitment.

(f) Collateral for 20-year loans shall include, at a minimum, a deed of trust on the real property financed. Collateral for seven-year loans shall include, at a minimum, a first security interest on all equipment and machinery purchased with loan funds.

(g) Applicants must demonstrate, within two years of the date that the loan agreement is executed, that the project will result in a minimum of one full-time permanent job for every twenty-five thousand dollars ($25,000) of loan funds. The department shall stipulate in the loan agreement that failure to meet this condition may result in the calling due of the loan.

(h) The department may assess a loan fee. The fee shall be deposited in the Rural Revolving Loan Collection Account.

15373.93. The department shall finance no more than one-third the cost of any project. Each borrower shall be required to pay a minimum of 10 percent of the project costs from its own funds. The remaining funds shall be provided by a financial institution chartered by a state or federal governmental entity.

15373.94. As part of the application form developed for this program, the department shall provide a list of financial and legal

documents necessary to demonstrate the applicant's ability to repay and collateralize the loan. The department may also request additional financial and legal documents not provided on the list from individual applicants, and the application shall not be deemed complete until the applicant has provided all additional information requested by the department.

15373.95. (a) Loan applications reviewed by the department shall be reviewed by a loan committee, appointed by the Director of the Department of Commerce, consisting of the Director of the Office of Local Development, an additional member from the department, two members employed by financial institutions with expertise in evaluating loan proposals, and one local economic development professional with expertise in small business lending. This committee shall then approve or deny the loan request.

(b) Applicants shall receive a final funding decision within 45 days after the loan application is deemed complete by the department.

15373.96. (a) There is hereby created in the Rural Economic Development Fund the Rural Revolving Loan Collection Account. The Rural Revolving 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 subdivision (c).

(b) In order to defray costs to the department for administration of its rural revolving loan program 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.

(c) 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.

(d) In the event that collection costs exceed the funds available in the Rural Revolving Loan Collection Account, the department may pay collection costs from the funds in the Rural Economic Development Fund.

SEC. 8. The Legislative Analyst shall report to the Legislature, no later than December 31, 1993, regarding whether the program has accomplished its stated goals of:

(a) Encouraging economic development, including tourism promotion, in the state's rural areas.

(b) Retaining or creating permanent jobs.

(c) Increasing local tax revenues.

(d) Providing one full-time permanent job for every twenty-five thousand dollars ($25,000) loaned.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 15373.2 of the Government Code proposed by both this bill and SB 409. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 15373.2 of the Government Code, and (3) this bill is enacted after SB 409, in which case Section 15373.2 of the Government Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 409, at which time Section 3.5 of this bill shall become operative.

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 to promptly proceed with implementation of the Rural Economic Development Program to encourage the revitalization of economically depressed rural areas of the state by providing permanent private sector jobs and reducing dependency on governmental social welfare programs, it is necessary that this act go into immediate effect.

CHAPTER 1110

An act to amend Sections 502 and 502.7 of, and to add Section 502.01 to, the Penal Code, relating to crimes.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial

institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means two or more computer systems connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or

execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6) or (7) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty

dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the

value of computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

SEC. 2. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs,

electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters,

damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not

exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the

value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

SEC. 3. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means two or more computer systems connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage

and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a

computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine

and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the

computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 4. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs

functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or

computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the

state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4)

of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 5. Section 502.01 is added to the Penal Code, to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is a computer, computer system, or computer network, and any software or data residing thereon, if the computer, computer system, or computer network was used in committing a violation of subdivision (c) of Section 502 or a violation of subdivision (b) of Section 502.7 or was used as a repository for the storage of software or data obtained in violation of those provisions. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating subdivision (c) of Section 502 or a violation of subdivision (b) of Section 502.7 or, in the case of a minor found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of subdivision (c) of Section 502 or subdivision (b) of Section 502.7, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for such a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the

hearing.

(2) The computer shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of subdivision (c) of Section 502 or subdivision (b) of Section 502.7 within two years after the date on which the minor is sentenced, and the violation involves a computer owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(f) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(g) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (f).

SEC. 6. Section 502.7 of the Penal Code is amended to read:

502.7. (a) Any person who, knowingly, willfully, and with intent to defraud a person providing telephone or telegraph service, avoids or attempts to avoid, or aids, abets or causes another to avoid the lawful charge, in whole or in part, for telephone or telegraph service by any of the following means is guilty of a misdemeanor or a felony, as provided in subdivision (f):

(1) By charging the service to an existing telephone number or

credit card number without the authority of the subscriber thereto or the lawful holder thereof.

(2) By charging the service to a nonexistent telephone number or credit card number, or to a number associated with telephone service which is suspended or terminated, or to a revoked or canceled (as distinguished from expired) credit card number, notice of the suspension, termination, revocation, or cancellation of the telephone service or credit card having been given to the subscriber thereto or the holder thereof.

(3) By use of a code, prearranged scheme, or other similar stratagem or device whereby the person, in effect, sends or receives information.

(4) By rearranging, tampering with, or making connection with telephone or telegraph facilities or equipment, whether physically, electrically, acoustically, inductively, or otherwise, or by using telephone or telegraph service with knowledge or reason to believe that the rearrangement, tampering, or connection existed at the time of the use.

(5) By using any other deception, false pretense, trick, scheme, device, or means.

(b) Any person who (1) makes, possesses, sells, gives, or otherwise transfers to another, or offers or advertises any instrument, apparatus, or device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or (2) sells, gives, or otherwise transfers to another or offers, or advertises plans or instructions for making or assembling an instrument, apparatus, or device described in paragraph (1) of this subdivision with knowledge or reason to believe that they may be used to make or assemble the instrument, apparatus, or device is guilty of a misdemeanor or a felony, as provided in subdivision (f).

(c) Any person who publishes the number or code of an existing, canceled, revoked, expired, or nonexistent credit card, or the numbering or coding which is employed in the issuance of credit cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful telephone or telegraph toll charge is guilty of a misdemeanor. The provisions of subdivision (f) shall not apply to this subdivision. As used in this section, "publishes" means the communication of information to any one or more persons, either orally, in person or by telephone, radio, or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper, or magazine article, or book.

(d) Subdivision (a) applies when the telephone or telegraph communication involved either originates or terminates, or both originates and terminates, in this state, or when the charges for service would have been billable, in normal course, by a person providing telephone or telegraph service in this state, but for the fact

that the charge for service was avoided, or attempted to be avoided, by one or more of the means set forth in subdivision (a).

(e) Jurisdiction of an offense under this section is in the jurisdictional territory where the telephone call or telegram involved in the offense originates or where it terminates, or the jurisdictional territory to which the bill for the service is sent or would have been sent but for the fact that the service was obtained or attempted to be obtained by one or more of the means set forth in subdivision (a).

(f) If the total value of all telephone or telegraph services obtained in violation of this section aggregates over four hundred dollars ($400) within any period of twelve (12) consecutive months during the three years immediately prior to the time the indictment is found or the case is certified to the superior court, or prior to the time the information is filed, or if the defendant has previously been convicted of an offense in excess of four hundred dollars ($400) under this section or of an offense in excess of four hundred dollars ($400) under the laws of another state or of the United States which would have been an offense under this section if committed in this state, a person guilty of such offense is punishable by imprisonment in the county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or both, or by imprisonment in the state prison, by a fine not exceeding ten thousand dollars ($10,000), or both.

(g) Any instrument, apparatus, device, plans, instructions, or written publication described in subdivision (b) or (c) may be seized under warrant or incident to a lawful arrest, and, upon the conviction of a person for a violation of subdivision (a), (b), or (c), the instrument, apparatus, device, plans, instructions, or written publication may be destroyed as contraband by the sheriff of the county in which the person was convicted or turned over to the person providing telephone or telegraph service in the territory in which it was seized.

(h) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in this section or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

SEC. 7. (a) Section 2 of this bill incorporates amendments to Section 502 of the Penal Code proposed by both this bill and SB 304. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 502 of the Penal Code, and (3) AB 1859 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 304, 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 502 of the Penal Code proposed by both this bill and AB 1859. It shall only become operative if (1) both bills are enacted and become effective

January 1, 1990, (2) each bill amends Section 502 of the Penal Code, (3) SB 304 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1859 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 502 of the Penal Code proposed by this bill, SB 304, and AB 1859. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 502 of the Penal Code, and (3) this bill is enacted after SB 304 and AB 1859, in which case Sections 1, 2, and 3 of this bill shall not become operative.

SEC. 8. If this bill and AB 1859 are both enacted and become operative on January 1, 1990, and both bills add Section 502.01 to the Penal Code, and this bill is enacted last, then Section 502.01 of the Penal Code, as added by AB 1859, shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1111

An act to amend Sections 1797.170, 1797.171, 1797.172, and 1797.213 of, and to add Section 1797.192 to, the Health and Safety Code, and to add Section 13519.3 to the Penal Code, relating to sudden infant death syndrome.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Sudden infant death syndrome is the leading cause of death for children under the age of one, striking one out of every 500 children.

(b) Existing law generally requires an investigation to determine the cause of all unexplained deaths, and law enforcement agencies often interview parents, day care providers, and surviving children shortly after an infant death has occurred to determine if a criminal act may have taken place.

(c) Law enforcement officers and many other first responders in

emergency situations are not adequately informed on the nature of sudden infant death syndrome, its signs and typical history, and as a result, *may compound the family grief and child care provider grief* through conveyed suspicions of a criminal act.

SEC. 2. Section 1797.170 of the Health and Safety Code is amended to read:

1797.170. (a) The authority shall establish minimum standards and promulgate regulations for the training and scope of practice for EMT-I.

(b) Any individual certified as an EMT-I pursuant to this act shall be recognized as an EMT-I on a statewide basis, and recertification shall be based on statewide standards. Effective July 1, 1990, any individual certified as an EMT-I pursuant to this act shall complete a course of training on the nature of sudden infant death syndrome which is developed by the California SIDS program in the State Department of Health Services in consultation with experts in the field of sudden infant death syndrome.

SEC. 3. Section 1797.171 of the Health and Safety Code is amended to read:

1797.171. (a) The authority shall develop, and after approval of the commission pursuant to Section 1799.50 shall adopt, minimum standards for the training and scope of practice for EMT-II.

(b) An EMT-II shall complete a course of training on the nature of sudden infant death syndrome in accordance with subdivision (b) of Section 1797.170.

SEC. 4. Section 1797.172 of the Health and Safety Code is amended to read:

1797.172. (a) The authority shall develop, and after the approval of the commission pursuant to Section 1799.50, shall adopt, minimum standards for the training and scope of practice for EMT-P.

(b) An EMT-P shall complete a course of training on the nature of sudden infant death syndrome in accordance with subdivision (b) of Section 1797.170.

SEC. 5. Section 1797.192 is added to the Health and Safety Code, to read:

1797.192. (a) By July 1, 1992, existing firefighters in this state shall complete a course on the nature of sudden infant death syndrome taught by experts in the field of sudden infant death syndrome. All persons who become firefighters after January 1, 1990, shall complete a course on this topic as part of their basic training as firefighters. The course shall include information on the community resources available to assist families who have lost children to sudden infant death syndrome.

(b) For purposes of this section, the term "firefighter" has the same meaning as that specified in Section 1797.182.

(c) When the instruction and training are provided by a local agency, a fee shall be charged sufficient to defray the entire cost of the instruction and training.

SEC. 6. Section 1797.213 of the Health and Safety Code is

amended to read:

1797.213. (a) Any local EMS agency conducting a program pursuant to this article may provide courses of instruction and training leading to certification as an EMT-I, EMT-II, EMT-P, or authorized registered nurse. When such instruction and training are provided, a fee may be charged sufficient to defray the cost of such instruction and training.

(b) Effective July 1, 1990, any courses of instruction and training leading to certification as an EMT-I, EMT-II, EMT-P, or authorized registered nurse shall include a course of training on the nature of sudden infant death syndrome which is developed by the California SIDS program in the State Department of Health Services in consultation with experts in the field of sudden infant death syndrome, and effective January 1, 1990, any individual certified as an EMT-I, EMT-II, EMT-P, or authorized registered nurse shall complete that course of training. The course shall include information on the community resources available to assist families who have lost a child to sudden infant death syndrome. An individual who was certified as an EMT-I, EMT-II, EMT-P, or authorized registered nurse prior to January 1, 1990, shall complete supplementary training on this topic on or before January 1, 1992.

SEC. 6.5. Section 1797.213 of the Health and Safety Code is amended to read:

1797.213. (a) Any local EMS agency conducting a program pursuant to this article may provide courses of instruction and training leading to certification as an EMT-I, EMT-II, EMT-P, or authorized registered nurse if the courses are consistent with Sections 1797.7, 1797.170, 1797.171, and 1797.172. When the instruction and training are provided, a fee shall be charged sufficient to defray the entire cost of the instruction and training.

(b) Effective July 1, 1990, any courses of instruction and training leading to certification as an EMT-I, EMT-II, EMT-P, or authorized registered nurse shall include a course of training on the nature of sudden infant death syndrome which is developed by the California SIDS program in the State Department of Health Services in consultation with experts in the field of sudden infant death syndrome, and effective January 1, 1990, any individual certified as an EMT-I, EMT-II, EMT-P, or authorized registered nurse shall complete that course of training. The course shall include information on the community resources available to assist families who have lost a child to sudden infant death syndrome. An individual who was certified as an EMT-I, EMT-II, EMT-P, or authorized registered nurse prior to January 1, 1990, shall complete supplementary training on this topic on or before January 1, 1992.

SEC. 7. Section 13519.3 is added to the Penal Code, to read:

13519 3. (a) Effective July 1, 1990, the commission shall establish, for those peace officers specified in subdivision (a) of Section 13510 who are assigned to patrol or investigations, a course on the nature of sudden infant death syndrome and the handling of cases involving

the sudden deaths of infants. The course shall include information on the community resources available to assist families and child care providers who have lost a child to sudden infant death syndrome. Officers who are employed after January 1, 1990, shall complete a course in sudden infant death syndrome prior to the issuance of the Peace Officer Standards and Training basic certificate, and shall complete training on this topic on or before July 1, 1992.

(b) The commission, in consultation with experts in the field of sudden infant death syndrome, shall prepare guidelines establishing standard procedures which may be followed by law enforcement agencies in the investigation of cases involving sudden deaths of infants.

(c) The course relating to sudden infant death syndrome and the handling of cases of sudden infant deaths shall be developed by the commission in consultation with experts in the field of sudden infant death syndrome. The course shall include instruction in the standard procedures developed pursuant to subdivision (b). In addition, the course shall include information on the nature of sudden infant death syndrome which shall be taught by experts in the field of sudden infant death syndrome.

(d) The commission shall review and modify the basic course curriculum to include sudden infant death syndrome awareness as part of death investigation training.

(e) When the instruction and training are provided by a local agency, a fee shall be charged sufficient to defray the entire cost of instruction and training.

SEC. 8. Section 6.5 of this bill incorporates amendments to Section 1797.213 of the Health and Safety Code proposed by both this bill and AB 2159. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 1797.213 of the Health and Safety Code, and (3) this bill is enacted after AB 2159, in which case Section 6 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1112

An act to add and repeal Section 217 of the Health and Safety Code, relating to sudden infant death syndrome.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

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

(1) Sudden infant death syndrome (SIDS) is the leading cause of death in children under the age of one, striking one out of every 500 infants, with a death toll in California now approaching 800 annually.

(2) Babies afflicted with SIDS simply stop breathing in their sleep and die.

(3) SIDS kills more children in the first year of life than birth defects, cancer, heart disease, cerebral palsy, cystic fibrosis, child abuse, and virtually all other diseases combined.

(4) The precise cause of SIDS continues to remain a mystery.

(5) There is a pressing need for strong state support for the following: SIDS education and training programs, data collection and analysis regarding SIDS, printing and distribution of newsletters and research monographs regarding SIDS, coordinated activities with SIDS volunteer groups, sponsorship of statewide conferences regarding SIDS, oversight of coroners' autopsy reporting and use of appropriate protocols in autopsies involving SIDS, county public health nursing visits regarding SIDS death, and grief counseling following SIDS deaths.

(b) Therefore, it is the intention of the Legislature by providing for the establishment of a Sudden Infant Death Syndrome Advisory Council, to ameliorate hardships encountered by SIDS families and child care providers by addressing the education and training services required by those who interact with SIDS parents and caregivers following a SIDS death, to foster research into the cause of SIDS, and to increase public awareness and education which will result in greater support and understanding for those families and caregivers affected by SIDS.

SEC. 2. Section 217 is added to the Health and Safety Code, to read:

217. (a) For purposes of this section, the following definitions shall apply:

(1) "SIDS" means sudden infant death syndrome.

(2) "SIDS Advisory Council" or "advisory council" means the Sudden Infant Death Syndrome Advisory Council established pursuant to subdivision (b).

(b) The State Department of Health Services shall establish a Sudden Infant Death Syndrome Advisory Council. The advisory

council shall consist of nine members who shall be chosen by the State Director of Health Services in consultation with regional SIDS parent advisory councils. At least one-third of the members of the advisory council chosen by the director shall be representatives of SIDS parents' groups. The membership of the advisory council shall also include, but not be limited to, a coroner, a medical examiner, a public health nurse, a physician and surgeon with expertise in SIDS, and a representative from a police or fire department.

(c) The SIDS Advisory Council shall do all of the following:

(1) Provide guidance to the state department in the development of training, educational, and research programs regarding SIDS.

(2) Provide ongoing guidance to the Governor and the Legislature regarding the need for specific programs regarding SIDS for specific targeted groups of persons.

(3) In conjunction with the state department or a person with whom the state department contracts to provide SIDS education, convene a statewide conference annually to examine the progress in discovering the cause of SIDS, explore the progress of newly established programs and services related to SIDS, identify future needs for legislation and program development regarding SIDS, and make recommendations on the needs of programs regarding SIDS. Conference participants shall include professionals and service providers in the area of SIDS, family members of SIDS victims, and the staff of members of the Legislature and departments of the state.

(d) The members of the advisory council shall serve at the pleasure of the director. The members of the advisory council shall serve without compensation, but shall be reimbursed for necessary and travel expenses incurred in the performance of the duties of the advisory council.

(e) The requirements contained in this section shall be subject to the annual Budget Act and shall be operative only to the extent that funds are appropriated for the purposes of this section.

(f) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

CHAPTER 1113

An act to amend Sections 52154, 52155, 52156, 69509, 69509.5, 69511, 69511.5, 69514, 69515, 69517, 69518, 69521, 69530, 69531, 69532, 69535, 69535.1, 69535.5, 69537, 69538, 69539, 69546.5, 69613, 69613.1, 69615.2, 69673, 69677, 69721, 69726, 69740, 69760, 69761, 69761.5, 69762, 69763, 69764, 69765, 69766, 69768, 69769, 69769.3, 69769.5, 69769.9, 69771, 69772, 69774, 69812, 69813, 69956, and 94343.6 of, to amend the heading of Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of, to add Section 52159.1 to, and to repeal Sections 69516, 69519, 69520, 69536, 69540, 69541, 69542, 69543, 69680, 69763.3, 69763.5,

and 69770 of, the Education Code, relating to education.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 52154 of the Education Code is amended to read:

52154. The Student Aid Commission shall chair as ex officio member a Bilingual Teacher Grant Program Advisory Committee to advise the commission on the operations of the program. The advisory committee shall consist of the following:

(a) A representative of the Chancellor's office of the California Community Colleges.

(b) Four coordinators of bilingual teacher grant programs representing California Community Colleges, the California State University, the University of California, and independent colleges and universities nominated by the respective segment and approved by the Student Aid Commission.

(c) One representative from each of the following who shall be nominated by each respective agency and approved by the Student Aid Commission:

(1) The State Department of Education

(2) The Commission on Teacher Credentialing.

(3) The California Postsecondary Education Commission.

(d) The Student Aid Commission shall appoint one student grant recipient to the advisory committee.

SEC. 2. Section 52155 of the Education Code is amended to read:

52155. The Student Aid Commission shall report annually no later than February 15 to the Legislature on the status of the Bilingual Teacher Grant Program. This report shall include, but not be limited to, demographic information on the grant recipients and participating institutions of higher education, numbers of grant recipients credentialed each year, projections on number of grantees expected to qualify as bilingual teachers, with appropriate timetables, and comments, provided by each participating institution through an onsite coordinator, concerning the supplementary services prescribed by subdivision (e) of Section 52156. Reports regarding supplementary services shall be supplied to the Student Aid Commission each year no later than November 15 by the Board of Governors of the California Community Colleges, the Trustees of the California State University, and the Regents of the University of California.

SEC. 3. Section 52156 of the Education Code is amended to read:

52156. The following requirements for program administration shall be met by participating agencies:

(a) Participating community college campuses shall designate a certificated employee to coordinate the grant program and to

provide supplementary services to the grant recipients. Participating campuses shall notify the Student Aid Commission and the chancellor's office immediately when a campus no longer has a coordinator.

(b) Participating campuses of the California State University shall designate personnel responsible for coordinating the grant program and providing supplementary services to the grant recipients. Each participating campus shall notify the Student Aid Commission annually of the person so designated.

(c) Participating campuses of the University of California shall designate personnel responsible for coordinating the grant program and providing supplementary services to the grant recipients. Each participating campus shall notify the Student Aid Commission annually of the person so designated.

(d) Participating independent colleges and universities shall designate personnel responsible for coordinating the grant program and providing supplementary services to the grant recipients. Each participating campus shall notify the Student Aid Commission annually of the person so designated.

(e) Each participating campus with 10 or more recipients shall receive from the Student Aid Commission from the funds appropriated for the Bilingual Teacher Grant Program an allocation equal to the product of (1) the quotient obtained by dividing the number of recipients enrolled at the participating campus by the total number of recipients statewide multiplied by (2) 8 percent of the total annual appropriation to the Student Aid Commission and shall provide additional services as appropriate and limited to all of the following:

(1) To hire students who are bilingual and biliterate to tutor bilingual teacher grant participants at the institution of higher education in cases of special need.

(2) To finance workshops for bilingual teacher grant candidates.

(3) To finance institution of higher education staff development endeavors.

(4) To reimburse institution of higher education staff for expenses incurred for attending bilingual teacher preparation workshops.

(5) A maximum of 10 percent of this 8-percent allocation may be used to reimburse the institutions of higher education for direct program operating expenses, except for salaries.

(f) The funds received by participating campuses pursuant to subdivision (e) shall be expended for purposes that are directly related to the services actually rendered by the participating campus in furtherance of a public purpose to be achieved and the moneys paid shall not be in excess of the value of the benefit being conferred on the state by the participating campus, and shall not be used for any sectarian purposes.

SEC. 4. Section 52159.1 is added to the Education Code, to read:

52159.1. This article shall be repealed on January 1, 1992, unless a later enacted statute, which becomes effective on or before January

1, 1992, deletes or extends the date on which it is repealed.

SEC. 5. Section 69509 of the Education Code is amended to read:

69509. (a) Upon the commencement of any cause of action, including an emergency action, by the commission against an educational institution in connection with the California Loan Programs or other state student financial aid program, the director of the commission may order that all or any part of state financial aid funds scheduled to be delivered to that institution by the commission, whether payable to that institution or its students, be withheld from the institution and deposited in a separate state account. However, in order to alleviate the financial hardships imposed upon students by withholding the delivery of state financial aid funds to an educational institution, the director of the commission may, at any time after the initial withholding, release state financial aid funds to these students, giving first priority to the release of funds for subsistence payments.

(b) The director shall give notice to the institution and affected students of any action taken pursuant to subdivision (a).

(c) The director, upon the termination of any action taken pursuant to subdivision (a), shall order the disposition of the withheld funds in a manner consistent with the outcome of the cause of action and in the best interest of the affected students. The director may order that the funds be withheld from an institution permanently, in which case those funds shall be returned to the state fund or account from which it originated, for subsequent use by the commission.

(d) "Cause of action" and "emergency action," for the purposes of this section, mean those actions described in Sections 30302 and 30304 of Title 5 of the California Code of Regulations, and as those sections may subsequently be amended, concerning the limitation, suspension, and termination of eligibility under the California Loan Programs.

SEC. 6. Section 69509.5 of the Education Code is amended to read:

69509.5. (a) Within five days of the commencement of any cause of action, including an emergency action, by the commission against a private postsecondary educational institution in connection with the California Loan Programs, the director of the commission shall give notice, in writing, of the commencement of the action to the Private Postsecondary Education Division of the State Department of Education.

(b) "Cause of action" and "emergency action," for the purposes of this section, mean those actions described in Sections 30302 and 30304 of Title 5 of the California Code of Regulations, and as those sections may subsequently be amended, concerning the limitation, suspension, and termination of eligibility under the California Loan Programs.

SEC. 7. Section 69511 of the Education Code is amended to read:

69511. (a) Except as provided in subdivision (b), each member

of the commission shall have a four-year term: provided, that members appointed pursuant to subdivision (d) of Section 69510 shall have terms of two academic years.

(b) The term of one member appointed pursuant to subdivision (g) of Section 69510 and the term of one member appointed pursuant to subdivision (h) of Section 69510, effective January 1, 1991, shall be for five years. Each subsequent term for members appointed pursuant to this subdivision shall be for four years.

(c) At no time shall both student representatives be enrolled in the same segment of postsecondary education in California. For purposes of this subdivision, each postsecondary education program listed in subdivisions (a), (b), and (c) of Section 69510 is a segment of postsecondary education in California.

(d) Appointment to the commission of members appointed pursuant to subdivisions (a) to (f), inclusive, of Section 69510 shall be made by the Governor subject to confirmation by the Senate.

(e) Any vacancy shall be filled by the appointment of a person who will have the same status as the predecessor of the appointee. The appointee shall hold office only for the balance of the unexpired term.

(f) Each member of the commission shall receive a stipend of one hundred dollars ($100) for each day in which he or she attends any meeting of the commission or any meeting of any committee or subcommittee of the commission, of which committee or subcommittee he or she is a member, and which committee or subcommittee meeting is conducted for the purpose of carrying out the powers and duties of the commission. In addition, each member shall receive his or her actual and necessary traveling expenses incurred in the course of his or her duties.

(g) Whenever by the provisions of any act of Congress a program of scholarships or grants for undergraduate students is established which permits administration of the program within a state by a state agency, the Student Aid Commission, as established by Section 69510, shall administer the act within the state if the Governor and the Student Aid Commission, by a majority vote of its entire membership, determine that the participation by the state in the federal scholarship or grant program under the act would not interfere with or jeopardize the continuation of the scholarship program established under Sections 69530 to 69547, inclusive.

The commission shall constitute the state commission on federal scholarships or grants and is hereby empowered to formulate a plan for development and administration of any such federal scholarship or grant program within the state

Subject to the provisions of this chapter, the commission is hereby vested with all necessary power and authority to cooperate with the government of the United States, or any agency or agencies thereof, in the administration of any act of Congress establishing a scholarship or grant program and the rules and regulations adopted thereunder.

Before adopting a state plan, the Student Aid Commission, acting

as the state commission on federal scholarships or grants, shall hold public hearings as provided in the California Administrative Procedure Act.

SEC. 8. Section 69511.5 of the Education Code is amended to read:

69511.5. (a) Notwithstanding Section 69511, the Governor shall appoint each student member of the Student Aid Commission pursuant to subdivision (d) of Section 69510 from the persons nominated in accordance with the provisions of subdivision (b).

(b) For each student member of the commission, the appropriate student organization of each of the four postsecondary education segments may submit a list of nominees. The appropriate student organizations are:

(1) The California State Student Association.

(2) The University of California Student Association.

(3) The California Association of Independent College and University Students.

(4) A composite group of representative community college student organizations, as determined by the Chancellor of the California Community Colleges

(c) Participating student organizations designated in subdivision (b) shall inform students within their respective segment of pending student vacancies on the commission.

(d) Any person appointed pursuant to subdivision (a) may be reappointed if the person is renominated pursuant to subdivision (b), but in no event shall the person be reappointed for more than two consecutive terms if the student is enrolled in the same postsecondary education segment as the one in which he or she was enrolled when first appointed.

(e) The person appointed as a student member of the Student Aid Commission pursuant to this section shall be subject to confirmation by the Senate as required in subdivision (d) of Section 69511.

SEC. 9. Section 69514 of the Education Code is amended to read:

69514. The commission shall do all of the following:

(a) Report, on or before April 1 of each year, statistical data examining the impact and effectiveness of state-funded programs. The commission shall utilize common criteria in determining the impact of these programs and shall have the authority to obtain any data from postsecondary educational institutions necessary for the reports.

(b) Collect and disseminate data concerning the financial resources and needs of students and potential students, and the scope and impact of existing state, federal, and institutional student aid programs.

(c) Report, on or before April 1 of each year, the aggregate financial need of individuals seeking access to postsecondary education and the degree to which current student aid programs meet this legitimate financial need.

(d) Develop and report annually the distribution of funds and

awards among income groups, ethnic groups, grade point average levels, and postsecondary education segments.

(e) Prepare and disseminate information regarding the criteria utilized in distributing available student aid funds.

(f) Be authorized to expend funds for the purpose of disseminating information about all institutional, state, and federal student aid programs to potential applicants. This distribution of information shall primarily focus on potential applicants with the greatest financial need.

SEC. 9.5. Section 69515 of the Education Code is amended to read:

69515. As used in this division, "commission" means the Student Aid Commission created by this article.

SEC. 10. Section 69516 of the Education Code is repealed.

SEC. 11. Section 69517 of the Education Code is amended to read:

69517. (a) The Student Aid Commission, in consultation with an advisory committee of students and representatives of postsecondary institutions, may make adjustments to award selection procedures and selection criteria. In determining adjustments, the commission shall consider at least all of the following factors:

(1) The impact of the adjustments on the distribution of funds and awards among income groups, ethnic groups, and grade point average levels.

(2) The impact of the adjustments on the distribution of funds and awards among postsecondary education segments.

(3) The costs of implementing proposed adjustments.

(4) The availability of financial aid from other sources for students who qualify for an award.

(b) The commission may also consider the impact of inflation in the proposed adjustments pursuant to subdivision (a).

(c) In proposing changes to the procedures and criteria for award selection that would result in a substantive change in the recipient population, the commission shall submit the proposed changes for public review and comment in accordance with procedures established in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 12. Section 69518 of the Education Code is amended to read:

69518. (a) By September 15 of each fiscal year, the Student Aid Commission shall submit budget change proposals to the Department of Finance for inclusion in the Governor's Budget prepared pursuant to Section 12 of Article IV of the California Constitution.

(b) The budget change proposals submitted pursuant to subdivision (a) shall include, but not be limited to, an analysis of the impact of any proposed adjustments in the distribution of funds and awards.

(c) Any supporting materials prepared for the Student Aid Commission's consideration and public review and comment pursuant to this section, including, when it becomes available, data

pertaining to the impact of any proposed adjustments on the distribution of funds and awards among income groups, ethnic groups, grade point average levels, and postsecondary education segments, shall be incorporated within the expenditure plan.

(d) If the Student Aid Commission proposes, in its budget change proposals, adjustments to the maximum grant, number of grants, and the income ceiling for grant awards made pursuant to Section 69532, at least the following factors shall be considered in determining the appropriate adjustments:

(1) The impact of inflation.

(2) The availability of financial aid from other sources for students who would qualify for a grant award.

(3) Any changes in the level of educational support provided to students at public colleges and universities in the state.

(4) The impact of proposed adjustments in the maximum grant and in the income ceiling upon the utilization of public and private postsecondary educational institutions.

(5) The number of applicants eligible to receive an award in the previous year who did not receive an award in the previous year.

SEC. 13. Section 69519 of the Education Code is repealed.

SEC. 14. Section 69520 of the Education Code is repealed.

SEC. 15. Section 69521 of the Education Code is amended to read:

69521. By January 1 of each year, the commission shall report to the fiscal committees of the Legislature regarding contracts made pursuant to Section 69534.4 and regarding the status of those contracts.

SEC. 15.1. The heading of Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code is amended to read:

Article 3. The Cal Grant Program

SEC. 15.3. Section 69530 of the Education Code is amended to read:

69530. The Legislature finds and declares all of the following:

(a) The enactment of the Pell Grant Program requires substantial changes in current state student aid programs if state programs are to effectively supplement federal student assistance.

(b) The entire student aid system, due to a proliferation of programs, has resulted in substantial confusion and inefficiencies.

(c) One statewide student assistance program supplementary to the Pell Grant Program would increase simplicity and effectiveness. The most appropriate program for this purpose is the Cal Grant Program.

SEC. 16. Section 69531 of the Education Code is amended to read:

69531. There is hereby established a state educational opportunity grant program, which shall be known as the Cal Grant Program.

SEC. 16.1. Section 69532 of the Education Code is amended to

read:

69532. Cal Grant Program awards shall be known as "Cal Grant A awards," "Cal Grant B awards," and "Cal Grant C awards." The maximum award in each category shall be determined in the annual Budget Act.

(a) Cal Grant A awards shall be used only for tuition and student fees in an instructional program of no less than two academic years. There shall be a minimum of 17,400 new Cal Grant A awards each year.

(b) Cal Grant B awards shall be used only for tuition, student fees, and subsistence costs in an instructional program of no less than one academic year. Subsistence costs are living expenses, transportation, supplies, and books. There shall be a minimum of 12,250 new Cal Grant B awards each year.

(c) Cal Grant C awards shall be used only for occupational or technical training in a course of no less than four months. There shall be a minimum of 1,570 new Cal Grant C awards each year.

SEC. 17. Section 69535 of the Education Code is amended to read:

69535. (a) Cal Grant Program awards shall be based upon the financial need of the applicant. The level of financial need of each applicant shall be determined by the commission, taking into account the financial resources of the applicant and the applicant's family.

(b) For the applicants so qualifying, academic criteria or criteria related to past performances shall be utilized as the criteria in determining eligibility for grants.

(c) All Cal Grant Program award recipients shall be residents of California, as determined by the commission pursuant to the provisions of Part 41 (commencing with Section 68000), and shall remain eligible only if they are in attendance and making satisfactory progress through the instructional programs, as determined by the commission.

(d) Part-time students shall not be discriminated against in the selection of Cal Grant Program award recipients, and awards to part-time students shall be roughly proportional to the time spent in the instructional program, as determined by the commission. First-time Cal Grant Program award recipients who are part-time students shall be eligible for a full-time renewal award.

(e) Cal Grant Program awards shall be awarded without regard to race, religion, creed, sex, or age.

(f) No applicant shall receive more than one type of Cal Grant Program award concurrently. Except as provided in subdivisions (b) and (c) of Section 69535.1, no applicant shall:

(1) Receive one or a combination of Cal Grant Program awards in excess of a total of four years of full-time attendance in an undergraduate program.

(2) Have obtained a baccalaureate degree prior to receiving a Cal Grant Program award.

Cal Grant Program awards may only be used for the expenses of

coursework leading directly to an undergraduate degree or certificate.

(g) The commission may, for students who accelerate college attendance, increase the amount of award for one academic year proportional to the period of additional attendance resulting from attendance at a summer term, session, or quarter. In the aggregate, the total amount a student may receive in a four-year period may not be increased as a result of accelerating his or her progress to a degree by attending summer terms, sessions, or quarters.

(h) The commission may provide by appropriate rules and regulations for reports, accounting, and statements from the award winner and college or university of attendance pertaining to the use or application of the award as the commission may deem proper.

(i) The commission may establish Cal Grant Program awards in one hundred dollar ($100) increments.

(j) A Cal Grant Program award may be utilized only at a 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.

SEC. 17.3. Section 69535.1 of the Education Code is amended to read:

69535.1. (a) Cal Grant A awards and Cal Grant B awards may be renewed for a total of four years of full-time attendance in an undergraduate program provided that financial need continues to exist. Commencing with the 1989–90 academic year, the total number of years of eligibility for grants pursuant to this section shall be based on 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.

(b) For a student enrolled in an institutionally prescribed five-year undergraduate program, Cal Grant A awards and Cal Grant B awards may be renewed for a total of five years of full-time attendance, provided that financial need continues to exist.

(c) Cal Grant Program award recipients who have completed a baccalaureate degree and who have been admitted to and 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 Program 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 shall not have lapsed more than 15 months prior to the payment of an award for purposes of this section.

SEC. 18. Section 69535.5 of the Education Code is amended 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 per term to authorized postsecondary educational institutions the funds for eligible students who have indicated they will attend those institutions less an amount based on historical claim enrollment attrition information. 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. 18.1. Section 69536 of the Education Code is repealed.

SEC. 18.3. Section 69537 of the Education Code is amended to read:

69537. An individual selected for a Cal Grant A award who enrolls in a public community college may elect to have the award held in trust for him or her for a period not to exceed two academic years, except that the commission may extend the period in which his or her award may be held in trust for up to three academic years if, in the commission's judgment, the student's rate of academic progress has been as rapid as could be expected in light of the personal and financial conditions that the student has encountered. The commission shall, in that case, hold the award in trust, to be granted to the award winner upon receipt of his or her request therefor within that period, provided that at the time of making the request he or she meets all of the requirements of this chapter. Upon receipt of the request the commission shall assess or reassess the financial needs of the award winner. 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 being continually utilized. Following the first year for which any such 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.

SEC. 18.5. Section 69538 of the Education Code is amended to read:

69538. To be eligible for a Cal Grant B award, the applicant 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 that hamper access to and persistence in postsecondary programs.

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 section shall be initiated primarily on the public community college level.

Awards under this section shall be for subsistence costs. The 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 and fees in their first academic year of attendance.

An individual selected for a Cal Grant B award 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 two academic years, except that the commission may extend the period in which the award is held in trust for up to 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 that 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.

SEC. 18.7. Section 69539 of the Education Code is amended to read:

69539. A Cal Grant C award shall be utilized for occupational or technical training.

(a) "Occupational or technical training" means that phase of education coming after the completion of a secondary school program and leading toward recognized occupational goals approved by the commission.

(b) The commission may use criteria it deems appropriate in selecting students with occupational talents to receive grants for occupational or technical training.

(c) The Cal Grant C recipients shall be eligible for renewal of their grants until they have completed their occupational or technical training in comformance with terms prescribed by the commission. In no case shall the grants exceed two calendar years.

(d) Cal Grant C awards shall be for institutional fees, charges, and other costs including tuition, plus training-related costs, such as special clothing, local transportation, required tools, equipment, supplies, and books. In determining the amount of grants and training-related costs, the commission shall take into account other state and federal programs available to the applicant.

(e) Cal Grant C awards shall be awarded in areas of occupational or technical training as determined by the commission after consultation with appropriate state and federal agencies.

SEC. 19. Section 69540 of the Education Code is repealed.

SEC. 19.3. Section 69541 of the Education Code is repealed.

SEC. 20. Section 69542 of the Education Code is repealed.

SEC. 21. Section 69543 of the Education Code is repealed.

SEC. 22. Section 69546.5 of the Education Code is amended to read:

69546.5. The Student Aid Commission shall allocate federal and state student incentive grant funds among the Cal Grant A, B, and C programs.

SEC. 23. Section 69613 of the Education Code is amended to read:

69613. (a) Any person enrolled in an institution of postsecondary education participating in the loan assumption program set forth in this article, or any person who agrees to participate in a teacher trainee or teacher internship program, may be eligible to receive a conditional warrant for loan assumption, to be redeemed pursuant to Section 69613.2 upon becoming employed as a teacher. In order to be eligible to receive a loan assumption warrant, an applicant shall satisfy all of the conditions specified in either subdivision (b) or (c):

(b) (1) The applicant has completed at least 60 semester units, or the equivalent, and is enrolled in an academic program leading to a baccalaureate degree at a participating institution, or has been admitted to a program of professional preparation that has been approved by the Commission on Teacher Credentialing.

(2) The applicant is currently enrolled in, or has been admitted to a program in which he or she will be enrolled in, at least 10 semester units, or the equivalent. The applicant shall agree to maintain not less than 10 semester units per semester, or the equivalent, and to maintain satisfactory academic progress.

(3) The applicant has been judged by his or her postsecondary institution to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(4) In order to meet the costs associated with obtaining a baccalaureate degree, or a California teaching credential, the applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs.

(A) The federal Stafford Student Loan Program.

(B) The Perkins Loan Program.

(C) Supplemental Loans for Students.

(D) The Loan Consolidation Program

(E) Any loan program approved by the Student Aid Commission.

(5) The applicant has agreed to teach in a public school in this state for at least three consecutive academic years after obtaining a teaching credential.

(c) (1) The applicant holds a baccalaureate degree and agrees to participate in a teacher trainee program or teacher internship program, or is a person who will continue to be employed full time in a field other than teaching while completing the necessary coursework for a teaching credential, or is a noncredentialed teaching paraprofessional, as described in Section 44323, who will continue to serve as a teaching paraprofessional while completing the necessary coursework for a California teaching credential.

(2) The applicant is enrolled in, or has been admitted to, a participating institution and agrees to maintain satisfactory academic progress in an academic program leading to a baccalaureate degree or in a program of professional preparation that has been approved by the Commission on Teacher Credentialing, and the applicant satisfies the conditions specified in paragraphs (3), (4), and (5) of subdivision (b).

No applicant who has completed fewer than 60 units, or the equivalent, shall be eligible under this subdivision to participate in the loan assumption program set forth in this article.

(d) Sixty percent of the warrants distributed each year pursuant to subdivisions (b) and (c) at each participating institution shall be awarded by that institution to applicants who agree to obtain a teaching credential in subject areas that are designated as current or projected shortage areas by the Superintendent of Public Instruction. The warrant shall remain valid even if the subject area ceases to be a designated shortage field by the time the applicant becomes a teacher

(e) The remaining 40 percent of the warrants distributed each year pursuant to subdivisions (b) and (c) at each participating institution shall be awarded to applicants who agree to obtain teaching credentials in any subject area and to provide classroom instruction in schools that serve large populations of students from low-income families, as designated by the superintendent for purposes of the Perkins Loan Program or otherwise. The warrant shall remain valid even if the school ceases to be so designated during the applicant's second or third year of teaching.

(f) A person participating in the program pursuant to this section shall not receive more than one warrant.

(g) The Student Aid Commission shall adopt rules and regulations regarding the reallocation of warrants where a participating institution is unable to utilize its allocated warrants or is unable to distribute them proportionately to subdivisions (d) and (e) within a reasonable period of time.

SEC. 24. 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) Commencing January 1, 1990, and every January 1 thereafter, 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 Perkins Loan Program, or according to other standards the superintendent deems appropriate.

SEC. 25. Section 69615.2 of the Education Code is amended to read:

69615.2. The Student Aid Commission shall work in conjunction with lenders participating in the California Loan Programs to develop a streamlined application process for participation in the program set forth in this article.

SEC. 25.1. Section 69673 of the Education Code is amended to read:

69673. The program for granting fellowships for graduate study shall be conducted under the general supervision of the commission, with the aid and advice of a committee of nine members appointed by the commission and composed of college and university teachers and graduate deans from the colleges and universities in California which are accredited or are candidates for accreditation by the Western Association of Schools and Colleges.

The commission shall prescribe the forms for all applications and certificates required in connection with the fellowship program. The commission shall, from time to time, adopt rules and regulations that it may determine not in conflict with this article as may be necessary, or appropriate, for effecting the provisions of this article.

SEC. 25.3. Section 69677 of the Education Code is amended to read:

69677. Candidates for the awards shall apply for the awards to the commission and comply with all of the rules and regulations adopted by the commission for the award, regulation, and administration of the state graduate fellowship program pursuant to this article.

SEC. 26. Section 69680 of the Education Code is repealed.

SEC. 26.1. Section 69721 of the Education Code is amended to read:

69721. For purposes of this article, the term "community service" includes, but is not limited to, work performed for a community service agency in such fields as environmental quality, health care,

education, local, state, and federally funded public assistance programs, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, conservation, child care, outdoor beautification, and other fields of human betterment and community improvement.

SEC. 26.3. Section 69726 of the Education Code is amended to read:

69726. Fellowships awarded pursuant to this article shall be funded from moneys appropriated for that purpose by the Legislature.

SEC. 26.5. Section 69740 of the Education Code is amended to read:

69740. Whenever by the provisions of any act of Congress a program of scholarships for undergraduate students is established which permits administration of the program within a state by a state agency, the commission, as established by Section 69510 shall administer the act within the state if the Governor and the commission, by a majority vote of its entire membership, determine that the participation by the state in the Federal Scholarship Program under the act would not interfere with or jeopardize the continuation of the grant program established under Article 3 (commencing with Section 69530).

SEC. 27. Section 69760 of the Education Code is amended to read:

69760. There is hereby established the California Loan Programs for eligible postsecondary students and their parents, which shall include, but not be limited to, the Stafford Student Loans (formerly known as the Guaranteed Student Loan Program), Supplemental Loans for Students (formerly known as the California Loans to Assist Students), Parent Loans (PLUS), and the Loan Consolidation Program. The programs shall be consistent with Title IV of the act of Congress entitled the "Higher Education Act of 1965" (P.L. 89-329) and extensions thereof, the Education Amendments of 1976 (P.L. 94-482), or any similar act of Congress, and the rules and regulations adopted under those acts.

SEC. 28. Section 69761 of the Education Code is amended to read:

69761. The purpose of the California Loan Programs shall be as follows:

(a) To provide a source of loans to eligible students to assist them in meeting educational costs at eligible schools of their choice.

(b) To accept, receive and administer the funds provided under Title IV of the "Higher Education Act of 1965," and extensions thereof, or any similar act of Congress.

SEC. 29. Section 69761.5 of the Education Code is amended to read:

69761.5. The commission shall serve as a state student loan guarantee agency, pursuant to P.L. 94-482, and subsequent federal regulations, including, but not limited to, the following provisions:

(a) The commission shall be the designated state agency for receiving any federal advances for administrative costs and

payments of insurance obligations.

(b) Educational loans to undergraduate and graduate students, or to their parent or parents, or to undergraduate and graduate students and to their parent or parents, shall not exceed the limits provided in federal law.

(c) Participating educational institutions shall notify lenders and the commission of participating students enrollment status changes and current address.

(d) No educational institution shall lend to more than 50 percent of its undergraduate students; this provision may be waived by the United States Secretary of Education if such a limitation creates a hardship for present or prospective students.

(e) A student may receive a loan only if he or she is maintaining satisfactory progress in a course of study pursuant to practices of the institution in which the student is enrolled, and provided the student has not previously defaulted on any student loan. If a student has made satisfactory arrangements to repay a default on a previous student loan, the student may be eligible to receive a loan.

(f) An insurance premium may be charged student borrowers not to exceed the maximum rate allowable, pursuant to federal statutes and regulations.

SEC. 30. Section 69762 of the Education Code is amended to read:

69762. Loans made pursuant to this chapter shall be made without regard to race, religion, creed or sex.

SEC. 31. Section 69763 of the Education Code is amended to read:

69763. (a) The commission shall administer the California Loan Programs established pursuant to this chapter. The commission is hereby vested with authority to enter into any contract with the United States Secretary of Education or any other federal officer or agency under Title IV of the Higher Education Act of 1965, any extension thereof, or any similar act of Congress, and is hereby vested with all other necessary power and authority to cooperate with the government of the United States, or any agency or agencies thereof, in administration of the act of Congress and the rules and regulations adopted thereunder. The commission shall adopt any rules and regulations it deems necessary for the proper administration of this chapter.

(b) The rules and regulations adopted by the commission pursuant to this section shall include a provision authorizing the commission to impose a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) per violation against any financial or educational institution that violates any applicable law, rule, regulation, limitation, consent agreement, or school or lender agreement, relative to a state financial aid program. The rules and regulations adopted pursuant to this section shall provide all of the following:

(1) No civil penalty shall be imposed against an institution without first affording that institution an opportunity to request a hearing and if a request for a hearing is made, a hearing shall be held before

a representative of the commission.

(2) No civil penalty shall be imposed against an institution unless an action against that institution has been initiated pursuant to Section 30302 or 30304 of Title 5 of the California Code of Regulations.

(c) Any moneys derived from the assessment of penalties pursuant to this section shall be deposited into the State Guaranteed Loan Reserve Fund.

SEC. 32. Section 69763.3 of the Education Code is repealed.

SEC. 33. Section 69763.5 of the Education Code is repealed.

SEC. 33.1. Section 69764 of the Education Code is amended to read:

69764. In the event that the amount of loans applied for under this article exceeds the amount of the loans that may be guaranteed pursuant to this article, the commission may establish a system of priorities for the approval of loans.

SEC. 33.3. Section 69765 of the Education Code is amended to read:

69765. (a) The commission shall guarantee any student loan made pursuant to this article at 100 percent of the amount of the loan.

(b) The commission shall establish the ratio of reserve funds to loans outstanding.

SEC. 33.5. Section 69766 of the Education Code is amended to read:

69766. There is hereby created in the State Treasury the State Guaranteed Loan Reserve Fund. All money received from federal, state or local governments, or from other private or public sources, for the purposes of this article shall be deposited in the fund. The money deposited in the fund is hereby appropriated, without regard to fiscal years, for purposes of this article.

The total amount of all outstanding debts, obligations, and liabilities that may be incurred or created under this article, including any obligation to repay to the United States any funds provided under Title IV of the "Higher Education Act of 1965," and extensions thereof, or any similar act of Congress, is limited to the amount contained in the State Guaranteed Loan Reserve Fund, and the state shall not be liable beyond the amount contained in such fund for such debts, obligations, and liabilities.

SEC. 33.7. Section 69768 of the Education Code is amended to read:

69768. The funds in the State Guaranteed Loan Reserve Fund shall be paid out by the State Treasurer on warrants drawn by the Controller and requisitioned by the commission in carrying out the purposes of this article and the federal act.

SEC. 34. Section 69769 of the Education Code is amended to read:

69769. The commission shall establish a Loan Study Council. The Loan Study Council shall be comprised of 17 members, appointed by the commission, comprised of representatives of students, postsecondary educational institutions, eligible lenders, and participating secondary markets.

SEC. 35. Section 69769.3 of the Education Code is amended to read:

69769.3. (a) The Loan Study Council established pursuant to Section 69769 shall be composed of members appointed from the following groups:

(1) Five representatives of the lending community participating in the California Loan Programs.

(2) One representative each from the University of California, the California State University, the California Community Colleges, a private nonprofit postsecondary education institution, and a private for-profit postsecondary education institution.

(3) One representative from the California Association of Student Financial Aid Administrators.

(4) Five student representatives from the same postsecondary segments listed in paragraph (2). In no event shall a student representative be appointed to serve simultaneously as the representative of more than one of these five postsecondary groups.

(5) One representative from a secondary market participating in the California Loan Programs.

(b) The representatives appointed by the commission pursuant to subdivision (a) shall be selected by the commission from lists provided to its chair by each group described in that subdivision.

SEC 36. Section 69769.5 of the Education Code is amended to read·

69769.5. The Loan Study Council shall review the activities and policies of the California Loan Programs and shall regularly advise the commission of its findings and recommendations. The Loan Study Council may request information and data that it deems appropriate from the Student Aid Commission with respect to the California Loan Programs or any other loan program administered by the commission.

SEC. 37. Section 69769.9 of the Education Code is amended to read:

69769.9. The Student Aid Commission shall report annually to the appropriate policy committees of the Legislature on the activities of the Loan Study Council.

SEC. 38. Section 69770 of the Education Code is repealed.

SEC. 38.3. Section 69771 of the Education Code is amended to read:

69771. This article shall be applicable to the extent that its provisions do not conflict with Title IV of the Higher Education Act of 1965, or any extensions thereof, or any similar act of Congress, and the rules and regulations adopted thereunder.

SEC. 39. Section 69772 of the Education Code is amended to read:

69772. The commission shall annually report on the numbers of students participating in the program, total loan volume, the postsecondary educational institutions in which participating students are enrolled, and numbers and types of students not served by the program.

SEC. 40. Section 69774 of the Education Code is amended to read:

69774. A common student application form may be utilized for student loans in compliance with the program eligibility and financial forms specified in Section 69534.1.

SEC. 40.3. Section 69812 of the Education Code is amended to read:

69812. Nothing in this article shall be construed to prohibit any public or private university, college, or other institution of higher education from suspending or refusing to grant scholarships, loans, fellowships, grants-in-aid, or any other financial aid given or guaranteed by the state for academic assistance to any individual because of any other misconduct that in its judgment bears adversely on his or her fitness for the assistance.

SEC. 40.5 Section 69813 of the Education Code is amended to read:

69813. For the purposes of this article, "state financial aid" means any assistance given or guaranteed by the state that is predicated on attendance at an institution of higher education.

SEC. 40 7 Section 69956 of the Education Code is amended to read:

69956. Any student satisfying all of the following criteria shall be eligible to participate in the California State Work-Study Program:

(a) Enrollment, or acceptance for enrollment, on at least a half-time basis at a participating postsecondary educational institution.

(b) Resident classification pursuant to Part 41 (commencing with Section 68000).

(c) Demonstrated maintenance of satisfactory academic progress in a program leading to a degree or a certificate, as determined by the postsecondary educational institution in which the student is enrolled, applying standards of eligibility for federal financial aid.

(d) Demonstrated financial need, as determined by the financial aid office of the institution in which the student is enrolled pursuant to the methodologies approved by the United States Department of Education for use in awarding funds provided under Title IV of the Higher Education Act of 1965 as amended. If individual circumstances affect the ability of the student or the student's family to contribute to the student's total financial resources, the financial aid administrator may make reasonable individualized adjustments to the computed total applicant resources.

SEC. 41. Section 94343.6 of the Education Code is amended 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) Stafford Student Loan Program.

(2) Supplemental Loans 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.

SEC. 42. Section 6 of this act shall not become operative if Senate Bill 190 is chaptered and takes effect on or before January 1, 1990, and amends Section 69509.5 of the Education Code.

CHAPTER 1114

An act to amend, repeal, and add Sections 651, 655, 655.1, 655.5, and 668 of, and to add Section 655.05 to, the Harbors and Navigation Code, and to amend, repeal, and add Sections 1803, 1804, 13353, 23152, 23153, 23155, and 23156 of, and to add and repeal Sections 34501.15 and 34501.16 of, the Vehicle Code, relating to driving offenses.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 651 of the Harbors and Navigation Code is amended to read.

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Department" means the Department of Boating and Waterways.

(b) "Director" means the Director of Boating and Waterways.

(c) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

(d) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(e) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(f) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of

a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(g) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(h) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(i) "Waters of this state" means any waters within the territorial limits of this state.

(j) "Person" means an individual, partnership, firm, corporation, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(k) "Operator" means the person on board who is steering the vessel while underway.

(*l*) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(m) "Use" means operate, navigate, or employ.

(n) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(o) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(p) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(q) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(r) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(s) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(t) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(u) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 2. Section 651 is added to the Harbors and Navigation Code, to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Alcohol" means any form or derivative of ethyl alcohol (ethanol).

(b) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) "Chemical test" means a test which analyzes an individual's breath, blood, or urine, for evidence of drug or alcohol use.

(d) "Controlled substance" means controlled substance as defined in Section 11007 of the Health and Safety Code.

(e) "Department" means the Department of Boating and Waterways.

(f) "Director" means the Director of Boating and Waterways.

(g) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on the permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical

device attached to the watercraft itself.

(h) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(i) "Intoxicant" means any form of alcohol, drug, or combination thereof.

(j) "Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

(k) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(*l*) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(m) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(n) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(o) "Waters of this state" means any waters within the territorial limits of this state.

(p) "Person" means an individual, partnership, firm, corporation, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(q) "Operator" means the person on board who is steering the vessel while underway.

(r) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor

thereto.

(s) "Use" means operate, navigate, or employ.

(t) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(u) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(v) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(w) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(x) "Manufacturer" means any person engaged in any of the following:

(1) The manufacture, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(y) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(z) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(aa) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

(bb) "Recreational vessel" means a vessel which is being used only for pleasure.

This section shall become operative on January 1, 1992.

SEC. 3. Section 651 is added to the Harbors and Navigation Code, to read:

651. As used in this chapter, unless the context clearly requires a different meaning:

(a) "Alcohol" means any form or derivative of ethyl alcohol (ethanol).

(b) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) "Chemical test" means a test which analyzes an individual's breath, blood, or urine, for evidence of drug or alcohol use.

(d) "Controlled substance" means controlled substance as defined in Section 11007 of the Health and Safety Code.

(e) "Department" means the Department of Boating and Waterways.

(f) "Director" means the Director of Boating and Waterways.

(g) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except either of the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled.

(h) "Boat" means any vessel which is any of the following:

(1) Manufactured or used primarily for noncommercial use.

(2) Leased, rented, or chartered to another for the latter's noncommercial use.

(3) Engaged in the carrying of six or fewer passengers, including those for-hire vessels carrying more than three passengers while using inland waters of the state that are not declared navigable by the United States Coast Guard.

(4) Commercial vessels required to be numbered pursuant to Section 9850 of the Vehicle Code.

(i) "Intoxicant" means any form of alcohol, drug, or combination thereof.

(j) "Marine employer" means the owner, managing operator, charterer, agent, master, or person in charge of a vessel other than a recreational vessel.

(k) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(*l*) "Owner" is a person having all the incidents of ownership, including the legal title, of a vessel whether or not that person lends, rents, or pledges the vessel; the person entitled to the possession of a vessel as the purchaser under a conditional sale contract; or the mortgagor of a vessel. "Owner" does not include a person holding

legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state or to any county, city, district, or political subdivision of the state under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(m) "Legal owner" is a person holding the legal title to a vessel under a conditional sale contract, the mortgagee of a vessel, or the renter or lessor of a vessel to the state, or to any county, city, district, or political subdivision of the state, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vessel to the lessee for a period of 30 consecutive days or more.

(n) "Registered owner" is the person registered by the Department of Motor Vehicles as the owner of the vessel.

(o) "Waters of this state" means any waters within the territorial limits of this state.

(p) "Person" means an individual, partnership, firm, corporation, association, or other entity, but does not include the United States, the state, or a municipality or subdivision thereof.

(q) "Operator" means the person on board who is steering the vessel while underway.

(r) "Undocumented vessel" means any vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.

(s) "Use" means operate, navigate, or employ.

(t) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(u) "State of principal use" means the state on which waters a vessel is used or intended to be used most during a calendar year.

(v) "Passenger" means every person carried on board a vessel other than any of the following:

(1) The owner or his or her representative.

(2) The operator.

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his or her carriage.

(w) "Associated equipment" means any of the following, excluding radio equipment:

(1) Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of the system, part, or component.

(2) Any accessory or equipment for, or appurtenance to, a boat.

(3) Any marine safety article, accessory, or equipment intended for use by a person on board a boat.

(x) "Manufacturer" means any person engaged in any of the following:

(1) The manufacturer, construction, or assembly of boats or associated equipment.

(2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(3) The importation into this state for sale of boats, associated equipment, or components thereof.

(y) "Drug" means any substance or combination of substances other than alcohol which could so affect the nervous system, brain, or muscles of a person as to impair to an appreciable degree his or her ability to operate a vessel in the manner that an ordinarily prudent person, in full possession of his or her faculties, using reasonable care, would operate a similar vessel under like conditions.

(z) "Water skis, an aquaplane, or a similar device" includes all forms of water skiing, barefoot skiing, skiing on skim boards, knee boards, or other contrivances, parasailing, ski kiting, or any activity where a person is towed behind or alongside a boat.

(aa) "Special-use area" means all or a portion of a waterway that is set aside for specified uses or activities to the exclusion of other incompatible uses or activities.

(bb) "Recreational vessel" means a vessel which is being used only for pleasure.

This section shall become operative on January 1, 1992.

SEC. 4. Section 655 of the Harbors and Navigation Code is amended to read:

655. (a) No person shall use any vessel or manipulate water skis, an aquaplane, or a similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person. The department shall adopt regulations for the use of vessels, water skis, aquaplanes, or similar devices in a manner which will minimize the danger to life, limb, or property consistent with reasonable use of the equipment for the purpose for which it was designed.

(b) No person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of intoxicating liquor, any drug, or the combined influence of intoxicating liquor and any drug.

(c) No person shall operate any vessel or manipulate any water skis, aquaplane, or similar device who has 0.10 percent or more, by weight, of alcohol in his or her blood.

(d) No person shall operate any vessel, or manipulate water skis, an aquaplane, or a similar device who is addicted to the use of any drug. This subdivision does not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(e) No person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of intoxicating liquor, any drug, or under the combined influence of

intoxicating liquor and any drug, and while so operating, do any act forbidden by law, or neglect any duty imposed by law in the use of the vessel, water skis, aquaplane, or similar device, which act or neglect proximately causes bodily injury to any person other than himself or herself.

(f) For purposes of this section, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under subdivision (c), it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of operation of a vessel if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the operation.

(g) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while operating a vessel or manipulating water skis, an aquaplane, or a similar device under the influence of an alcoholic beverage in violation of subdivision (b) or (e), the amount of alcohol in the person's blood at the time of the test, as shown by chemical analysis of that person's blood, breath, or urine, shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more, but less than 0.10 percent, by weight, of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0 10 percent or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(h) This section does not limit the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(i) This section applies to foreign vessels using waters subject to state jurisdiction.

(j) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 5. Section 655 is added to the Harbors and Navigation Code, to read:

655. (a) No person shall use any vessel or manipulate water skis, an aquaplane, or a similar device in a reckless or negligent manner

so as to endanger the life, limb, or property of any person. The department shall adopt regulations for the use of vessels, water skis, aquaplanes, or similar devices in a manner which will minimize the danger to life, limb, or property consistent with reasonable use of the equipment for the purpose for which it was designed.

(b) No person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug.

(c) No person shall operate any recreational vessel or manipulate any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.10 percent or more in his or her blood.

(d) No person shall operate any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood

(e) No person shall operate any vessel, or manipulate water skis, an aquaplane, or a similar device who is addicted to the use of any drug. This subdivision does not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(f) No person shall operate any vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or under the combined influence of an alcoholic beverage and any drug, and while so operating, do any act forbidden by law, or neglect any duty imposed by law in the use of the vessel, water skis, aquaplane, or similar device, which act or neglect proximately causes bodily injury to any person other than himself or herself.

(g) In any prosecution under subdivision (c), it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of operation of a recreational vessel if the person had an alcohol concentration of 0.10 percent or more in his or her blood at the time of the performance of a chemical test within three hours after the operation.

(h) In any prosecution under subdivision (d), it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of operation of a vessel other than a recreational vessel if the person had an alcohol concentration of 0.04 percent or more in his or her blood at the time of the performance of a chemical test within three hours after the operation.

(i) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person who was operating a vessel or manipulating water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage in violation of subdivision (b) or (f), the amount of alcohol in the person's blood at the time of the test, as shown by a chemical test of that person's

blood, breath, or urine, shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more, but less than 0.10 percent, by weight, of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(j) This section does not limit the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(k) This section applies to foreign vessels using waters subject to state jurisdiction.

(*l*) This section shall become operative on January 1, 1992.

SEC. 6. Section 655.05 is added to the Harbors and Navigation Code, to read:

655.05. (a) No person shall operate a vessel other than a recreational vessel for 24 hours if the person is found by a peace officer to have an alcohol concentration of 0.01 percent or more in his or her blood. The peace officer shall order the person out of service for 24 hours.

(b) This section shall become operative on January 1, 1992.

SEC. 7. Section 655.1 of the Harbors and Navigation Code is amended to read:

655.1. (a) As used in this section, "mechanically propelled vessel" means any vessel actively propelled by machinery, whether or not the machinery is the principal source of propulsion.

(b) A peace officer, having reasonable cause to believe that any person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, who lawfully arrests the person for any violation of subdivision (b), (c), (d), or (e) of Section 655, may request that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood. The arrested person shall be informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law and that the court may impose

increased penalties for that refusal or failure, upon conviction.

(c) (1) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage and submits to the chemical testing, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the person shall be advised by the arresting officer 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 then have the choice of submitting to and completing any of the remaining test or tests, and the officer shall advise the person that he or she has that choice.

(2) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug or the combined influence of an alcoholic beverage and any drug and submits to the chemical testing, 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.

(d) The arresting officer shall advise a person submitting to chemical testing under this section that he or she does not have the right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which test or tests to take, or during the administration of the test or tests chosen.

(e) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the arresting officer has reasonable cause to believe that the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug, or the combined influence of an alcoholic beverage and any drug, and if the arresting officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The arresting officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the arresting officer that he or she is requested to submit to an additional test, and that he or she may choose a test of either blood or urine. If the person arrested is either 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.

(f) (1) A person who chooses to submit to a breath test shall be advised before or after the test that the breath-testing equipment does not retain any sample of the breath, and that no breath sample will be available after the test which could be analyzed later by the person or any other person.

(2) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be

subsequently analyzed for the alcoholic content of the persons's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.

(3) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this test shall place no duty upon the opposing party to perform the test nor affect the admissibility of any other evidence of the drug or alcoholic content of the blood of the person arrested.

(g) If the person is lawfully arrested for any offense allegedly committed in violation of subdivision (b), (c), (d), or (e) of Section 655, 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 submitting to those tests which are available at the facility to which that person has been transported. In this event, the arresting 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.

(h) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal may be subjected to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood, whether or not the person is informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law, and that the court may impose increased penalties upon conviction.

(i) Any person who is afflicted with hemophilia is exempt from the blood test provided for in this section.

(j) 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 provided for in this section.

(k) A person lawfully arrested for any offense allegedly committed while the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device in violation of subdivision (b), (c), (d), or (e) of Section 655 may request the arresting officer to have a chemical test made of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood and, if so requested, the arresting officer shall have the test performed.

(*l*) Any chemical test of blood, breath, or urine to determine the percentage, by weight, of alcohol in the blood shall be performed in accordance with Section 23158 of the Vehicle Code.

(m) Nothing in this section limits the authority of a peace officer to gather evidence from a person lawfully arrested for a violation of subdivision (b), (c), (d), or (e) of Section 655.

(n) This section shall remain in effect only until January 1, 1992,

and as of that date is repealed.

SEC. 8. Section 655.1 is added to the Harbors and Navigation Code, to read:

655.1. (a) As used in this section, "mechanically propelled vessel" means any vessel actively propelled by machinery, whether or not the machinery is the principal source of propulsion.

(b) A peace officer, having reasonable cause to believe that any person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, who lawfully arrests the person for any violation of subdivision (b), (c), (d), (e), or (f) of Section 655, may request that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood. The arrested person shall be informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the person in a court of law and that the court may impose increased penalties for that refusal or failure, upon conviction.

(c) (1) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage and submits to the chemical testing, the person has the choice of whether the chemical test shall be of his or her blood, breath, or urine, and the person shall be advised by the arresting officer 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 chemical test, the person shall then have the choice of submitting to and completing any of the remaining chemical test or tests, and the officer shall advise the person that he or she has that choice.

(2) If the person is lawfully arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug or the combined influence of an alcoholic beverage and any drug and submits to the chemical testing, the person has the choice of whether the chemical 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.

(d) The arresting officer shall advise a person submitting to chemical testing under this section that he or she does not have the right to have an attorney present before stating whether he or she will submit to the chemical testing, before deciding which chemical test or tests to take, or during the administration of the chemical test or tests chosen.

(e) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the arresting officer has reasonable cause to believe that the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of any drug, or the

combined influence of an alcoholic beverage and any drug, and if the arresting officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The arresting officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person shall have the choice of submitting to and completing a blood or urine test, and shall be advised by the arresting officer that he or she is requested to submit to an additional test, and that he or she may choose a test of either blood or urine. If the person arrested is either incapable, or states that he or she is incapable, of completing either chosen chemical test, the person shall submit to and complete the other remaining chemical test.

(f) (1) A person who chooses to submit to a breath test shall be advised before or after the breath test that the breath-testing equipment does not retain any sample of the breath, and that no breath sample will be available after the breath test which could be analyzed later by the person or any other person.

(2) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be subsequently analyzed for the alcoholic content of the persons's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.

(3) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this chemical test shall place no duty upon the opposing party to perform the chemical test nor affect the admissibility of any other evidence of the drug or alcoholic content of the blood of the person arrested.

(g) If the person is lawfully arrested for any offense allegedly committed in violation of subdivision (b), (c), (d), (e), or (f) of Section 655, 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 chemical test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of submitting to those chemical tests which are available at the facility to which that person has been transported. In this event, the arresting officer shall advise the person of those chemical tests which are available at the medical facility, and that the person's choice is limited to those chemical tests which are available.

(h) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal may be subjected to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood, whether or not the person is informed that a refusal to submit to, or failure to complete, the required chemical testing may be used against the

person in a court of law, and that the court may impose increased penalties upon conviction.

(i) Any person who is afflicted with hemophilia is exempt from the blood test provided for in this section.

(j) 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 provided for in this section.

(k) A person lawfully arrested for any offense allegedly committed while the person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 may request the arresting officer to have a chemical test made of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood and, if so requested, the arresting officer shall have the chemical test performed.

(*l*) Any chemical test of blood, breath, or urine to determine the percentage, by weight, of alcohol in the blood shall be performed in accordance with Section 23158 of the Vehicle Code.

(m) Nothing in this section limits the authority of a peace officer to gather evidence from a person lawfully arrested for a violation of subdivision (b), (c), (d), (e), or (f) of Section 655.

(n) This section shall become operative on January 1, 1992.

SEC. 9. Section 655.5 of the Harbors and Navigation Code is amended to read:

655.5. (a) Whenever a person convicted of any violation of subdivision (b), (c), (d), or (e) of Section 655 is found by the court to have willfully refused the request of a peace officer to submit to chemical testing of the blood, breath, or urine pursuant to Section 655.1, the court may impose enhanced penalties either by fine or imprisonment, or both, not to exceed the maximum of the penalties prescribed in Section 668.

(b) A willful refusal to submit to chemical testing pursuant to subdivision (a) shall be pled and proven.

(c) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 10. Section 655.5 is added to the Harbors and Navigation Code, to read:

655.5. (a) Whenever a person convicted of any violation of subdivision (b), (c), (d), (e), or (f) of Section 655 is found by the court to have willfully refused the request of a peace officer to submit to chemical testing of the blood, breath, or urine pursuant to Section 655.1, the court may impose enhanced penalties either by fine or imprisonment, or both, not to exceed the maximum of the penalties prescribed in Section 668.

(b) A willful refusal to submit to chemical testing pursuant to subdivision (a) shall be pled and proven.

(c) This section shall become operative on January 1, 1992.

SEC. 11. Section 668 of the Harbors and Navigation Code is amended to read:

668. (a) Any person who violates Section 652, 654, 654.05, 654.06, 655.2, 655.3, 659, or 663.6, or any regulations adopted by the department pursuant thereto, is guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars ($100) or imprisonment in the county jail for not to exceed five days, or both, for each violation.

(b) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not to exceed two hundred dollars ($200) for each violation.

(c) Any person who violates Section 652.5, subdivision (a) of Section 655, Section 656 or 656.1, subdivision (d) or (e) of Section 658, or any rules and regulations adopted by the department pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six months, or both, for each violation.

(d) Any person convicted of a first violation of subdivision (b), (c), or (d) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six months, or both.

(e) Any person convicted of a second or subsequent violation of subdivision (b), (c), or (d) of Section 655 within seven years of the first conviction, or any person convicted of a violation of subdivision (b), (c), or (d) of Section 655 within seven years of a prior conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed one year, or both.

(f) Any person convicted of a violation of subdivision (e) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(g) If any person is convicted of a violation of subdivision (e) of Section 655 within seven years of a prior conviction of a violation of subdivision (b), (c), or (d) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If any person is convicted of a violation of subdivision (e) of Section 655 within seven years of a prior conviction of a violation of subdivision (e) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars

($5,000).

(h) The court shall not absolve a person who is convicted of a violation of subdivision (e) of Section 655 within seven years of a prior conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (i).

(i) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under subdivision (b), (c), (d), or (e) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a prior conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(j) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not to exceed ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not to exceed one year, or both.

(k) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not to exceed one hundred dollars ($100).

(*l*) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 12. Section 668 is added to the Harbors and Navigation Code, to read:

668. (a) Any person who violates Section 652, 654, 654.05, 654.06, 655.2, 655.3, 659, or 663.6, or any regulations adopted by the department pursuant thereto, is guilty of a misdemeanor and shall be punished by a fine of not to exceed one hundred dollars ($100) or imprisonment in the county jail for not to exceed five days, or both, for each violation.

(b) Any person who violates subdivision (a) or (b) of Section 658 is guilty of a misdemeanor and shall be punished by a fine of not to exceed two hundred dollars ($200) for each violation.

(c) Any person who violates Section 652.5, subdivision (a) of Section 655, Sections 655.05, 656, or 656.1, subdivision (d) or (e) of Section 658, or any rules and regulations adopted by the department pursuant to subdivision (b) or (c) of Section 660, is guilty of a misdemeanor and shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not

to exceed six months, or both, for each violation.

(d) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six months, or both.

(e) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not to exceed one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed one year, or both.

(f) Any person convicted of a violation of subdivision (f) of Section 655 shall be punished by imprisonment in the state prison, or in the county jail for not less than 90 days or more than one year, and by a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(g) If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000). If any person is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars ($250) or more than five thousand dollars ($5,000).

(h) The court shall not absolve a person who is convicted of a violation of subdivision (f) of Section 655 within seven years of a separate conviction of a violation of subdivision (b), (c), (d), (e), or (f) of Section 655, of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code

or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, from the minimum time in confinement provided in this section and a fine of at least two hundred fifty dollars ($250), except as provided in subdivision (i).

(i) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a separate conviction of an offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or of Section 191.5 or subdivision (c) of Section 192.5 of the Penal Code, when the prior conviction resulted from the operation of a vessel, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, for purposes of sentencing in order to avoid imposing, as part of the sentence or as a term of probation, the minimum time in confinement and the minimum fine, as provided in this section. When a separate conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for the striking order. On appeal by the people from an order striking a separate conviction, it shall be conclusively presumed that the order was made only for the reasons specified in the order, and the order shall be reversed if there is no substantial basis in the record for any of those reasons.

(j) Any person convicted of a violation of Section 656.2 or 656.3 shall be punished by a fine of not to exceed ten thousand dollars ($10,000) or imprisonment in the state prison or in the county jail for not to exceed one year, or both.

(k) Any person convicted of a violation of Section 658.5 shall be punished by a fine of not to exceed one hundred dollars ($100).

(*l*) This section shall become operative on January 1, 1992.

SEC. 13. 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.

(f) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 14. Section 1803 is added to the Vehicle Code, 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 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation 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

(f) This section shall become operative on January 1, 1992.

SEC. 15. Section 1803 is added to the Vehicle Code, to read:

1803. (a) Every clerk of a court in which a person was convicted of any violation of this code, of any violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation 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 the 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 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.

(f) This section shall become operative on January 1, 1992.

SEC. 16. Section 1804 of the Vehicle Code 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.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 17. Section 1804 is added to the Vehicle Code, 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, including, but not limited to, the person's driver's license number, name, and date of birth, the date and nature of the offense, the vessel number, if any, of the vessel involved in 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 or whether the vessel involved in the offense was a recreational vessel, as defined in subdivision (y) of Section 651 of the Harbors and Navigation Code.

(b) As to any abstract for which the original arrest and final conviction was for a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code or Section 23152 or 23153 of this code, 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.

(d) This section shall become operative on January 1, 1992.

SEC. 18. 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.

(e) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 19. Section 13353 is added to the Vehicle Code, 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, except as provided in subdivision (e), 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.

(e) If any person who was driving a commercial motor vehicle, as defined in Section 15210, 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 commercial motor vehicle, as defined in Section 15210, 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 suspend or revoke the person's privilege to operate a commercial motor vehicle for the period specified in Section 13352 for conviction of a violation of Section 23152, including any applicable enhancement for convictions of other separate offenses, as specified in that section. The officer's sworn statement shall be submitted on a form furnished or approved by the department. Subdivisions (b), (c), and (d) apply to actions taken under this subdivision.

(f) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to suspend a person's commercial driver's license if that person refuses to submit to testing of his or her blood for the concentration of alcohol therein.

(g) The director shall submit a notice of the determination under subdivision (f) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 20. Section 13353 is added to the Vehicle Code, 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) suspend the person's privilege to operate a motor vehicle for a period of one year if the refusal occurred within seven years of a separate violation of Section 23103 as specified in Section 23103.5, Section 23152, or Section 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, which resulted in a conviction, or (3) suspend the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, Section 23152, or Section 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions. The officer's sworn statement shall be submitted on a form furnished by the department pursuant to Section 23158.3. The suspension shall not become effective until 45 days after the giving of written notice thereof, or until the end of any stay of the suspension, as provided for in Section 13558.

(b) The notice of the order of suspension under this section may be served on the person by a peace officer pursuant to Section 23157. If the notice of the order of suspension has not been served by the peace officer pursuant to Section 23157, the department shall immediately notify the person in writing of the action taken. A notice which is mailed to the person is deemed received three days after mailing.

(c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review 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 if he or she refused to submit to, or did not complete, the test or tests.

(d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension.

(e) If any person who was driving a commercial motor vehicle, as defined in Section 15210, 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

commercial motor vehicle, as defined in Section 15210, 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 suspend or revoke the person's privilege to operate a commercial motor vehicle for the period specified in Section 13352 for conviction of a violation of Section 23152, including any applicable enhancement for convictions of other separate offenses, as specified in that section. The officer's sworn statement shall be submitted on a form furnished by the department. Subdivisions (b), (c), and (d) apply to actions taken under this subdivision.

(f) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to suspend a person's commercial driver's license if that person refuses to submit to testing of his or her blood for the concentration of alcohol therein.

(g) The director shall submit a notice of the determination under subdivision (f) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 21. Section 13353 is added to the Vehicle Code, 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.

(e) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (g) of Section 13353, as added by Section 19 of Senate Bill No. 1119 of the 1989–90 Regular Session.

SEC. 22. Section 13353 is added to the Vehicle Code, 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) suspend the person's privilege to operate a motor vehicle for a period of one year if the refusal occurred within seven years of a separate violation of Section 23103 as specified in Section

23103.5, Section 23152, or Section 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, which resulted in a conviction, or (3) suspend the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, Section 23152, or Section 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions. The officer's sworn statement shall be submitted on a form furnished by the department pursuant to Section 23158.3. The suspension shall not become effective until 45 days after the giving of written notice thereof, or until the end of any stay of the suspension, as provided for in Section 13558.

(b) The notice of the order of suspension under this section may be served on the person by a peace officer pursuant to Section 23157. If the notice of the order of suspension has not been served by the peace officer pursuant to Section 23157, the department shall immediately notify the person in writing of the action taken. A notice which is mailed to the person is deemed received three days after mailing.

(c) Upon receipt of the officer's sworn statement, the department shall review the record. For purposes of this section, the scope of the administrative review 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 if he or she refused to submit to, or did not complete, the test or tests.

(d) The person may request an administrative hearing pursuant to Section 13558. Except as provided in subdivision (e) of Section 13558, the request for an administrative hearing does not stay the order of suspension.

(e) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (g) of Section 13353, as added by Section 20 of Senate Bill 1119 of the 1989–90 Regular Session.

SEC. 23. Section 23152 of the Vehicle Code is amended to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 24. Section 23152 is added to the Vehicle Code, to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, subdivision (d), and Section 34501.1, percent, by weight, of alcohol in a person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(d) It is unlawful for any person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle

Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to prohibit operation of commercial vehicles when the operator has a concentration of alcohol in his or her blood of 0.04 percent by weight or more.

(f) The director shall submit a notice of the determination under subdivision (e) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 25. Section 23152 is added to the Vehicle Code, to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, subdivision (d), and Section 34501.1, percent, by weight, of alcohol in a person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(d) It is unlawful for any person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to prohibit operation of commercial vehicles when the operator has a concentration of alcohol in his or her blood of 0.04 percent by weight or more.

(f) The director shall submit a notice of the determination under

subdivision (e) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 26. Section 23152 is added to the Vehicle Code, to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(d) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (f) of Section 23152, as added by Section 24 of Senate Bill 1119 of the 1989–90 Regular Session.

SEC. 27. Section 23152 is added to the Vehicle Code, to read:

23152. (a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

(d) This section shall become operative only upon the receipt by

the Secretary of State of the notice specified in subdivision (f) of Section 23152, as added by Section 25 of Senate Bill 1119 of the 1989–90 Regular Session.

SEC. 28. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, 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.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, 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.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) 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.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 29. Section 23153 is added to the Vehicle Code, to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, 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.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, 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.

For purposes of this subdivision and subdivision (d), percent, by weight, of alcohol in a person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the

person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) 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.

(d) It is unlawful for any person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210, and, when so driving, 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 any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after the driving.

(e) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to prohibit operation of commercial vehicles when the operator has a concentration of alcohol in his or her blood of 0.04 percent by weight or more.

(f) The director shall submit a notice of the determination under subdivision (e) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 30. Section 23153 is added to the Vehicle Code, to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, 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.

(b) It is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, 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.

For purposes of this subdivision and subdivision (d), percent, by weight, of alcohol in a person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the

person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) 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.

(d) It is unlawful for any person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210, and, when so driving, 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 any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after the driving.

(e) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to prohibit operation of commercial vehicles when the operator has a concentration of alcohol in his or her blood of 0.04 percent by weight or more.

(f) The director shall submit a notice of the determination under subdivision (e) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 31. Section 23153 is added to the Vehicle Code, to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, 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.

(b) It is unlawful for any person, while having 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, 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

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three

hours after the driving.

(c) 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.

(d) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (f) of Section 23153, as added by Section 29 of Senate Bill 1119 of the 1989–90 Regular Session.

SEC. 32. Section 23153 is added to the Vehicle Code, to read:

23153. (a) It is unlawful for any person, while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle and, when so driving, 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.

(b) It is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and, when so driving, 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.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) 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.

(d) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (f) of Section 23153, as added by Section 30 of Senate Bill 1119 of the 1989–90 Regular Session.

SEC. 33. Section 23155 of the Vehicle Code is amended to read:

23155. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10 percent by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 34. Section 23155 is added to the Vehicle Code, to read:

23155. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10 percent by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the

influence of an alcoholic beverage at the time of the alleged offense.

(d) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not require the state to prohibit operation of commercial vehicles when the operator has a concentration of alcohol in his or her blood of 0.04 percent by weight or more.

(e) The director shall submit a notice of the determination under subdivision (d) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 35. Section 23155 is added to the Vehicle Code, to read:

23155. (a) Upon the the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.08 percent by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.08 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(d) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in Section 383.51 or 391.15 of Title 49 of the Code of Federal Regulations do not

require the state to prohibit operation of commercial vehicles when the operator has a concentration of alcohol in his or her blood of 0.04 percent by weight or more.

(e) The director shall submit a notice of the determination under subdivision (d) to the Secretary of State, and this section shall be repealed upon the receipt of that notice by the Secretary of State.

SEC. 36. Section 23155 is added to the Vehicle Code, to read:

23155. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10 percent by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(d) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (e) of Section 23155, as added by Section 34 of Senate Bill No. 1119 of the 1989–90 Regular Session.

SEC. 37. Section 23155 is added to the Vehicle Code, to read:

23155. (a) Upon the the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions

affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.08 percent by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.08 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent by weight of alcohol in the person's blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

(d) This section shall become operative only upon the receipt by the Secretary of State of the notice specified in subdivision (e) of Section 23155, as added by Section 35 of Senate Bill 1119 of the 1989–90 Regular Session.

SEC. 38. Section 23156 of the Vehicle Code is amended to read:

23156. (a) For the purposes of this article, a separate offense which resulted in a conviction of a violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code is a separate offense of a violation of Section 23153.

(b) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 39. Section 23156 is added to the Vehicle Code, to read:

23156. (a) For the purposes of this article, a separate offense which resulted in a conviction of a violation of subdivision (f) of Section 655 of the Harbors and Navigation Code or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code is a separate offense of a violation of Section 23153.

(b) For the purposes of this article and Section 13352, a separate offense which resulted in a conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code is a separate violation of Section 23152.

(c) This section shall become operative on January 1, 1992.

SEC. 40. Section 34501.15 is added to the Vehicle Code, to read:

34501.15. (a) The regulations adopted pursuant to Section 34501 shall require that any driver of a commercial motor vehicle, as defined in Section 15210, be ordered out of service for 24 hours if the driver is found to have 0.01 percent or more, by weight, of alcohol

in his or her blood.

(b) This section shall become operative on January 1, 1992, and shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) contained in that act and Section 391.15 of Title 49 of the Code of Federal Regulations do not require the state to order the operator of a commercial vehicle out of service for 24 hours when the operator has a measurable concentration of alcohol in his or her blood.

(c) The director shall submit a notice of the determination under subdivision (b) to the Secretary of State, and this section shall be repealed upon the receipt of that notice.

SEC. 41. Section 34501.16 is added to the Vehicle Code, to read:

34501.16. (a) Every employer of a commercial driver shall provide information to that employee at the time of hiring and to all employed commercial drivers annually, concerning all of the following:

(1) The prohibition against driving a commercial motor vehicle with over 0.04 percent or more, by weight, alcohol in his or her blood on and after January 1, 1992.

(2) The requirement to be placed out of service for 24 hours if the person's blood-alcohol concentration is tested to be 0.01 percent or more, by weight, on and after January 1, 1992.

(b) The Department of Motor Vehicles shall include the information prescribed in subdivision (a), together with information concerning the alcohol concentration in a person's blood resulting from consumption of alcoholic beverages, in each publication of the commercial driver's handbook published after January 1, 1990.

(c) This section shall remain operative until the director determines that federal regulations adopted pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Sec. 2701 et seq.) do not require the state to implement the prohibitions and requirements in paragraphs (1) and (2) of subdivision (a).

(d) The director shall submit a notice of the determination under subdivision (c) to the Secretary of State, and this section shall be repealed upon the receipt of that notice.

SEC. 42. The Legislature finds and declares that the minimum reportable concentration of alcohol in a person's blood is 0.01 percent under the regulations of the State Department of Health Services (17 Cal. Code Regs. 1220.4). The Legislature further finds that very low concentrations of alcohol occur in people from normal metabolism of food, and that those very low concentrations are detectable with modern analytical techniques. Therefore, the Legislature finds that the requirement for ordering a commercial motor vehicle driver out of service, if the alcohol in that person's blood is 0.01 percent or more, complies with the federal regulations for driving motor vehicles transporting persons or property for a motor carrier, which prohibit a driver from having any measured alcohol concentration or any detected presence of alcohol, while on duty, or operating, or in

physical control of a motor vehicle as stated in paragraph (2) of subsection (a) of Section 392.5 of Title 49 of the Code of Federal Regulations.

SEC. 43. Section 3 of this bill incorporates amendments to Section 651 of the Harbors and Navigation Code proposed by this bill and AB 1973. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends or amends, repeals, and adds Section 651 of the Harbors and Navigation Code, and (3) this bill is enacted after AB 1973, in which case Section 651 of the Harbors and Navigation Code, as amended by AB 1973, shall remain operative only until the operative date of Section 3 of this bill, at which time Section 3 of this bill shall become operative, and Sections 1 and 2 of this bill shall not become operative.

SEC. 44. Section 15 of this bill incorporates amendments to Section 1803 of the Vehicle Code proposed by this bill and SB 710. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends or amends, repeals, and adds Section 1803 of the Vehicle Code, and (3) this bill is enacted after SB 710, in which case Section 1803 of the Vehicle Code, as amended by SB 710, shall remain operative only until the operative date of Section 15 of this bill, at which time Section 15 of this bill shall become operative, and Sections 13 and 14 of this bill shall not become operative.

SEC. 45. Sections 20 and 22 of this bill incorporate amendments to Section 13353 of the Vehicle Code proposed by this bill and SB 1623. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends or amends, repeals, and adds Section 13353 of the Vehicle Code, and (3) this bill is enacted after SB 1623, in which case Section 13353 of the Vehicle Code, as amended by SB 1623 shall remain operative only until the operative date of Section 20 of this bill, at which time Sections 20 and 22 of this bill shall become operative as provided in those sections, and Sections 18, 19, and 21 of this bill shall not become operative.

SEC. 46. Sections 25 and 27 of this bill incorporate amendments to Section 23152 of the Vehicle Code proposed by this bill and SB 408. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 23152 of the Vehicle Code, and (3) this bill is enacted after SB 408, in which case Section 23152 of the Vehicle Code, as amended by SB 408, shall remain operative only until the operative date of Section 25 of this bill, at which time Sections 25 and 27 of this bill shall become operative as provided in those sections, and Sections 23, 24, and 26 of this bill shall not become operative.

SEC. 47. Sections 30 and 32 of this bill incorporate amendments to Section 23153 of the Vehicle Code proposed by this bill and SB 408. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 23153 of the Vehicle Code, and (3) this bill is enacted after

SB 408, in which case Section 23153 of the Vehicle Code, as amended by SB 408, shall remain operative only until the operative date of Section 30 of this bill, at which time Sections 30 and 32 of this bill shall become operative as provided in those sections, and Sections 28, 29, and 31 of this bill shall not become operative.

SEC. 48. Sections 35 and 37 of this bill incorporate amendments to Section 23155 of the Vehicle Code proposed by this bill and SB 408. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 23155 of the Vehicle Code, and (3) this bill is enacted after SB 408, in which case Section 23155 of the Vehicle Code, as amended by SB 408, shall remain operative only until the operative date of Section 35 of this bill, at which time Sections 35 and 37 of this bill shall become operative as provided in those sections, and Sections 33, 34, and 36 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1115

An act to amend Sections 1569.2, 1569.15, 1569.16, 1569.19, 1569.36, 1569.40, 1569.43, 1569.44, 1569.47, 1569.48, 1569.485, and 1569.49 of, to amend, repeal, and add Section 1569.23 of, to amend, renumber, and add Section 1569.61 of, to add Sections 1569.191, 1569.193, 1569.205, 1569.46, 1569.525, 1569.615, and 1569.618, to, and to repeal and add Sections 1569.20 and 1569.54 of, the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. This act shall be known and may be cited as "the Residential Care Facilities for the Elderly Reform Act of 1989."

SEC. 2. Section 1569.2 of the Health and Safety Code is amended to read:

1569.2. As used in this chapter:

(a) "Administrator" means the individual designated by the licensee to act in behalf of the licensee in the overall management

of the facility. The licensee, if an individual, and the administrator may be one and the same person.

(b) "Care and supervision" means the facility assumes responsibility for, or provides or promises to provide in the future, ongoing assistance with activities of daily living without which resident physical health, mental health, safety or welfare would be endangered. Assistance includes assistance with taking medications, money management, or personal care.

(c) "Department" means the State Department of Social Services.

(d) "Director" means the Director of Social Services.

(e) "Health-related services" mean services which shall be directly provided by an appropriate skilled professional, including a registered nurse, licensed vocational nurse, physical therapist, or occupational therapist.

(f) "Instrumental activities of daily living" means any of the following: housework, meals, laundry, taking of medication, money management, appropriate transportation, correspondence, telephoning, and related tasks.

(g) "License" means a basic permit to operate a residential care facility for the elderly.

(h) "Personal activities of daily living" means any of the following: dressing, feeding, toileting, bathing, grooming, and mobility and associated tasks.

(i) "Personal care" means assistance with personal activities of daily living, to help provide for and maintain physical and psychosocial comfort.

(j) "Protective supervision" means observing and assisting confused residents, including persons with dementia, to safeguard them against injury.

(k) "Residential care facility for the elderly" means a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. Persons under 60 years of age with compatible needs, as determined by the department in regulations, may be allowed to be admitted or retained in a residential care facility for the elderly.

This subdivision shall be operative only until the enactment of legislation implementing the three levels of care in residential care facilities for the elderly pursuant to Section 1569.70.

(l) "Residential care facility for the elderly" means a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. Persons under 60 years of age with compatible needs,

as determined by the department, may be allowed to be admitted or retained in a residential care facility for the elderly.

This subdivision shall become operative upon the enactment of legislation implementing the three levels of care in residential care facilities for the elderly pursuant to Section 1569.70.

(m) "Supportive services" means resources available to the resident in the community which help to maintain their functional ability and meet their needs as identified in the individual resident assessment. Supportive services may include any of the following: medical, dental, and other health care services; transportation; recreational and leisure activities; social services; and counseling services.

SEC. 3. Section 1569.15 of the Health and Safety Code is amended to read:

1569.15. Any person desiring issuance or renewal of a license for a residential care facility for the elderly under this chapter shall file with the department, pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to:

(a) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations adopted under this chapter by the department. Where there is an application for renewal of a license, evidence satisfactory to the department that the licensee has substantially complied for the term of the previous license with this chapter, and with the rules and regulations adopted pursuant to this chapter.

(b) Evidence satisfactory to the department that the applicant is of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1569.17, employment history, and character references. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the residential care facility for the elderly which application for issuance or renewal of license or special permit is made.

(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any residential care facility for the elderly or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), or Chapter 3 (commencing with Section 1500).

(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (c).

(f) Any other information as may be required by the department

for the proper administration and enforcement of this chapter.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(h) Following the implementation of Article 7 (commencing with Section 1569.70) evidence satisfactory to the department of the applicant's ability to meet regulatory requirements for the level of care the facility intends to provide.

(i) Evidence satisfactory to the department of adequate knowledge of supportive services and other community supports which may be necessary to meet the needs of elderly residents.

(j) A signed statement that the person desiring issuance or renewal of a license has read and understood the residential care facility for the elderly statute and regulations.

(k) Designation by the applicant of the individual who shall be the administrator of the facility, including, if the applicant is an individual, whether or not the licensee shall also be the administrator.

(*l*) Evidence of successfully completing a certified prelicensure education program pursuant to Section 1569.23.

SEC. 4. Section 1569.16 of the Health and Safety Code is amended to read:

1569.16. (a) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), 3 (commencing with Section 1500), 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), or 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1569.22 or any other provision of law. All residential care facilities for the elderly are exempt from the health planning requirements contained in Part 1.5 (commencing with Section 437) of Division 1.

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied within the last year, the department shall, except as provided in Section 1569.22, cease further review of the application until one year has elapsed from the date of the denial letter. In those circumstances where denials are appealed and upheld at an administrative hearing, review of the application shall cease for one year from the date of the decision and order being rendered by the department. The cessation

of review shall not constitute a denial of the application.

SEC. 5. Section 1569.19 of the Health and Safety Code is amended to read:

1569.19. Each new license or special permit issued pursuant to this chapter shall expire 12 months from the date of its issuance.

A renewal license or special permit may be issued for a period not to exceed two years, provided the licensee has been found not to be in violation of any statutory requirements or rules or regulations, during the preceding license period.

Application for renewal of a license or special permit shall be filed with the state department pursuant to departmental rules and regulations.

A license shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

(a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation and when the transfer of stock does not constitute a majority change in ownership. The sale of a facility shall be subject to the requirements of this chapter.

(b) The licensee surrenders the license to the department.

(c) The licensee moves a facility from one location to another. The department shall develop regulations to ensure that the facilities are not charged a full licensing fee and do not have to complete the entire application process when applying for a license for the new location.

(d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264 1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The licensee dies. When a licensee dies, the continued operation shall be subject to the requirements of Section 1569.193.

(f) The licensee abandons the facility.

SEC. 6. Section 1569.191 is added to the Health and Safety Code, to read:

1569.191. (a) Notwithstanding Section 1569.19, in the event of a sale of a licensed facility where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:

(1) The licensee shall provide written notice to the department and to each resident or his or her legal representative of the licensee's intent to sell the facility at least 60 days prior to the transfer of property or business, or at the time that a bona fide offer is made, whichever period is longer.

(2) The licensee shall, prior to entering into an admission agreement, inform all residents, or their legal representatives, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.

(b) Except as provided in subdivision (e), the property and

business shall not be transferred until the buyer qualifies for a license or provisional license within the appropriate provisions of this chapter.

(1) For purposes of this section, it shall be the seller's responsibility to inform a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a residential care facility for the elderly.

(2) For purposes of this section, it shall be the buyer's responsibility to apply for a license, as specified in Section 1569.15, within five days of the acceptance of the offer by the seller.

(c) No sale of the facility shall be permitted until 60 days have elapsed from the date upon which notice has been provided pursuant to paragraphs (1) and (2) of subdivision (a).

(d) The department shall give priority to applications for licensure which are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after the application is submitted on whether to issue a license pursuant to Section 1569.15.

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

SEC. 7. Section 1569.193 is added to the Health and Safety Code, to read:

1569.193. (a) When a licensee dies, an adult relative who has control of the property may continue operation of the facility if the following conditions are met:

(1) The department receives notification of the death during the next normal workday and is informed of the relative's intent to continue operating the facility as a residential care facility for the elderly.

(2) The relative files application within five days of the date of death, shows evidence satisfactory to the department that he or she has the ability to operate the facility, submits his or her fingerprint card, and provides evidence of the licensee's death.

(b) The department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 1569.21. A provisional license shall be granted only if the department is satisfied that the conditions specified in subdivision (a) have been met and that the health and safety of the residents of the facility will not be jeopardized.

(c) If the relative complies with this section, he or she shall not be considered to be operating an unlicensed facility while the department decides whether to grant the provisional license.

SEC. 8. Section 1569.20 of the Health and Safety Code is repealed.

SEC. 9. Section 1569.20 is added to the Health and Safety Code, to read:

1569.20. Upon the filing of the application for issuance of an initial license, the department shall, within five working days of the filing, make a determination regarding the completeness of the application. If the application is complete, the department shall immediately request a fire clearance and notify the applicant to arrange a time for the department to conduct a prelicensure survey. If the application is incomplete, the department shall notify the applicant and request the necessary information. Within 60 days of making a determination that the file is complete, the department shall make a determination whether the application is in compliance with this chapter and the rules and regulations of the department and shall either immediately issue the license or notify the applicant of the deficiencies. The notice shall specify whether the deficiencies constitute denial of the application or whether further corrections for compliance will likely result in approval of the application.

SEC. 10. Section 1569.205 is added to the Health and Safety Code, to read:

1569.205. Upon the filing of the licensee for renewal of a license and substantial compliance with this chapter and the rules and regulations of the department, the department shall issue the license renewal. If it is found that the licensee is not in compliance, the department shall deny the license renewal.

SEC. 11. Section 1569.23 of the Health and Safety Code is amended to read:

1569.23. As a requirement for licensure, the applicant shall attend an orientation given by the department which outlines the applicable rules and regulations, and the scope and responsibility for operation of a residential care facility for the elderly. The orientation shall include information on relevant community services, and may include participation by local area agencies on aging, the Long-Term Care Ombudsman, and provider organizations.

This section shall remain in effect 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. 12. Section 1569.23 is added to the Health and Safety Code, to read:

1569.23. (a) As a requirement for licensure of applications filed on or after January 1, 1991, the applicant shall demonstrate that he or she has successfully completed an approved certification program.

(b) The certification program shall be for a minimum of 40 hours of classroom instruction and include a uniform core of knowledge which shall include all of the following:

(1) Law, regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly.

(2) Business operations.

(3) Management and supervision of staff.

(4) Psychosocial need of the elderly residents.

(5) Physical needs for elderly residents.

(6) Community and support services.

(7) Use, misuse, and interaction of drugs commonly used by the elderly.

(8) Resident admission, retention, and assessment procedures.

(c) Successful completion of the certification program shall be demonstrated by passing a written test.

(d) The department shall establish by regulation the program content, the testing instrument, process for approving certification programs, and criteria to be used for authorizing individuals or organizations to conduct certification programs. These regulations shall be developed in conjunction with the Department of Consumer Affairs and with the participation of provider organizations.

(e) This section shall apply to all applications for licensure unless the applicant provides evidence that he or she has a current license for another residential care facility for the elderly which was initially licensed prior to July 1, 1989, or has successfully completed an approved certification program within the prior five years.

(f) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, or other person serving in a like capacity, or the designated administrator of the facility shall provide evidence of successfully completing an approved certification program.

SEC. 13. Section 1569.36 of the Health and Safety Code is amended to read:

1569.36. (a) Not less than 30 days prior to the expiration date of any residential care facility for the elderly license, the department shall transmit a copy to the state ombudsman in the Department of Aging as well as the local ombudsman, if one exists, of all notices sent to the facility by the department during the term of the current license as a result of a substantiated complaint regarding a violation of any of the provisions of this chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection

(b) The department shall provide the names and addresses of the state ombudsman in the Department of Aging and, where applicable, the local ombudsman, to each residential care facility for the elderly.

SEC. 14. Section 1569.40 of the Health and Safety Code is amended to read:

1569.40. (a) Any person who violates this chapter, or who willfully or repeatedly violates any rule or regulation adopted under this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000), by imprisonment in the county jail for a period not to exceed one year, or by both the fine and imprisonment.

(b) Operation of a residential care facility for the elderly without a license shall be subject to a summons to appear in court. Unlicensed operation, establishment, management, conducting, or maintaining

of a facility as prohibited by Section 1569.10 is a separate and distinct offense of this section and is punishable as a misdemeanor.

(c) A misdemeanor may be prosecuted regardless of any concurrent enforcement of civil penalties or administrative remedies available to the department.

(d) Notwithstanding any other provision of this chapter, any person, firm, partnership, association, or corporation who owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly, as defined in subdivisions (k) and (*l*) of Section 1569.2 which is an unlicensed residential care facility for the elderly as defined in subdivision (a) of Section 1569.44 is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), by imprisonment in the county jail for a period not to exceed one year, or by both the fine and imprisonment.

SEC. 15. Section 1569.43 of the Health and Safety Code is amended to read:

1569.43. Notwithstanding any other provisions of this chapter, the district attorney of every county, and city attorneys in those cities which have city attorneys which prosecute misdemeanors pursuant to Sections 71099 and 72193 of the Government Code, shall, upon their own initiative or upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation of this chapter within his or her jurisdiction.

SEC. 16. Section 1569.44 of the Health and Safety Code is amended to read:

1569.44 (a) A facility shall be deemed to be an "unlicensed residential care facility for the elderly" and "maintained and operated to provide residential care" if it is unlicensed and not exempt from licensure, and any one of the following conditions is satisfied:

(1) The facility is providing care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(2) The facility is held out as, or represented as, providing care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(3) The facility accepts or retains residents who demonstrate the need for care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

(4) The facility represents itself as a licensed residential facility for the elderly.

(b) No unlicensed residential facility for the elderly, as defined in subdivision (a), shall operate in this state.

(c) Upon discovery of an unlicensed residential care facility for the elderly, the department shall refer residents to the appropriate placement or adult protective services agency or the appropriate local or state long-term care ombudsman, if either of the following

conditions exist:

(1) There is an immediate threat to the clients' health and safety.

(2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

SEC. 17. Section 1569.46 is added to the Health and Safety Code, to read:

1569.46. Operation of an unlicensed facility shall be an act of unfair competition and an unfair business practice within the meaning of Chapter 5 (commencing with Section 17200) of the Business and Professions Code.

SEC. 18. Section 1569.47 of the Health and Safety Code is amended to read:

1569.47. (a) "Placement agency" means any county welfare department, county social service department, county mental health department, county public guardian, general acute care hospital discharge planner or coordinator, state-funded program or private agency providing placement or referral services, and regional center for persons with developmental disabilities which is engaged in finding homes or other places for the placement of elderly persons for temporary or permanent care.

(b) A placement agency shall place individuals only in licensed residential care facilities for the elderly or facilities which are exempt from licensing under Section 1569.145.

(c) No employee of a placement agency shall place, refer, or recommend placement of a person in a facility operating without a license, unless the facility is exempt from licensing under Section 1569.145. Violation of this subdivision is a misdemeanor.

(d) Any employee of a placement agency who knows, or reasonably suspects, that a facility which is not exempt from licensing is operating without a license shall report the name and address of the facility to the department. Failure to report as required by this subdivision is a misdemeanor.

(e) The department shall investigate any report filed under subdivision (d). If the department has probable cause to believe that the facility which is the subject of the report is operating without a license, the department shall investigate the facility within 10 days after receipt of the report.

(f) A placement agency shall notify the appropriate licensing agency of any known or suspected incidents which would jeopardize the health or safety of residents in a residential care facility for the elderly. Reportable incidents include, but are not limited to, all of the following:

(1) Incidents of physical abuse.

(2) Any violation of personal rights.

(3) Any situation in which a facility is unclean, unsafe, unsanitary, or in poor condition.

(4) Any situation in which a facility has insufficient personnel or incompetent personnel on duty.

(5) Any situation in which residents experience mental or verbal abuse.

SEC. 19. Section 1569.48 of the Health and Safety Code is amended to read:

1569.48. A fund may be established to which 50 percent of each penalty assessed pursuant to Section 1569.49 is transmitted to the department for use by the Community Care Licensing Division of the department to establish an emergency resident relocation fund to be utilized for the relocation and care of residents when a facility's license is revoked or temporarily suspended, when appropriated by the Legislature. The money in the fund shall cover costs, including, but not limited to, transportation expenses, expenses incurred in notifying family members, and any other costs directly associated with providing continuous care to the residents. The department shall seek the advice of providers in developing a state plan for emergency resident relocation.

SEC. 20. Section 1569.485 of the Health and Safety Code is amended to read:

1569.485. (a) Notwithstanding any other provision of this chapter, any person who violates Section 1569.10 or 1569.44, or both, shall be assessed by the department an immediate civil penalty in the amount of one hundred dollars ($100) per resident for each day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be doubled if an unlicensed facility 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 facility.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

SEC. 21. Section 1569.49 of the Health and Safety Code is amended to read:

1569.49. (a) In addition to suspension or revocation of a license issued under this chapter, the department may levy a civil penalty in addition to the penalties of suspension or revocation. The department shall adopt regulations setting forth the appeal procedures for deficiencies.

(b) The amount of the civil penalty shall not be less than twenty-five dollars ($25) or more than fifty dollars ($50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall a civil penalty assessment exceed one hundred fifty dollars ($150) per day.

(c) Notwithstanding Section 1569.33, any residential care facility for the elderly that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars ($150) and fifty

dollars ($50) for each day the violation continues until the deficiency is corrected.

(d) Any residential care facility for the elderly that is assessed a civil penalty pursuant to subdivision (c) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (c) shall be assessed an immediate civil penalty of one thousand dollars ($1,000) and one hundred dollars ($100) for each day the violation continues until the deficiency is corrected.

The department shall adopt regulations implementing this section.

SEC. 22. Section 1569.525 is added to the Health and Safety Code, to read:

1569.525. If the director determines that it is necessary to temporarily suspend any license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety pursuant to Section 1569.50, the department shall make every effort to minimize trauma for the residents

The department shall contact any local agency that may have placement or advocacy responsibility for the residents of a residential care facility for the elderly after a decision is made to temporarily suspend the license of the facility and prior to its implementation. The department shall work with these agencies to locate alternative placement sites and to contact relatives responsible for the care of these residents.

The department shall use physicians and surgeons and other medical personnel deemed appropriate by the department to provide onsite evaluation of the residents and assist in the transfer.

The department may require the licensee to prepare and submit to the licensing agency a written plan for relocation and compliance with the terms and conditions of the approved plans, and to provide other information as necessary for the enforcement of this section.

SEC. 23. Section 1569.54 of the Health and Safety Code is repealed.

SEC. 24. Section 1569.54 is added to the Health and Safety Code, to read:

1569.54. (a) (1) When the department does not suspend the license of a residential care facility for the elderly pursuant to this article, the department may still order the licensee to remove a resident who has a health condition which cannot be cared for within the limits of the license or requires inpatient care in a health facility as determined by the department.

(2) Where the department determines that the resident's mental or physical condition requires immediate transfer from the facility in order to protect the health and safety of the resident, the department may order the licensee to remove the resident after the department consults with a physician or other medical professional about the transfer and ways in which transfer trauma can be minimized.

(b) (1) Where the department alleges that a resident has a health condition which cannot be cared for within the limits of the

license or requires inpatient care in a health facility, the department shall give notice to the resident, his or her legal representative when appropriate, and the licensee. The notice shall specify a deadline for submitting a written plan for relocation and inform the resident of his or her right for a review and determination by an interdisciplinary team as provided for in Section 1569.34. The resident, or his or her legal representative, shall have three working days to inform the licensee of the request for review. Upon receiving a request from a resident, or his or her legal representative, for a review and determination, the licensee shall forward the request to the department within two working days of receipt. Failure or refusal by the licensee to submit the request for review and determination to the department may be subject to the civil penalties specified in Section 1569.49.

(2) The review and determination shall be completed within 30 days from the date that the resident was initially informed of the need to relocate. If the determination is made that the resident must relocate, the notice shall include a plan for transfer, including attempts to minimize transfer trauma for the resident.

The department may require the licensee to prepare and submit to the licensing agency a written plan for relocation, to comply with the terms and conditions of the approved plans and to provide other information as necessary for the enforcement of this section.

(c) The provisions allowing for a resident's right to a review prior to transfer as provided for in subdivision (b) neither negates the department's authority and responsibility to require an immediate transfer according to paragraph (2) of subdivision (a) when the department finds and provides evidence that the resident must be relocated in order to protect the health and safety of the resident, nor implies any right to a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code.

The department shall specify in regulations the process provided for pursuant to this section for making relocation decisions and for appealing and reviewing these decisions.

SEC. 25. Section 1569.61 of the Health and Safety Code is amended and renumbered to read:

1569.601. The director may grant a partial or total variance from the bonding requirements of Section 1569.60 for any residential care facility for the elderly if he or she finds that compliance with them is so onerous that a residential care facility for the elderly will cease to operate, and if he or she also finds that money of the persons received or cared for in the facility has been, or will be, deposited in a bank in this state, in a trust company authorized to transact a trust business in this state, or in a savings and loan association in this state, upon condition that the money may not be withdrawn except on authorization of the guardian or conservator of the person.

SEC. 26. Section 1569.61 is added to the Health and Safety Code, to read:

1569.61. (a) The department, in conjunction with the Department of Consumer Affairs and with the participation of provider organizations, shall submit to the Legislature by December 1, 1990, an implementation plan to establish a certification program for administrators of residential care facilities for the elderly.

(b) The implementation plan shall, at least, include minimum hours of instruction, experience and other qualifications, a uniform core of knowledge, means for testing knowledge, and process for approving programs.

It is the intent of the Legislature that, subsequent to the receipt of the implementation plan by the Legislature, legislation be enacted for the establishment of administrator certification requirements.

SEC. 27 Section 1569.615 is added to the Health and Safety Code, to read:

1569.615. (a) Notwithstanding Section 1569.62, and until legislation is enacted establishing an administrator certification program, an administrator of a residential care facility, if other than the licensee, shall be required to successfully complete the certification program provided for pursuant to Section 1569.23. In those cases where the individual is both the licensee and the designated administrator of a facility, and the individual is exempt from the requirements of Section 1569.23 as a licensee, the individual shall comply with the requirements of this subdivision as the designated administrator unless he or she qualifies for the exemption provided for in subdivision (b).

(b) An individual designated as the administrator of a residential care facility for the elderly who holds a valid license as a nursing home administrator issued in accordance with Chapter 8.5 (commencing with Section 3901) of the Business and Professions Code shall be exempt from the provisions of this section.

(c) Individuals designated as the administrator of a residential care facility for the elderly on or after January 1, 1991, shall comply with this section by July 1, 1991. Failure to comply with this section shall constitute cause for revocation of the license.

(d) This section shall become operative on January 1, 1991.

SEC. 28. Section 1569.618 is added to the Health and Safety Code, to read:

1569.618. (a) The administrator designated by the licensee pursuant to subdivision (k) of Section 1569.15 shall be present at the facility during normal working hours. A facility manager designated by the licensee with notice to the department, shall be responsible for the operation of the facility when the administrator is temporarily absent from the facility.

(b) "Facility manager" means a person on the premises with the authority and responsibility necessary to manage and control the day-to-day operation of a residential care facility for the elderly and supervise the clients. The facility manager, licensee, and administrator, or any combination thereof, may be the same person provided he or she meets all applicable requirements. If the

administrator is also the facility manager for the same facility, he or she shall be limited to the administration and management of only one facility.

SEC. 29. Section 26 of this act shall not become operative if Assembly Bill 2323 is enacted during the 1989 portion of the 1989–90 Regular Session.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1116

An act to amend Section 10133.1 of, and to add Section 10008.5 to, the Business and Professions Code, and to amend Sections 181, 903, and 1203 of, and to add Sections 183.5 and 1201.5 to, the Corporations Code, relating to business regulations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 10008.5 is added to the Business and Professions Code, to read:

10008.5. Solely with regard to any transaction involving the sale, lease, or exchange of a business opportunity occurring before, on, or after the effective date of this section, this division shall not apply to any person licensed at the time of the transaction as a securities broker or securities dealer under any law of this state or of the United States, or by any employee, officer, or agent of that person while acting under the direction of, and within the scope of, his or her employment with that person in connection with the transaction.

As used in this section, "any transaction involving the sale, lease, or exchange of a business opportunity" does not include any of the acts described in Section 10131 or Section 10131.2 if the substance of the transaction is to transfer, sell, lease, or exchange an interest in real property for the purpose of evading this part.

SEC. 2. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section

10131.1, Article 5 (commencing with Section 10230), Article 6 (commencing with Section 10237), and Article 7 (commencing with Section 10240) and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any such business.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), provided, the fees and disbursements shall not be shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a personal property broker, a consumer finance lender, or a commercial finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code which is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Federal Home Loan Bank Board by its regulations, when acting under the authority of such written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly

by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(b) Persons described in either paragraph (1) or (2) are exempt from the provisions of subdivisions (d) and (e) of Section 10131 with respect to the collection of payments for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property.

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

SEC. 2.5. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), Article 6 (commencing with Section 10237), and Article 7 (commencing with Section 10240) and Section 1695.13 of the Civil Code do not apply to any of the following.

(1) Any person or employee thereof doing business under any law of this state, any other state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any such business

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), provided, the fees and disbursements shall not be shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a personal property broker, a

consumer finance lender, or a commercial finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code which is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Federal Home Loan Bank Board by its regulations, when acting under the authority of such written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(b) Persons described in paragraph (1), (2), or (3) are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For the purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

SEC. 3. Section 181 of the Corporations Code is amended to read:

181 "Reorganization" means either:

(a) A merger pursuant to Chapter 11 (commencing with Section 1100) other than a short-form merger (a "merger reorganization").

(b) The acquisition by one corporation in exchange in whole or in part for its equity securities (or the equity securities of a corporation which is in control of the acquiring corporation) of shares of another corporation if, immediately after the acquisition, the acquiring corporation has control of the other corporation (an "exchange reorganization").

(c) The acquisition by one corporation in exchange in whole or in part for its equity securities (or the equity securities of a corporation which is in control of the acquiring corporation) or for its debt securities (or debt securities of a corporation which is in control of the acquiring corporation) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the reorganization, or both, of all or substantially all of the assets of another corporation (a "sale-of-assets reorganization").

SEC. 4. Section 183.5 is added to the Corporations Code, to read:

183.5. "Share exchange tender offer" means any acquisition by one corporation in exchange in whole or in part for its equity securities (or the equity securities of a corporation which is in control of the acquiring corporation) of shares of another corporation, other than an exchange reorganization (subdivision (b) of Section 181).

SEC. 5. Section 903 of the Corporations Code is amended to read:

903. (a) A proposed amendment must be approved by the outstanding shares (Section 152) of a class, whether or not such class is entitled to vote thereon by the provisions of the articles, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class, other than an increase as provided in either subdivision (b) of Section 405 or subdivision (c) of Section 902.

(2) Effect an exchange, reclassification or cancellation of all or part of the shares of such class, other than a stock split.

(3) Effect an exchange, or create a right of exchange, of all or part of the shares of another class into the shares of such class.

(4) Change the rights, preferences, privileges or restrictions of the shares of such class.

(5) Create a new class of shares having rights, preferences or privileges prior to the shares of such class, or increase the rights, preferences or privileges or the number of authorized shares of any class having rights, preferences or privileges prior to the shares of such class.

(6) In the case of preferred shares, divide the shares of any class into series having different rights, preferences, privileges or restrictions or authorize the board to do so.

(7) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been paid.

(b) Different series of the same class shall not constitute different classes for the purpose of voting by classes except when a series is adversely affected by an amendment in a different manner than other shares of the same class.

(c) In addition to approval by a class as provided in subdivision (a), a proposed amendment must also be approved by the outstanding voting shares (Section 152).

SEC. 6. Section 1201.5 is added to the Corporations Code, to read:

1201.5. (a) The principal terms of a share-exchange tender offer (Section 183.5) shall be approved by the outstanding shares (Section

152) of each class of the corporation making the tender offer or whose shares are to be used in the tender offer, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of either corporation shall be required, if the rights, preferences, privileges, and restrictions granted to or imposed upon that class of shares remain unchanged. For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if the corporation, or its shareholders immediately before the tender offer, or both, shall own (immediately after the completion of the share exchange proposed in the tender offer) equity securities, (other than any warrant or right to subscribe to or purchase the equity securities), of the corporation making the tender offer or of the corporation whose shares were used in the tender offer, possessing more than five-sixths of the voting power of either corporation. In making the determination of ownership by the shareholders of a corporation, immediately after the tender offer, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the tender offer as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to, or purchase, shares.

SEC. 7 Section 1203 of the Corporations Code is amended to read:

1203. (a) If a tender offer, including a share exchange tender offer (Section 183.5), or a written proposal for approval of a reorganization subject to Section 1200 or for a sale of assets subject to subdivision (a) of Section 1001 is made to some or all of a corporation's shareholders by an interested party (herein referred to as an "Interested Party Proposal"), an affirmative opinion in writing as to the fairness of the consideration to the shareholders of that corporation shall be delivered as follows:

(1) If no shareholder approval or acceptance is required for the consummation of the transaction, the opinion shall be delivered to the corporation's board of directors not later than the time that consummation of the transaction is authorized and approved by the board of directors.

(2) If a tender offer is made to the corporation's shareholders, the opinion shall be delivered to the shareholders at the time that the tender offer is first made in writing to the shareholders However, if the tender offer is commenced by publication and tender offer materials are subsequently mailed or otherwise distributed to the shareholders, the opinion may be omitted in that publication if the

opinion is included in the materials distributed to the shareholders.

(3) If a shareholders' meeting is to be held to vote on approval of the transaction, the opinion shall be delivered to the shareholders with the notice of the meeting (Section 601).

(4) If consents of all shareholders entitled to vote are solicited in writing (Section 603), the opinion shall be delivered at the same time as that solicitation.

(5) If the consents of all shareholders are not solicited in writing, the opinion shall be delivered to each shareholder whose consent is solicited prior to that shareholder's consent being given, and to all other shareholders at the time they are given the notice required by subdivision (b) of Section 603.

For purposes of this section, the term "interested party" means a person who is a party to the transaction and (A) directly or indirectly controls the corporation that is the subject of the tender offer or proposal, (B) is, or is directly or indirectly controlled by, an officer or director of the subject corporation, or (C) is an entity in which a material financial interest (subdivision (a) of Section 310) is held by any director or executive officer of the subject corporation. For purposes of the clause (C), "any executive officer" means the president, any vice president in charge of a principal business unit, division, or function such as sales, administration, research or development, or finance, and any other officer or other person who performs a policymaking function or has the same duties as those of a president or vice president. The opinion required by this subdivision shall be provided by a person who is not affiliated with the offeror and who, for compensation, engages in the business of advising others as to the value of properties, businesses, or securities. The fact that the opining person previously has provided services to the offeror or a related entity or is simultaneously engaged in providing advice or assistance with respect to the proposed transaction in a manner which makes its compensation contingent on the success of the proposed transaction shall not, for those reasons, be deemed to affiliate the opining person with the offeror. Nothing in this subdivision shall limit the applicability of the standards of review of the transaction in the event of a challenge thereto under Section 310 or subdivision (c) of Section 1312.

This subdivision shall not apply to an Interested Party Proposal if the corporation that is the subject thereof does not have shares held or record by 100 or more persons (determined as provided in Section 605), or if the transaction has been qualified under Section 25113 or 25121 and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to that qualification.

(b) If a tender of shares or a vote or written consent is being sought pursuant to an Interested Party Proposal and a later tender offer or written proposal for a reorganization subject to Section 1200 or sale of assets subject to subdivision (a) of Section 1001 that would require a vote or written consent of shareholders is made to the corporation or its shareholders (herein referred to as a "Later

Proposal") by any other person at least 10 days prior to the date for acceptance of the tendered shares or the vote or notice of shareholder approval on the Interested Party Proposal, then each of the following shall apply:

(1) The shareholders shall be informed of the Later Proposal and any written material provided for this purpose by the later offeror shall be forwarded to the shareholders at that offeror's expense.

(2) The shareholders shall be afforded a reasonable opportunity to withdraw any vote, consent, or proxy previously given before the vote or written consent on the Interested Party Proposal becomes effective, or a reasonable time to withdraw any tendered shares before the purchase of the shares pursuant to the Interested Party Proposal. For purposes of this subdivision, a delay of 10 days from the notice or publication of the Later Proposal shall be deemed to provide a reasonable opportunity or time to effect that withdrawal.

SEC. 8 It is the intent of the Legislature that the provisions contained in Sections 1, 2, and 2.5 of this act shall restore and clarify the basis for the practice by which both licensed real estate brokers and licensed securities broker-dealers may participate in transactions involving business opportunities without unnecessary duplicate licensing requirements.

The Legislature recognizes that licensed securities broker-dealers have customarily engaged in merger- and acquisition-related activities involving complex transactions of substantial value, typically in excess of seven million five hundred thousand dollars ($7,500,000). The Legislature intends to ensure that licensed securities broker-dealers not also be required to obtain a real estate broker's license when they engage in these activities traditionally and customarily engaged in prior to 1989. The Legislature does not intend to either increase or decrease the range of activities available to licensees.

The provisions contained in Sections 1, 2, and 2.5 of this act are intended to clarify existing law regarding licensing requirements, but shall not affect the rights and obligations of the parties determined in All Points Traders, Inc. v. Barrington Associates, 211 Cal. App. 3d 723.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 10133.1 of the Business and Professions Code proposed by both this bill and SB 1204. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 10133.1 of the Business and Professions Code, and (3) this bill is enacted after SB 1204, in which case Section 10133.1 of the Business and Professions Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1204, at which time Section 2.5 of this bill shall become operative.

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 to clarify as soon as possible what law is applicable to securities dealers and securities brokers performing transactions involving business opportunities, and to clarify provisions of corporate law relating to exchange organizations and the amendment of articles of incorporation, it is necessary that this act go into immediate effect.

CHAPTER 1117

An act to amend Sections 48267, 48902, and 49076 of the Education Code, and to amend Sections 601.4, 653.5, 725, and 777 of, to amend and repeal Section 654 of, and to add Sections 625.1, 625.2, 654.2, 654.3, 654.4, 729.2, 729.3, and 729.10 to, the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) The problem of juvenile delinquency should be addressed at its inception rather than after it has progressed to serious criminality.

(2) The precursors of serious criminality by juveniles include incorrigibility, truancy, curfew, illiteracy, and alcohol and drug abuse. These precursors have been given little attention because the attention has been focused on those juveniles who are the most difficult to reform, the serious and habitual offenders.

(3) The young offender who exhibits the symptoms of future delinquency presents the most significant potential for rehabilitation, yet this young offender has been largely ignored. This approach is a disservice to the community, the parents, and most importantly, to our youth.

(b) In this regard, it is the intent of the Legislature to implement a program based on a different perspective and strategy toward juvenile delinquency which program is designed to reach our children before they become habitual criminals, and requires the intervention by the juvenile justice system at the earliest signs of drug abuse, gang affiliation, and other antisocial behavior. The program mandates parental involvement, drug and alcohol counseling, structured probation programs monitored for compliance, and early judicial intervention with delinquent youths. It seeks to promote the positive development of juveniles by emphasizing the enforcement of school attendance laws and the establishment of special education and socialization programs designed for the individual needs of the minor.

SEC. 2. Section 48267 of the Education Code is amended to read:

48267. Any pupil who has once been adjudged an habitual truant or habitually insubordinate or disorderly during attendance at school by the juvenile court of the county, or has been found to be a person described in Section 602 and as a condition of probation is required to attend a school program approved by a probation officer, who is reported as a truant from school one or more days or tardy on one or more days without valid excuse, in the same school year or in a succeeding year, or habitually insubordinate, or disorderly during attendance at school, shall be brought to the attention of the juvenile court and the pupil's probation or parole officer within 10 days of the reported violation.

Notwithstanding Section 827 of the Welfare and Institutions Code, written notice that a minor enrolled in a public school in grades 7 to 12, inclusive, has been found by a court to be a person described in Section 602 and as a condition of probation is required to attend a school program approved by a probation officer shall be provided by the juvenile court, within seven days of the entry of the dispositional order, to the superintendent of the school district of attendance, which information shall be expeditiously transmitted to the principal or to one person designated by the principal of the school that the minor is attending. The principal or the principal's designee shall not disclose this information to any other person except as otherwise required by law.

SEC. 3. 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) Notwithstanding subdivision (b), the principal of a school or the principal's designee shall notify the appropriate law enforcement authorities of the county or city in which the school is located of any acts of a student that may involve the possession or sale of narcotics or of a controlled substance or a violation of Section 626.9 or 626.10 of the Penal Code.

(d) 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. 4. Section 49076 of the Education Code is amended to read:

49076. A school district is not authorized to permit access to pupil records to any person without written parental consent or under

judicial order except that:

(a) Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

(1) School officials and employees of the district, members of a school attendance review board appointed pursuant to Section 48321, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to students referred to the school attendance review board, provided that that person has a legitimate educational interest to inspect a record.

(2) Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided, where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.

(3) Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, and administrative head of an education agency, state education officials, or their respective designees, or the United States Office of Civil Rights, where the information is necessary to audit or evaluate a state or federally supported education program or pursuant to a federal or state law, provided that except when collection of personally identifiable information is specifically authorized by federal law, any data collected by those officials shall be protected in a manner which will not permit the personal identification of students or their parents by other than those officials, and any personally identifiable data shall be destroyed when no longer needed for the audit, evaluation, and enforcement of federal legal requirements.

(4) Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted prior to November 19, 1974.

(5) Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of the Internal Revenue Code of 1954.

(6) A pupil 16 years of age or older or having completed the 10th grade who requests access.

(7) Any district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5 or Section 601.3 of the Welfare and Institutions Code or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

(8) A prosecuting agency for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200) of Part 27 of Division 4 of Title 2) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400) of Part 27 of Division 4 of Title 2).

(9) Any probation officer or district attorney for the purposes of conducting a criminal investigation or an investigation in regards to

declaring a person a ward of the court or involving a violation of a condition of probation.

(b) School districts may release information from pupil records to the following:

(1) Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a student or other persons.

(2) Agencies or organizations in connection with a student's application for, or receipt of, financial aid. However, information permitting the personal identification of students or their parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.

(3) Accrediting associations in order to carry out their accrediting functions.

(4) Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if the studies are conducted in such a manner as will not permit the personal identification of students or their parents by persons other than representatives of the organizations and the information will be destroyed when no longer needed for the purpose for which it is conducted.

(5) Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.

No person, persons, agency, or organization permitted access to pupil records pursuant to this section shall permit access to any information obtained from those records by any other person, persons, agency, or organization without the written consent of the pupil's parent. However, this paragraph shall not be construed as to require prior parental consent when information obtained pursuant to this section is shared with other persons within the educational institution, agency, or organization obtaining access, so long as those persons have a legitimate interest in the information.

SEC. 5. Section 601.4 of the Welfare and Institutions Code is amended to read:

601.4. (a) The juvenile court judge may be assigned to sit as a municipal court judge to hear any complaint alleging that a parent, guardian, or other person having control or charge of a minor has violated Section 48293 of the Education Code. The jurisdiction of the juvenile court granted by this section shall not be exclusive and the charge may be prosecuted instead in a municipal or justice court. However, upon motion, that action shall be transferred to the juvenile court.

(b) Notwithstanding Section 737 of the Penal Code, a violation of Section 48293 of the Education Code may be prosecuted pursuant to subdivision (a), by written complaint filed in the same manner as an infraction may be prosecuted in a municipal or justice court. The juvenile court judge, sitting as a municipal court judge, may coordinate the action involving the minor with any action involving the parent, guardian, or other person having control or charge of the minor. Both matters may be heard and decided at the same time unless the parent, guardian, other person having control or charge of the minor, or any member of the press or public objects to closed hearing of the proceedings charging violation of Section 48293 of the Education Code.

SEC. 6. Section 625.1 is added to the Welfare and Institutions Code, to read:

625.1. Any minor who is taken into temporary custody pursuant to subdivision (a) of Section 625, when the peace officer has reasonable cause for believing the minor is a person described in Section 602, or pursuant to subdivision (b) or (c) of Section 625, may be requested to submit to voluntary chemical testing of his or her urine for the purpose of determining the presence of alcohol or illegal drugs. The peace officer shall inform the minor that the chemical test is voluntary. The results of this test may be considered by the court in determining the disposition of the minor pursuant to Section 706 or 777. Unless otherwise provided by law, the results of such a test shall not be the basis of a petition filed by the prosecuting attorney to declare the minor a person described in Section 602, nor shall it be the basis for such a finding by a court pursuant to Section 702.

SEC. 7. Section 625.2 is added to the Welfare and Institutions Code, to read:

625.2. (a) Before administering the chemical test pursuant to Section 625.1, the peace officer shall give the following admonition: "I am asking you to take a voluntary urine test to test for the presence of drugs or alcohol in your body. You have the right to refuse to take this test. If you do take the test, it cannot be used as the basis for filing any additional charges against you. It can be used by a court for the purpose of sentencing. You have the right to telephone your parent or guardian before you decide whether or not to take this test."

(b) The admonition in subdivision (a) shall not be given when a chemical test is administered pursuant to Section 23157 of the Vehicle Code.

SEC. 8. Section 653.5 of the Welfare and Institutions Code is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The

probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for the offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and

Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

SEC. 8.1. Section 653.5 of the Welfare and Institutions Code is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of

a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

(9) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and the offense for which the referral was made constitutes a violation of Section 487h of the Penal Code or Section 10851 of the Vehicle Code.

Except for the offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(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. 8.3. Section 653.5 is added to the Welfare and Institutions Code, to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim

exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, changes that date.

SEC. 9. Section 654 of the Welfare and Institutions Code, as amended by Chapter 1412 of the Statutes of 1984, is repealed

SEC. 10. Section 654 of the Welfare and Institutions Code, as amended by Chapter 1635 of the Statutes of 1984, is amended to read:

654. In any case in which a probation officer, after investigation of an application for a petition or any other investigation he or she is authorized to make concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the probation officer may, in lieu of filing a petition to declare a minor a dependent child of the court or a minor or a ward of the court under Section 601 or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court under Section 602 and with consent of the minor and the minor's parent or guardian, delineate specific programs of supervision for the minor, for not to exceed six months, and attempt thereby to adjust the situation which brings the minor within the jurisdiction of the court or creates the probability that the minor will soon be within that jurisdiction. Nothing in this section shall be construed to prevent

the probation officer from filing a petition or requesting the prosecuting attorney to file a petition at any time within the six-month period or a 90-day period thereafter. If the probation officer determines that the minor has not involved himself or herself in the specific programs within 60 days, the probation officer shall immediately file a petition or request that a petition be filed by the prosecuting attorney. However, when in the judgment of the probation officer the interest of the minor and the community can be protected, the probation officer shall make a diligent effort to proceed under this section.

The program of supervision of the minor undertaken pursuant to this section may call for the minor to obtain care and treatment for the misuse of or addiction to controlled substances from a county mental health service or other appropriate community agency.

The program of supervision shall require the parents or guardians of the minor to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court if the program of supervision is pursuant to the procedure prescribed in Section 654.2.

Further, this section shall authorize the probation officer with consent of the minor and the minor's parent or guardian to provide the following services in lieu of filing a petition:

(a) Maintain and operate sheltered-care facilities, or contract with private or public agencies to provide these services. The placement shall be limited to a maximum of 90 days. Counseling services shall be extended to the sheltered minor and his or her family during this period of diversion services. The minor and his or her parents may be required to make full or partial reimbursement for the services rendered the minor and his or her family during the diversion process. Referrals for sheltered-care diversion may be made by the minor, his or her family, schools, any law enforcement agency, or any other private or public social service agency.

(b) Maintain and operate crisis resolution homes, or contract with private or public agencies offering these services. Residence at these facilities shall be limited to 20 days during which period individual and family counseling shall be extended the minor and his or her family. Failure to resolve the crisis within the 20-day period may result in the minor's referral to a sheltered-care facility for a period not to exceed 90 days. Referrals shall be accepted from the minor, his or her family, schools, law enforcement or any other private or public social service agency. The minor, his or her parents, or both, 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.

(c) Maintain and operate counseling and educational centers, or contract with private and public agencies, societies, or corporations whose purpose is to provide vocational training or skills. The centers may be operated separately or in conjunction with crisis resolution

homes to be operated by the probation officer. The probation officer shall be authorized to make referrals to the appropriate existing private or public agencies offering similar services when available.

At the conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall prepare and maintain a followup report of the actual program measures taken.

SEC. 11. Section 654.2 is added to the Welfare and Institutions Code, to read:

654.2. (a) If a petition has been filed by the prosecuting attorney to declare a minor a ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654. Fifteen days prior to the conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall submit to the court a followup report of the minor's participation in the program. The minor and the minor's parents or guardian shall be ordered to appear at the conclusion of the six-month period. If the minor successfully completes the program of supervision, the court shall order the petition be dismissed. If the minor has not successfully completed the program of supervision, proceedings on the petition shall proceed.

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

SEC. 12. Section 654.3 is added to the Welfare and Institutions Code, to read:

654.3. No minor shall be eligible for the program of supervision set forth in Section 654 or 654.2 in the following cases, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision:

(a) A petition alleges that the minor has violated an offense listed in subdivision (b) of Section 707.

(b) A petition alleges that the minor has sold or possessed for sale a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(c) A petition alleges that the minor has violated Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(d) A petition alleges that the minor has violated Section 186.22 of the Penal Code.

(e) The minor has previously participated in a program of supervision pursuant to Section 654.

(f) The minor has previously been adjudged a ward of the court pursuant to Section 602.

(g) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

SEC. 13. Section 654.4 is added to the Welfare and Institutions Code, to read:

654.4. Any minor who is placed in a program of supervision set forth in Section 654 or 654.2 for a violation of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or for violating subdivision (f) of Section 647 of the Penal Code or Section 23140 or 23152 of the Vehicle Code, shall be required to participate in and successfully complete an alcohol or drug education program from a county mental health agency or other appropriate community program.

SEC. 14. Section 725 of the Welfare and Institutions Code is amended to read:

725. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

(a) If the court has found that the minor is a person described by Section 601 or 602, by reason of the commission of an offense other than any of the offenses set forth in Section 654.3, it may, without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months. The minor's probation shall include the conditions required in Section 729.2 except in any case in which the court makes a finding and states on the record its reasons that any of those conditions would be inappropriate. If the offense involved the unlawful possession, use, or furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, a violation of subdivision (f) of Section 647 of the Penal Code, or a violation of Section 25662 of the Business and Professions Code, the minor's probation shall include the conditions required by Section 729.10 If the minor fails to comply with the conditions of probation imposed, the court may order and adjudge the minor to be a ward of the court.

(b) If the court has found that the minor is a person described by Section 601 or 602, it may order and adjudge the minor to be a ward of the court.

SEC. 15. Section 729.2 is added to the Welfare and Institutions Code, to read:

729.2. If a minor is found to be a person described in Section 601 or 602 and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and

states on the record its reasons that that condition would be inappropriate, shall:

(a) Require the minor to attend a school program approved by the probation officer without absence.

(b) Require the parents or guardian of the minor to participate with the minor in a counseling or education program, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court or the probation department, unless the minor has been declared a dependent child of the court pursuant to Section 300 or a petition to declare the minor a dependent child of the court pursuant to Section 300 is pending.

(c) Require the minor to be at his or her legal residence between the hours of 10:00 p.m. and 6:00 a.m. unless the minor is accompanied by his or her parent or parents, legal guardian or other adult person having the legal care or custody of the minor.

SEC. 16. Section 729.3 is added to the Welfare and Institutions Code, to read:

729.3. If a minor is found to be a person described in Section 601 or 602 and the court does not remove the minor from the physical custody of his or her parent or guardian, the court, as a condition of probation, may require the minor to submit to urine testing upon the request of a peace officer or probation officer for the purpose of determining the presence of alcohol or drugs.

SEC. 17. Section 729.10 is added to the Welfare and Institutions Code, to read.

729.10. (a) Whenever, in any county specified in subdivision (b), a judge of a juvenile court or referee of a juvenile court finds a minor to be a person described in Section 602 by reason of the commission of an offense involving the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or for violating subdivision (f) of Section 647 of the Penal Code, or Section 25662 of the Business and Professions Code, the minor shall be required to participate in, and successfully complete, an alcohol or drug education program, or both of those programs, as designated by the court. The expense of the person's attendance in the program shall be paid by the person's parents or guardian so long as the person is under the age of 18 years, and shall be paid by the person thereafter. The court shall consider the financial capacity of the person, or the person's parents or guardian, to pay the expense of the person's attendance in the program, and is authorized to waive all or part of the payment of the fee upon a finding of insufficient financial capacity to incur the cost of the fee. However, in approving the program, each county shall require the program to provide for the payment of the fee for the program in installments by any person who cannot afford to pay the full fee at the commencement of the program because of the person's income, earning capacity, or financial resources, and shall require the

program to provide for the waiver of the fee for any person who is indigent, as determined by criteria for indigency established by the board of supervisors. Whenever it can be done without substantial additional cost, each county shall require that the program be provided for juveniles at a separate location from, or at a different time of day than, alcohol and drug education programs for adults.

(b) This section applies only in those counties that have one or more alcohol or drug education programs certified by the county alcohol program administrator and approved by the board of supervisors.

SEC. 18. Section 777 of the Welfare and Institutions Code is amended to read:

777. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed as follows:

(1) By the probation officer where a minor has been declared a ward of the court or a probationer under Section 601 in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

(2) By the probation officer or the prosecuting attorney, after consulting with the probation officer, if the minor is a court ward or probationer under Section 602 in the original matter and the supplemental petition alleges a violation of a condition of probation not amounting to a crime. The petition shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor. The petition shall be filed by the prosecuting attorney, after consulting with the probation officer, if a minor has been declared a ward or probationer under Section 602 in the original matter and the petition alleges a violation of a condition of probation amounting to a crime. The petition shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

(3) Where the probation officer is the petitioner pursuant to paragraph (2), if prior to the attachment of jeopardy at the time of the jurisdictional hearing it appears to the prosecuting attorney that the minor is not a person described by subdivision (a) or that the supplemental petition was not properly charged, the prosecuting attorney may make a motion to dismiss the supplemental petition and may request that the matter be referred to the probation officer for whatever action the prosecuting attorney or probation officer may deem appropriate.

(b) Notwithstanding the provisions of subdivision (a), if the petition alleges a violation of a condition of probation and is for the commitment of a minor to a county juvenile institution for a period of 30 days or less, or for a less restrictive disposition, it is not necessary to allege and prove that the previous disposition has not been effective in the rehabilitation or protection of the minor. However, before any period of commitment in excess of 15 days is ordered, the court shall determine and consider the effect that an extended commitment period would have on the minor's schooling, including possible loss of credits, and on any current employment of the minor. In order to make such a commitment the court must, however, find that the commitment is in the best interest of the minor. The provisions of this subdivision may not be utilized more than twice during the time the minor is a ward of the court.

(c) Upon the filing of a supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice of it to be served upon the persons and in the manner prescribed by Sections 658 and 660.

(d) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 15 (commencing with Section 625) of this chapter.

(e) The filing of a supplemental petition and the hearing thereon shall not be required for the commitment of a minor to a county institution for a period of 30 days or less pursuant to an original or a previous order imposing a specified time in custody and staying the enforcement of the order subject to subsequent violation of a condition or conditions of probation, provided that in order to make the commitment, the court finds at a hearing that the minor has violated a condition of probation.

SEC. 19. Sections 8.1 and 8.3 of this bill incorporate amendments to Section 653.5 of the Welfare and Institutions Code proposed by both this bill and AB 332. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) this bill amends Section 653.5 of the Welfare and Institutions Code, (3) AB 332 amends, repeals, and adds Section 653.5 to the Welfare and Institutions Code, and (4) this bill is enacted after AB 332, in which case Section 8 of this bill shall not become operative.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1118

An act to add Sections 219 and 462.1 to the Health and Safety Code, relating to sudden infant death syndrome.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death in children under the age of one, striking one out of every 500 infants, with a death toll in California now approaching 800 annually. The Legislature further finds and declares that the current level of state SIDS support and training services is insufficient to adequately train local health department staff, coroners, coroner's investigators, child care providers, peace officers and other emergency responders, and hospital emergency room staff to assure SIDS awareness and sensitivity by those who must interact with parents and caregivers following a SIDS death.

SEC. 2. Section 219 is added to the Health and Safety Code, to read:

219. (a) As used in this section, "SIDS" means sudden infant death syndrome.

(b) The state department shall contract with a person to provide regular and ongoing SIDS education and training programs for those who interact with parents and caregivers following a death from SIDS, including, but not limited to, the following:

(1) County public health nurses.

(2) Coroners and coroners' investigators.

(3) Forensic pathologists.

(4) Emergency room physicians and surgeons, nurses, and other staff.

(5) Licensed day care providers.

(6) SIDS parent groups.

(7) Medical examiners.

(c) The state department shall contract with a person to produce, update, and distribute literature on SIDS for specific target

populations of persons who interact with parents and caregivers following a death from SIDS, including, but not limited to, the following:

(1) Clergy.
(2) Fire and police departments.
(3) Emergency medical service staff.
(4) Morticians.
(5) Funeral directors.
(6) SIDS parent groups.

(d) The requirements of this section shall be subject to the annual Budget Act and shall be operative only to the extent funds are appropriated for the purposes of this section.

SEC. 3. Section 462.1 is added to the Health and Safety Code, to read:

462.1. The state department shall monitor, or contract with a person to monitor, whether the county health officer or his or her designated agent is performing the duties required by Section 462 and whether they are being performed within the time frames specified in Section 462.

CHAPTER 1119

An act to add Chapter 12 (commencing with Section 1871) to Part 2 of Division 1 of, to repeal Sections 556 and 556.1 of, and to repeal Chapter 11 (commencing with Section 1878) of Part 2 of Division 1 of, and Article 5 (commencing with Section 12990) and Article 6 (commencing with Section 13000) of Chapter 2 of Division 3 of, the Insurance Code, and to repeal Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code, relating to insurance.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 556 of the Insurance Code is repealed.

SEC. 2. Section 556.1 of the Insurance Code is repealed.

SEC. 3. Chapter 12 (commencing with Section 1871) is added to Part 2 of Division 1 of the Insurance Code, to read:

CHAPTER 12. THE INSURANCE FRAUDS PREVENTION ACT

Article 1. False and Fraudulent Claims

1871. The Legislature finds and declares as follows:

(a) That the business of insurance involves many transactions which have potential for abuse and illegal activities. There are numerous law enforcement agencies on the state and local levels

charged with the responsibility for investigating and prosecuting fraudulent activity. This chapter is intended to permit the full utilization of the expertise of the commissioner and the department so that they may more effectively investigate and discover insurance frauds, halt fraudulent activities, and assist and receive assistance from federal and state, local, and administrative law enforcement agencies in prosecution of persons who are parties in insurance frauds.

(b) That insurance fraud is a particular problem for automobile policyholders; fraudulent activities account for 15 to 20 percent of all auto insurance payments. Automobile insurance fraud is the biggest and fastest growing segment of insurance fraud and contributes substantially to the high cost of automobile insurance with particular significance in urban areas.

(c) That prevention of automobile insurance fraud will significantly reduce the incidence of severity and automobile insurance claim payments and will therefore produce a commensurate reduction in automobile insurance premiums.

1871.1. (a) It is unlawful to do any of the following:

(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 present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) 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 false or fraudulent claim.

(6) Knowingly assist, abet, solicit, or conspire with (A) any person who knowingly presents any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance; (B) any person who knowingly presents multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud; (C) any person who knowingly causes or participates in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim; and (D) any person who knowingly prepares, makes, or subscribes any writing, with the intent to present or use the same, or to allow it to be presented in support on 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 a fine not exceeding fifty thousand dollars ($50,000), or by both, unless the value of the fraud exceeds fifty thousand dollars

($50,000), in which event the fine may not exceed the value of the fraud.

(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 violations 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 an 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.

(d) Any person who violates subdivision (a) and who has a prior conviction of the offense set forth in that subdivision or in Section 548 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b). The existence of any fact which would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

1871.2. Any insurer who, in connection with any insurance contract or provision of contract described in Section 108, prints, reproduces, or furnishes a form to any person upon which that person gives notice to the insurer or makes claim against it by reason of accident, injury, death, or other noticed or claimed loss, or on a rider attached thereto, shall cause to be printed or displayed in comparative prominence with other content the statement: "Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison." This statement shall be preceded by the words: "For your protection California law requires the following to appear on this form" or other explanatory words of similar meaning.

Article 2. Bureau of Fraudulent Claims

1872. There is created within the department a Bureau of Fraudulent Claims to enforce the provisions of Section 1871.1 and to

administer the provisions of Article 3 (commencing with Section 1873).

1872.1. (a) There is created within the Bureau of Fraudulent Claims an advisory committee on automobile insurance fraud prevention. The committee shall be composed of a representative from the Department of Justice, the Department of Motor Vehicles, the Division of Investigation of the Department of Consumer Affairs, the Department of the California Highway Patrol, the Bureau of Automotive Repair, the Board of Medical Quality Assurance, the California State Bar, and two representatives from local law enforcement agencies, one of whom shall be a prosecutor.

(b) The commissioner shall select representatives from local law enforcement agencies from names submitted from local law enforcement agencies and they shall serve at the pleasure of the commissioner. Representatives from other agencies shall be selected by the agencies represented.

(c) The Chief of the Bureau of Fraudulent Claims shall serve as a member of the advisory committee and shall serve as its chair. The chair shall conduct quarterly meetings of the committee and at such other times as he or she deems appropriate.

(d) The purpose and goals of the advisory committee are the following:

(1) Recommend to the Bureau of Fraudulent Claims and other appropriate public agencies and private sector entities ways to coordinate the prosecution of fraudulent automobile claim activities and ways to prevent automobile insurance fraud.

(2) Provide assistance to the bureau towards implementing the goal of reducing the frequency and severity of fraudulent automobile insurance claims (adjusted for population growth and inflation) of 20 percent in urban areas and 10 percent in rural areas of the state within a 24-month period from the effective date of this chapter by utilizing resources set forth in Section 1872.8.

(3) Make recommendations for inclusion in the bureau's annual report required by Section 1872.9.

1872.2. For purposes of this article, "insurer" means any person who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event, including reciprocals and interinsurance exchanges.

1872.3. (a) If by its own inquiries or as a result of complaints, the Bureau of Fraudulent Claims has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates Section 1871.1, the commissioner in his or her discretion (1) may make those public or private investigations within or outside of this state that he or she deems necessary to determine whether any person has violated or is about to violate any provision of Section 1871.1, or to aid in the enforcement of this chapter, and (2) may publish information concerning any violation of this chapter.

(b) For purposes of any investigation under this section, the commissioner or any officer designated by the commissioner may

administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner deems relevant or material to the inquiry, as provided by Section 12924

(c) If any matter that the commissioner seeks to obtain by request is located outside the state, the person so requested may make it available to the commissioner or his or her representative to be examined at the place where it is located. The commissioner may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states

(d) Except as provided in subdivision (e), the department's papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to public inspection for so long a period as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to serve the public interest. Furthermore, those papers, documents, reports, or evidence shall not be subject to subpoena or subpoena duces tecum until opened for public inspection by the commissioner, unless the commissioner otherwise consents or, after notice to the commissioner and a hearing, the superior court determines that the public interest and any ongoing investigation by the commissioner would not be unnecessarily jeopardized by compliance with the subpoena duces tecum.

(e) The Bureau of Fraudulent Claims shall furnish all papers, documents, reports, complaints, or other facts or evidence to any police, sheriff, or other law enforcement agency, when so requested, and shall assist and cooperate with those law enforcement agencies.

1872.4. (a) Any company licensed to write insurance in this state that believes that a fraudulent claim is being made shall, within 60 days after determination by the insurer that the claim appears to be a fraudulent claim, send to the Bureau of Fraudulent Claims, on a form prescribed by the department, the information requested by the form and any additional information relative to the factual circumstances of the claim and the parties claiming loss or damages that the commissioner may require. The Bureau of Fraudulent Claims shall review each report and undertake further investigation it deems necessary and proper to determine the validity of the allegations. Whenever the commissioner is satisfied that fraud, deceit, or intentional misrepresentation of any kind has been committed in the submission of the claim, he or she shall report the violations of law to the insurer, to the appropriate licensing agency, and to the district attorney of the county in which the offenses were committed, as provided by Sections 12928 and 12930. If the commissioner is satisfied that fraud, deceit, or intentional misrepresentation has not been committed, he or she shall report that determination to the insurer. If prosecution by the district

attorney concerned is not begun within 60 days of the receipt of the commissioner's report, the district attorney shall inform the commissioner and the insurer as to the reasons for the lack of prosecution regarding the reported violations.

(b) This section shall not require an insurer to submit to the bureau the information specified in subdivision (a) in either of the following instances:

(1) The insurer's initial investigation indicated a potentially fraudulent claim but further investigation revealed that it was not fraudulent.

(2) The insurer and the claimant have reached agreement as to the amount of the claim and the insurer does not have reasonable grounds to believe that claim to be fraudulent.

(c) Nothing contained in this article shall relieve an insurer of its existing obligations to also report suspected violations of law to appropriate local law enforcement agencies.

(d) Any police, sheriff, disciplinary body governed by the provisions of the Business and Professions Code, or other law enforcement agency shall furnish all papers, documents, reports, complaints, or other facts or evidence to the Bureau of Fraudulent Claims, when so requested, and shall otherwise assist and cooperate with the bureau.

1872.5. No insurer, or the employees or agents of any insurer, shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing any of the following without malice:

(a) Any information or reports relating to suspected fraudulent insurance transaction furnished to law enforcement officials, or licensing officials governed by the Business and Professions Code.

(b) Any reports or information relating to suspected fraudulent insurance transaction furnished to other persons subject to this chapter.

(c) Any information or reports required by this article or required by the commissioner under the authority granted in this chapter.

1872.6. Nothing contained in this article shall:

(a) Preempt the authority of other law enforcement or licensing agencies to investigate and prosecute suspected violations of law.

(b) Prevent or prohibit a person from voluntarily disclosing any information concerning violations of this chapter to any law enforcement or licensing agency governed by the Business and Professions Code.

(c) Limit any of the powers granted to the department or the commissioner to investigate possible violations of the chapter and take appropriate action against wrongdoers.

1872.7. The costs of administration and operation of the Bureau of Fraudulent Claims shall be borne by all of the insurers admitted to transact insurance in this state. The commissioner shall divide those costs among all of those insurers, assessing each such company an identical amount adequate to provide the funds for each fiscal

year of operation of the bureau. However, the assessment for each company shall not exceed one thousand dollars ($1,000) in each fiscal year. All moneys received by the commissioner from insurers pursuant to this section shall be transmitted to the Treasurer to be deposited in the State Treasury to the credit of the Insurance Fund. All moneys which are deposited in the fund after receipt by the commissioner from insurers pursuant to this section are hereby appropriated to the department and are to be exclusively used for the support of the Bureau of Fraudulent Claims. To the extent the assessments against insurers made pursuant to this section are not sufficient to fund the entire operations of the bureau, other moneys appropriated to the department, if available, may be used, at the commissioner's discretion, to fund those operations not covered by the assessments. The total budget of the bureau shall be as determined annually in the Budget Act.

1872.8. Each insurance company doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed fifty cents ($0.50) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims. After incidental expenses, 40 percent of those funds received from thirty cents ($0.30) of the assessment fee per policy shall be distributed to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts, and 60 percent of the funds shall be distributed to local district attorneys, according to population, for investigation and prosecution of automobile insurance fraud cases. The remaining twenty cents ($0.20) shall be spent pursuant to Article 6. 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.

1872.9. The Bureau of Fraudulent Claims shall annually compile and report, as a part of the commissioner's annual report as required by Section 12922, the following information:

(a) The number of cases reported to the bureau pursuant to this chapter.

(b) The number of cases rejected for which an investigation was not initiated by the bureau due to insufficient evidence to proceed and the number of cases rejected for which an investigation was not initiated by the bureau due to any other reason.

(c) The number of cases that were prosecuted in cooperation with licensing agencies governed by the Businesss and Professions Code.

(d) The number and kind of cases prosecuted as a result of moneys received under Section 1872.7.

(e) An estimate of the economic value of insurance fraud by type of insurance fraud.

(f) Recommendations on ways insurance fraud may be reduced.

(g) A summary of the bureau's activities with respect to pursuing a reduction of fraud with all of the following:

(1) Insurance companies.

(2) The Department of Motor Vehicles.

(3) The Department of the California Highway Patrol.

(4) Licensing agencies governed by the Business and Professions Code.

(5) The Department of Insurance.

(6) Local and state law enforcement agencies.

(h) Basic claims information including trends of payments by type of claim and other claim information that is generally provided in a closed claim study.

Article 3. Insurance Fraud Reporting

1873. (a) Upon written request to an insurer by officers designated in subdivisions (a) and (b) of Section 830.1 and subdivision (a) of Section 830.2, and subdivisions (b), (d), and (k) of Section 830.3 of the Penal Code, an insurer, or agent authorized by that insurer to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer may possess relating to any specific insurance fraud. Relevant information may include, but is not limited to, all of the following:

(1) Insurance policy information relevant to the insurance fraud under investigation, including, but not limited to, any application for a policy.

(2) Policy premium payment records which are available.

(3) History of previous claims made by the insured.

(4) Information relating to the investigation of the insurance fraud, including statements of any person, proof of loss, and notice of loss.

(5) Complete copies of both sides of payment drafts.

(b) The provisions of subdivision (a) shall not operate to authorize disclosure of medical information not otherwise authorized for disclosure pursuant to law.

1873.1. Any information acquired pursuant to this article shall not be a part of any public record. Except as otherwise provided by law, any authorized governmental agency, an insurer, or an agent authorized by an insurer to act on its behalf, which receives any information furnished pursuant to this article, shall not release that information to public inspection until the time that its release is required in connection with a criminal or civil proceeding.

1873.2. In the absence of fraud or malice, no insurer, or any employee or agent authorized by an insurer to act on behalf of the

insurer, and no authorized governmental agency or its respective employees, shall be subject to any civil liability for libel, slander, or any other relevant cause of action by virtue of releasing or receiving any information pursuant to Section 1873 or 1873.1. Nothing in this article is intended to, nor does in any way or manner, abrogate or lessen the existing common law or statutory privileges and immunities of an insurer, or any employee or agent authorized by the insurer to act on behalf of the insurer, or of any authorized governmental agency or its respective employees.

1873.3. (a) For purposes of this article, "insurance fraud" does not include motor vehicle theft and motor vehicle insurance fraud reporting subject to the provisions of Article 4 (commencing with Section 1874).

(b) As used in this article, "authorized governmental agency" means the Department of the California Highway Patrol, the Department of Motor Vehicles, the Department of Insurance, the Department of Justice, the police department of a city, or a city and county, the sheriff's office or department of a county, the district attorney of any county, or city and county, those agencies employing officers designated in subdivisions (a) and (b) of Section 830.1, subdivision (a) of Section 830.2, and subdivisions (b), (d), and (k) of Section 830.3 of the Penal Code, any other law enforcement agency of this state or any city or county, or city and county, and any licensing agency governed by the Business and Professions Code.

1873.4. Any or all information released or received by an authorized governmental entity pursuant to Section 1873 or 1873.1 shall be provided by that agency to the Bureau of Fraudulent Claims within 10 days of the agency's receipt of the information.

Article 4. Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting

1874. This article shall be known and may be cited as the Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting Act.

1874.1. The following definitions govern the construction of this article, unless the context requires otherwise:

(a) "Authorized governmental agency" means the Department of the California Highway Patrol, the Department of Insurance, the Department of Justice, the Department of Motor Vehicles, the police department of a city, or a city and county, the sheriff's office or department of a county, a law enforcement agency of the federal government, the district attorney of any county, or city and county, and any licensing agency governed by the Business and Professions Code.

(b) "Relevant" means having a tendency to make the existence of any fact that is of consequence to the investigation or determination of an issue more probable or less probable than it would be without the information.

(c) Information shall be deemed important if, within the sole

discretion of the authorized governmental agency, that information is requested by that authorized governmental agency.

(d) "Insurer" means the automobile assigned risk plan established pursuant to Section 11620 of the Insurance Code, as well as any insurer writing insurance for motor vehicles or otherwise liable for any loss due to motor vehicle theft or motor vehicle insurance fraud.

(e) "Motor vehicle" means motor vehicle as defined in Section 415 of the Vehicle Code.

1874.2. (a) Upon written request to an insurer by an authorized governmental agency, an insurer, or agent authorized by that insurer to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency which the insurer may possess relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information may include, but is not limited to, all of the following:

(1) Insurance policy information relevant to the motor vehicle theft or motor vehicle insurance fraud under investigation, including, but not limited to, any application for a policy.

(2) Policy premium payment records which are available.

(3) History of previous claims made by the insured.

(4) Information relating to the investigation of the motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss, and notice of loss.

(b) (1) When an insurer knows or reasonably believes it knows the identity of a person whom it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of such a criminal or fraudulent act which is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or an agent authorized by an insurer to act on its behalf, shall notify the local police department, sheriff's office, the Department of the California Highway Patrol, or district attorney's office, and may notify any other authorized governmental agency of that knowledge or reasonable belief and provide any additional information in accordance with subdivision (a).

(2) When an insurer provides the local police department, sheriff's office, the Department of the California Highway Patrol, or district attorney's office with notice pursuant to this section, it shall be deemed sufficient notice to all authorized governmental agencies for the purpose of this chapter. Nothing in this section shall relieve an insurer of its obligations under Section 12992 of the Insurance Code.

(3) Nothing in this subdivision shall abrogate or impair the rights or powers created under subdivision (a).

(c) The authorized governmental agency provided with information pursuant to subdivision (a) or (b) may release or provide that information to any other authorized governmental

agency.

(d) An authorized governmental agency shall notify the affected insurer in writing when it has reason to believe that a fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim has been committed. The agency shall provide this notice within a reasonable time, not to exceed 30 days. The agency may also release more specific information pursuant to this section when it determines that an ongoing investigation would not be jeopardized. The agency may require a fee from the insurer equal to the cost of providing the notice or the information specified in this section.

(e) An insurer providing information to an authorized agency pursuant to this section shall provide the information within a reasonable time, but not to exceed 30 days from the day on which the duty arose.

1874.3. (a) Any information acquired pursuant to this article shall not be a part of any public record. Except as otherwise provided by law, any authorized governmental agency, an insurer, or an agent authorized by an insurer to act on its behalf, which receives any information furnished pursuant to this article shall not release that information to public inspection.

(b) The evidence or information described in this section shall be privileged and shall not be subject to subpoena or subpoena duces tecum in a civil or criminal proceeding unless, after reasonable notice to any insurer, agent authorized by an insurer to act on its behalf, and an authorized governmental agency which has an interest in the information, and a hearing, the court determines that the public interest and any ongoing investigation by the authorized governmental agency, insurer, or an agent authorized by an insurer to act on its behalf will not be jeopardized by its disclosure, or by the issuance of and compliance with a subpoena or subpoena duces tecum.

1874.4. In the absence of fraud or malice, no insurer, or agent authorized by an insurer to act on behalf of the insurer, and no authorized governmental agency or its employees, shall be subject to any civil liability in a cause of action of any kind for releasing or receiving any information pursuant to Section 1874.1 or 1874.2. Nothing in this chapter is intended to, nor does in any way or manner, abrogate or lessen the existing common law or statutory privileges and immunities of an insurer, agent authorized by that insurer to act on behalf of the insurer, or of any authorized governmental agency or its employees.

Article 5. Arson Investigations

1875. As used in this chapter:

(a) "Authorized agency" means any of the following officers or agencies, or their duly authorized representatives, when investigating or prosecuting arson in connection with a specific fire: the State Fire Marshal, the Director of the Department of Forestry

and Fire Protection, the chief of any city or county fire department, the chief of any fire protection district, the Attorney General, any district attorney, or any peace officer, and any federal agency.

(b) "Insurer" means any insurer admitted to write, or otherwise issuing, fire insurance covering property in this state and includes its agents, servants, investigators, and adjusters. "Insurer" includes the California FAIR Plan.

1875.1. An authorized agency may, when there is evidence or suspicion that the crime of arson has been committed, request any insurer to release all information in its possession that the authorized agency determines to be relevant to the crime. The insurer shall release the following:

(a) Any insurance policy or any application for such a policy.

(b) Policy premium payment records.

(c) History of previous claims made by the insured for fire loss.

(d) Material relating to the investigation of the loss, including the statement of any person, proof of loss, and any other relevant evidence.

1875.2. If any insurer has reason to suspect that a fire loss was caused by incendiary means, the insurer shall furnish an authorized agency with all relevant information acquired during its investigation of the fire loss and cooperate in an investigation by an authorized agency.

The authorized agency provided with the information pursuant to this article may release that information to any of the other authorized agencies.

1875.3. An authorized agency shall notify the insurer, if known, and at the expense of the insurer, whenever it has reason to believe that a fire loss was not accidentally caused. The agency may also release specific information regarding the fire loss whenever it determines that an ongoing investigation would not be jeopardized.

1875.4. In the absence of fraud or malice, no insurer or person acting in its behalf who (a) furnishes information whether oral or written, pursuant to this article, or (b) assists in any investigation conducted by an authorized agency, shall be liable for damages in a civil action, nor shall any authorized agency which releases information pursuant to this chapter be liable for damages in a civil action.

The act of furnishing information required pursuant to this article shall not constitute an act of fraud or malice.

1875.5. In any case in which an insurer willfully fails to comply with this article, the authorized agency may petition the superior court in an appropriate county for an order requiring compliance.

1875.6. Any authorized agency that receives any information furnished as required by this article shall not make the information public until the time that its release is required in connection with a criminal or civil proceeding.

Article 6. Automobile Insurance Claims Depository

1876. (a) There is hereby created the Automobile Insurance Claims Depository to permit insurers and law enforcement agencies to deposit automobile claims data in a common data base within the Bureau of Fraudulent Claims.

(b) The purpose of the depository is to identify utilization patterns by individual claimants and individuals or businesses who provide a service under which an automobile insurance claim is made in order to prevent automobile fraudulent claims activities.

(c) The use of information deposited pursuant to this article shall be made available to law enforcement agencies and insurers for the purpose of investigating and prosecuting automobile insurance fraud or evaluating the validity and payment of automobile insurance claims. The commissioner shall establish rules governing the access to, and use of, information, and the circumstances under which information may be inspected and corrected.

1876.1. The revenue derived from Section 1872.8 shall be used to implement the provisions of this article.

1876.2. Every insurer who knows or reasonably believes it knows that a claim made under a policy of insurance defined in Section 660 or Section 11622 is or may be fraudulent, whether or not paid, shall deposit that claim information to the Automobile Insurance Claims Depository within 20 days of the payment of that claim. The bureau shall establish the claim information to be deposited in its prescribed format.

1876.3. Any information acquired pursuant to this article shall not be part of any public record except as follows: Except as otherwise provided by law, any authorized governmental agency, and insurer, or an agent authorized by an insurer to act on its behalf, which receives any information furnished pursuant to this article shall not release that information to public inspection until such time as its release is required in connection with a criminal or civil proceeding; to analyze and present information for release in the bureau's annual report pursuant to subdivision (h) of Section 1872.9

1876.4. No insurer, or the employees or agents of any insurer, shall be subject to civil liability for libel, slander, or any other tort cause of action arising from the deposit or furnishing of any information or data pursuant to this article.

1876.5. As used in this article, "authorized governmental agency" and "insurer" have the same meaning as is given by Section 1874.1.

SEC. 4. Chapter 11 (commencing with Section 1878) of Part 2 of Division 1 of the Insurance Code is repealed.

SEC. 5. Article 5 (commencing with Section 12990) of Chapter 2 of Division 3 of the Insurance Code is repealed.

SEC. 6. Article 6 (commencing with Section 13000) of Chapter 2 of Division 3 of the Insurance Code is repealed.

SEC. 7. Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code 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 only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1120

An act to repeal Section 14529.1 of the Government Code, to amend Section 103357 of, and to add Sections 103360.1, 103360.2, and 103363 to, the Public Utilities Code, and to repeal Section 30895.5 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 14529.1 of the Government Code is repealed.

SEC. 2. Section 103357 of the Public Utilities Code is amended to read:

103357. (a) The district may issue bonds payable from the proceeds of the retail transactions and use tax.

(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 , as determined by the district. The amount of bonds outstanding at any one time does not include the amount of any bonds or refunding bonds for which moneys or securities necessary to provide for the payment thereof have been set aside for that purpose in a trust or escrow account.

SEC. 3. Section 103360.1 is added to the Public Utilities Code, to read:

103360.1. (a) The district may issue refunding bonds to redeem or retire any bonds issued by the district upon the terms, at the times, and in the manner which it determines.

(b) Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premiums, if any, due upon call and redemption thereof prior to maturity, all expenses of the refunding, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the proceeds of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(c) The provisions of this article for the issuance and sale of bonds apply to the issuance and sale of refunding bonds.

SEC. 4. Section 103360 2 is added to the Public Utilities Code, to read:

103360.2. (a) The district may borrow money in anticipation of the sale of bonds which have been authorized pursuant to this article but which have not been sold or delivered, and may issue negotiable bond anticipation notes therefor and may renew the bond anticipation notes from time to time. However, the maximum maturity of any bond anticipation notes, including the renewals thereof, shall not exceed five years from the date of delivery of the original bond anticipation notes.

(b) The bond anticipation notes, and the interest thereon, may be paid from any money of the district available therefor, including the revenues from the retail transactions and use tax. If not previously otherwise paid, the bond anticipation notes, or any portion thererof, or the interest thereon, shall be paid from the proceeds of the next sale of the bonds of the district in anticipation of which the notes were issued.

(c) The bond anticipation notes shall not be issued in any amount in excess of the aggregate amount of the bonds which the district has been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding. The bond anticipation notes shall be issued and sold in the same manner as the bonds.

(d) The bond anticipation notes and the resolutions authorizing them may contain any provisions, conditions, or limitations which a resolution of the district may contain.

SEC. 5. Section 103363 is added to the Public Utilities Code, to read:

103363. (a) Any action or proceedings wherein the validity of the levy or collection of the retail transactions and use tax, or any proceedings in relation thereto, is contested, questioned, or denied shall be commenced not later than July 1, 1990; otherwise the retail transactions and use tax and all proceedings in relation thereto shall be held to be valid and in every respect legal, enforceable, and incontestable.

(b) Any action or proceedings wherein the validity of the issuance of any bonds, or any proceedings in relation thereto is contested,

questioned, or denied shall be commenced not later than July 1, 1990, or, in the case of bonds authorized to be issued after that date, within six months from the date the bonds are authorized to be issued by the district; otherwise, in each case, the bonds and all proceedings in relation thereto shall be held to be valid and in every respect legal, enforceable, and incontestable.

(c) Nothing in this section precludes the validity of the retail transactions and use tax or of any bonds or any related proceedings from being established by an action brought under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure or pursuant to any other procedure established by law, before the end of any period of time specified in subdivision (a) or (b).

SEC. 6. Section 30895.5 of the Streets and Highways Code is repealed.

CHAPTER 1121

An act to add Section 17705.6 to the Education Code, and to add Section 53313.4 to the Government Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 17705.6 is added to the Education Code, to read:

17705.6. In addition to the amounts determined pursuant to subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (b) of Section 17705.5, the local matching share requirement shall also be reduced by an amount equal to the portion of the local matching share requirement that is based on new residential, commercial, and industrial construction in any territory in the applicant district that is within a community facilities district, where all of the following conditions are met:

(a) One or more special taxes or other charges have been levied for purposes of the community facilities district.

(b) The community facilities district was established to provide funding for the acquisition or improvement of school facilities for the applicant district in an amount that equals or exceeds both of the following:

(1) Fifty percent of the cost of the school facilities acquisition or improvement that will be required to meet the needs of the anticipated pupil population of the school district who reside in the community facilities district. No later than a date six months after the effective date of this paragraph, or upon theformation of the

communities facilities district, whichever occurs later, the governing board of the applicant district shall submit a report to the board identifying those costs, and the existing or anticipated pupil population figures upon which those costs are based.

(2) The amount of the matching fund reduction authorized under this paragraph.

(c) The reduction authorized under this paragraph shall apply to any community facilities district only until a date 10 years following the most recent issuance of bonds by the community facilities district

(d) If the applicant school district applies for state funding to provide school facilities to meet the needs of the existing or anticipated student population of the school district residing in the community facilities district in excess of the cost or pupil population estimates contained in the report submitted pursuant to item (i) of subparagraph (B), the reduction authorized in this paragraph shall not apply after the date the application is received by the board.

SEC. 2. Section 53313.4 is added to the Government Code, to read:

53313.4. Any territory within a community facilities district established for the acquisition or improvement of school facilities for a school district shall be exempt from any fee or other requirement levied subsequent to the date on which the resolution of formation creating the community facilities district is adopted under Section 53080, or under Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7, to benefit any other school district, except as otherwise negotiated between the school districts. That exemption shall apply until a date 10 years following the most recent issuance of bonds by the community facilities district or, if no bonds have ever been issued by the community facilities district, a date 10 years following the formation of the community facilities district or until the school district applies for state funding as provided in subdivision (d) of Section 17705.6.

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 resolve certain ambiguities in the existing statutes governing school facilities financing, so as to permit school districts to fund urgently needed school facilities projects, it is necessary that this act take effect immediately.

CHAPTER 1122

An act to add Article 10.6 (commencing with Section 25216) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to batteries.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Article 10.6 (commencing with Section 25216) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.6. Management of Small Household Batteries

25216. For the purposes of this article, "batteries" means primary or secondary batteries, including nickel-cadmium, alkaline, carbon-zinc, and other batteries generated as non-RCRA waste similar in size to those typically generated as household waste. "Batteries" does not include lead-acid batteries.

25216.1. Any collection location or intermediate collection location that receives, or any person that transports, spent batteries, as defined in this article, is exempt from the requirements of this chapter concerning the receipt, storage, and transportation of hazardous waste if the batteries are sent to a facility authorized to receive these batteries and all of the following conditions are met:

(a) The collection location does not store more than 200 pounds of batteries at any one time and no batteries are stored for longer than 180 days.

(b) The batteries are stored and transferred in a manner which minimizes the possibility of fire, explosion, or any release of hazardous waste or hazardous waste constituents.

(c) The collection location, transporter, and receiving facility retains a copy of the hazardous waste manifest or bill or lading used during transportation for a period of three years. If a bill of lading is used, the bill of lading shall have, at a minimum, all of the following information:

(1) The name, address, and telephone number of the collection location, transporter, and receiving facility.

(2) A general description and quantity of batteries.

(3) The date of the transfer.

(4) The signatures of the transporter and the collection location representative.

(d) The batteries are not treated or reclaimed at any location exempted from the requirements of this chapter by this article.

25216.2. (a) This article does not apply to batteries that are disposed of on or into the land, water, or air.

(b) The department shall implement this article consistent with all applicable state and federal laws.

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

CHAPTER 1123

An act to amend Sections 8654, 8682.9, 8685, 8685.2, 8685.7, and 8686 of the Government Code, and to amend Section 13600 of the Welfare and Institutions Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 8654 of the Government Code is amended to read:

8654. (a) Whenever the Governor has proclaimed a state of emergency and the President has declared an emergency or a major disaster to exist in this state, the Governor may do any of the following:

(1) Enter into purchases, leases, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make those units available to any political subdivision for that purpose.

(2) Assist any political subdivision within which temporary housing for disaster victims is proposed to be located to acquire sites necessary for that temporary housing and to do all things required to prepare those sites to receive and utilize temporary housing units by advancing or lending any funds available to the Governor from any appropriation made by the Legislature or from any other source, by transmitting any funds made available by any public or private agency, or by acting in cooperation with the political subdivision for the execution and performance of any project for temporary housing for disaster victims, and for those purposes to pledge the credit of the state on terms as the Governor declares necessary under the circumstances, having due regard for current financial obligations of the state.

(3) Under regulations as the Governor shall make, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or intrastate transportation law, ordinance, or regulation when by proclamation he or she declares such suspension or modification essential to provide temporary housing for disaster victims.

(b) Whenever, the President, at the request of the Governor, has declared a major disaster to exist in this state, the Governor may do any of the following:

(1) Upon his or her determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept any grant by the federal government to fund that financial assistance, subject to those terms and conditions as may be imposed upon the grant.

(2) Enter into an agreement with the federal government, or any officer or agency thereof, pledging the state to participate in the funding of any grant accepted pursuant to paragraph (1), in an amount not to exceed 25 percent thereof, and, if state funds are not otherwise available to the Governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

(3) Notwithstanding any other provision of law, make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which shall not exceed ten thousand dollars ($10,000) in the aggregate to an individual or family in any single major disaster declared by the President. This ten thousand dollar ($10,000) limit shall be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor in the same manner as the Federal Emergency Management Administration makes similar adjustments for purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(4) Upon his or her determination that a local government will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government, for a loan, and receive and disburse the proceeds of that loan to the local government.

(5) Determine the amount needed by a local government to restore or resume its governmental functions, and certify that amount to the federal government. However, that amount shall not exceed 25 percent of the annual operating budget of the local government for the fiscal year in which the major disaster has occurred.

(6) Recommend to the federal government, after reviewing the

matter, the cancellation of all or any part of a loan made pursuant to paragraph (5) when during the period of three full fiscal years immediately following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including disaster-related expenses incurred by the local government.

(c) The Governor shall make those regulations as are necessary in carrying out the purposes of paragraphs (1), (2), and (3) of subdivision (b), including, but not limited to: standards of eligibility for persons applying for benefits; procedures for application and administration; methods of investigation, processing, and approving applications; formation of local or statewide review boards to pass upon applications; and procedures for appeals.

(d) Any political subdivision is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) which are necessary to prepare or equip the sites to utilize the housing units.

(e) Any person who fraudulently makes any misstatement of fact in connection with an application for financial assistance under this section shall, upon conviction of each offense, be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars ($5,000), or imprisonment for not more than one year, or both.

(f) The terms "major disaster," "emergency," and "temporary housing," as used in this section, shall have the same meaning as those terms are defined or used in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended by P.L. 100-707). It is the intent of the Legislature in enacting this section that it shall be liberally construed to effectuate the purposes of that federal act.

SEC. 2. Section 8682.9 of the Government Code is amended 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). These regulations shall include specific project eligibility requirements, a procedure for local governments to request the implementation of programs under this chapter, and a method for evaluating these requests by the Office of Emergency Services. Interim regulations required by this section shall be adopted by July 1, 1989, and final regulations shall be adopted by July 1, 1990, provided that neither the interim nor final regulations shall be subject to review or approval of the Office of Administrative Law.

SEC. 3 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 or regulations 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 regular hourly wage and overtime costs and cost of supplies and materials used during disaster response activities, 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 as defined in Section 8680.3.

(c) Matching fund assistance for cost sharing required under federal public assistance programs offered under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended by P.L. 100-707).

(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, and any other assistance deemed necessary to carry out the requirements of this chapter.

SEC. 4. Section 8685.2 of the Government Code is amended to read:

8685.2. An allocation may be made to a local agency for a project when within 10 days after the actual occurrence of a natural disaster the local agency has declared a local emergency and that declaration is acceptable to the director or upon the order of the Governor when a state of emergency proclamation has been issued, and, if the Legislature has appropriated money for allocation for purposes 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 applicable state and federal laws or regulations. 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 8686 of the Government Code is amended to read:

8686. 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).

SEC. 7. Section 13600 of the Welfare and Institutions Code is amended to read:

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 Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended by P.L. 100-707), 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 Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended by P.L. 100-707). 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.

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:

Disasters are inherently unpredictable and could occur in the near future. In order that the changes in the law affecting disaster assistance which are made by this act can be implemented prior to any future disaster, it is necessary that this act go into immediate effect.

CHAPTER 1124

An act to amend Section 11580.10 of the Insurance Code, and to amend Section 16028 of the Vehicle Code, relating to financial responsibility, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 11580.10 of the Insurance Code is amended to read:

11580.10. Any liability insurer issuing or renewing an automobile liability policy or a motor vehicle liability policy within the meaning of subdivision (a) of Section 16054 of the Vehicle Code shall provide written notice to the named insured of the policy identification number that may be used for verifying financial responsibility for purposes of Section 16028 of the Vehicle Code. This notice may be provided in a written binder, if any, or in the policy documents provided upon issuance or renewal of the policy. The insurer shall provide at least two copies of the notice to the insured and shall, upon request and payment of the reasonable cost thereof, provide additional copies.

SEC. 2. Section 16028 of the Vehicle Code is amended to read:

16028. (a) (1) Every person who drives a motor vehicle required to be registered in this state upon a highway, or who drives a moped upon the highway, shall, when requested by a peace officer pursuant to subdivision (c) or (d), provide evidence of financial responsibility for the vehicle.

(2) Every person who drives a motor vehicle upon private property, shall, when requested by a peace officer pursuant to subdivision (c) or (d), provide evidence of financial responsibility for the vehicle.

Except as otherwise provided in this subdivision and subdivisions (e) and (f), any person who violates this subdivision is guilty of an infraction and shall be punished for each offense by a fine of seventy-five dollars ($75) and an additional penalty assessment of twenty-five dollars ($25). If (A) the citation is issued pursuant to subdivision (c) on a notice to appear for violation of Section 23152, and (B) the driver is convicted of violating Section 23152, then the penalty upon conviction for violation of subdivision (a) is a fine of one hundred eighty dollars ($180) and an additional penalty assessment of sixty dollars ($60). Each defendant shall be fined and assessed a penalty assessment in the amount specified in this section, upon conviction, unless the court determines that in the interests of justice the fine and the penalty assessment should be reduced. Any reduction of the fine and penalty assessment shall be in the same

proportion and the court shall state the reasons for reducing the fine and assessment on the record.

In lieu of the fine and penalty assessment otherwise assessable under this subdivision, the court may permit the defendant to perform community service designated by the court.

(b) (1) For purposes of this section, "evidence of financial responsibility" shall be in writing and means any of the following:

(A) The name of the insurance or surety company which issued the automobile liability policy, motor vehicle liability policy, or bond meeting the requirements of Section 16056, in effect for the vehicle, and the number of the insurance policy or surety bond.

(B) If the owner is a self-insurer as provided in Section 16052 or a depositor as provided in Section 16054.2, the certificate or deposit number issued by the department.

(C) An insurance covering note, as specified in Section 382 of the Insurance Code.

(D) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(2) For purposes of this section, "evidence of financial responsibility" also includes the identifying symbol issued to a highway carrier by the Public Utilities Commission pursuant to Section 3543 of the Public Utilities Code and displayed on the motor vehicle.

(3) For purposes of this section, "evidence of financial responsibility in writing" may be satisfied by writing the name of the insurance company or surety company and the policy number or surety bond number on the motor vehicle registration card issued by the Department of Motor Vehicles.

(c) Whenever a notice to appear is issued for any alleged violation of this code, except a violation specified in Chapter 9 (commencing with Section 22500) of Division 11 or any local ordinance adopted pursuant thereto, the cited driver shall furnish written evidence of financial responsibility, as defined by subdivision (b), upon request of the peace officer issuing the citation. The peace officer shall request and write the driver's evidence of financial responsibility on the notice to appear, except where the peace officer is unable to write the driver's evidence of financial responsibility on the notice to appear due to an emergency that requires his or her presence elsewhere. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for violation of subdivision (a). The notice to appear for violation of subdivision (a) shall be written on the same citation form as the original violation.

(d) Whenever a peace officer is summoned to the scene of an accident, the driver of any motor vehicle which is in any manner involved in the accident, shall furnish written evidence of financial responsibility as defined by subdivision (b), upon the request of the peace officer making the report. If the driver fails to provide

evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of subdivision (a).

However, this subdivision shall not apply to accidents involving only a single vehicle and occurring on private property which result only in injury, or damage to property, of the driver.

(e) A person cited in a notice to appear for violation of subdivision (a) may personally appear before the clerk of the court, as designated in the notice to appear, and provide written evidence of financial responsibility in a form consistent with Section 16028.4 showing that the driver was in compliance with Section 16020 at the time the notice to appear for violating subdivision (a) was issued. In lieu of a personal appearance, the person may submit written evidence of financial responsibility by mail to the court. Upon receipt by the clerk of written evidence of financial responsibility in a form consistent with Section 16028.4, further proceedings on the notice to appear for the violation of subdivision (a) of Section 16028 shall be dismissed, subject to Section 16031.

(f) If a driver cited for a violation of subdivision (a) is, at the time of issuance of the notice to appear, driving a motor vehicle owned, operated, or leased by the employer of the driver and driven with the permission of the employer, this section and Sections 16031 and 16032 apply to the employer rather than the driver. In that case, the notice to appear shall be issued to the employer, rather than the driver, and the driver may sign the notice to appear on behalf of the employer and shall notify the employer of the citation within five days after the issuance thereof.

(g) Penalty assessments collected pursuant to subdivision (a) shall be deposited in the county's Courthouse Temporary Construction Fund established pursuant to Section 76001, 76002, 76003, 76004, 76005, or 76006 of the Government Code.

(h) Any penalty assessment imposed pursuant to any other provision of law shall not be imposed on the additional penalty assessment provided in subdivision (a).

SEC. 3. Section 2 of this act shall become operative only if SB 1160 is enacted and becomes effective on or before January 1, 1990, and amends Section 16028 of the Vehicle Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. 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 number of uninsured motorists without delay, it is necessary that this act go into immediate effect.

CHAPTER 1125

An act to amend Section 15438 of, and to add Section 15453.9 to, the Government Code, relating to health facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 15438 of the Government Code is amended to read:

15438. Subject to the conditions, restrictions, and limitations of Section 15438.1, the authority may do any of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) Receive and accept from any agency of the United States or any agency of the State of California or any municipality, county or other political subdivision thereof, or from any individual, association, or corporation gifts, grants, or donations of moneys for achieving any of the purposes of this chapter.

(e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this part.

(f) Determine the location and character of any project to be financed under this part, and to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, fund, finance, own, maintain, manage, repair, operate, lease as lessee or lessor and regulate the same, to enter into contracts for any or all of those purposes, to enter into contracts for the management and operation of a project or other health facilities owned by the authority, and to designate a participating health institution as its agent to determine the location and character of a project undertaken by that participating health institution under this chapter and as the agent of the authority, to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor and regulate the same, and as the agent of the authority, to enter into contracts for any or all of those purposes, including contracts for the management and operation of

that project or other health facilities owned by the authority.

(g) Acquire, directly or by and through a participating health institution as its agent, by purchase solely from funds provided under the authority of this part, or by gift or devise, and to sell, by installment sale or otherwise, any lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, which are located within the state the authority determines necessary or convenient for the acquisition, construction, or financing of a health facility or the acquisition, construction, financing, or operation of a project, upon the terms and at the prices considered by the authority to be reasonable and which can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of a participating health institution as its agent.

(h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of a project or any portion of a project in money, property, labor, or other things of value.

(i) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating health institution in connection with the financing of a project or working capital in accordance with an agreement between the authority and the participating health institution. However, no loan to finance a project shall exceed the total cost of the project, as determined by the participating health institution and approved by the authority.

(j) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating health institution in accordance with an agreement between the authority and the participating health institution to refinance indebtedness incurred by that participating health institution in connection with projects undertaken or for health facilities acquired or for working capital financed prior to or after January 1, 1980.

(k) Mortgage all or any portion of interest of the authority in a project or other health facilities and the property on which that project or other health facilities are located whether owned or thereafter acquired including the granting of a security interest in any property, tangible or intangible, and to assign or pledge all or any portion of the interests of the authority in mortgages, deeds of trust, indentures of mortgage or trust or similar instruments, notes, and security interests in property, tangible or intangible, of participating health institutions to which the authority has made loans, and the revenues therefrom, including payments or income from any thereof owned or held by the authority, for the benefit of the holders of bonds issued to finance the project or health facilities or issued to refund or refinance outstanding indebtedness of participating health institutions as permitted by this part

(*l*) Lease to a participating health institution the project being financed or other health facilities conveyed to the authority in

connection with that financing, upon the terms and conditions the authority determines proper, and to charge and collect rents therefor and to terminate the lease upon the failure of the lessee to comply with any of the obligations of the lease; and to include in that lease, if desired, provisions granting the lessee options to renew the term of the lease for the period or periods and at the rent, as determined by the authority, to purchase any or all of the health facilities or that upon payment of all of the indebtedness incurred by the authority for the financing of that project or health facilities or for refunding outstanding indebtedness of a participating health institution, then the authority may convey any or all of the project or the other health facilities to the lessee or lessees thereof with or without consideration.

(m) Charge and equitably apportion among participating health institutions, the administrative costs and expenses incurred by the authority in the exercise of the powers and duties conferred by this part.

(n) Obtain, or aid in obtaining, from any department or agency of the United States or of the State of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, or any part thereof, on any loan, lease, or obligation, or any instrument evidencing or securing the loan, lease, or obligation, made or entered into pursuant to this part; and notwithstanding any other provisions of this part, to enter into any agreement, contract, or any other instrument whatsoever with respect to that insurance or guarantee, to accept payment in the manner and form as provided therein in the event of default by a participating health institution, and to assign that insurance or guarantee as security for the authority's bonds.

(o) Enter into any and all agreements or contracts, including agreements for liquidity and credit enhancement, interest rate swaps or hedges, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly granted by this part.

(p) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in any obligations authorized by the resolution authorizing the issuance of the bonds secured thereof or authorized by law for the investment of trust funds in the custody of the Treasurer.

(q) Establish and maintain a reciprocal insurance company or an insurance program that shall be treated and licensed as a reciprocal insurance company for regulatory purposes under the Insurance Code on behalf of one or more participating health institutions, to provide for payment of judgments, settlement of claims, expense, loss and damage that arises, or is claimed to have arisen, from any act or omission of, or attributable to, the participating health institution or any nonprofit organization controlled by, or controlling or under

common control with, the participating health institution, their employees, agents or others for whom they may be held responsible, in connection with any liability insurance (including medical malpractice); set premiums, ascertain loss experience and expenses and determine credits, refunds, and assessments; and establish limits and terms of coverage; and engage any expert or consultant it deems necessary or appropriate to manage or otherwise assist with the insurance company or program; and pay any expenses in connection therewith; and contract with the participating health institution or institutions for insurance coverage from the insurance company or program and for the payment of any expenses in connection therewith including any bonds issued to fund or finance the insurance company or program.

(r) Provide funding for self-insurance for participating health institutions. However, there shall be no pooling of liability risk among participating health institutions except as provided in subdivision (f) of Section 15438.5.

(s) (1) Make grants in aid to any participating small or rural hospital, as defined in Section 1188.855 of the Health and Safety Code, in connection with the financing of a project or for working capital in accordance with an agreement between the authority and the hospital. However, no grant to finance a project shall exceed the total cost of the project, as determined by the hospital and approved by the authority.

(2) Make grants in aid to any small or rural hospital, as defined in Section 1188.855 of the Health and Safety Code, in accordance with an agreement between the authority and the hospital to discharge indebtedness incurred by the hospital in connection with projects undertaken, for health facilities acquired, or for working capital financed prior to the effective date of this subdivision.

(3) Grants shall be made pursuant to this subdivision only from HELP Program funds, not to exceed eight hundred seventy thousand dollars ($870,000). In consultation with representatives of the hospital industry and other affected parties, the authority shall develop a process and criteria for making grants under this subdivision, including obtaining legal opinions on appropriateness of grants to private facilities for capital outlay purposes.

SEC. 2. Section 15453.9 is added to the Government Code, to read:

15453.9. Notwithstanding Sections 15453, 15453.5, 15453.6, 15453.7, and 15453.8, the total amount of bonds which may be outstanding at any one time is hereby increased by an amount not exceeding eight hundred seventy-five million dollars ($875,000,000). Bonds that are refunded pursuant to Section 15446 or for which moneys or securities in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon that have been deposited in trust shall not be deemed outstanding for the purposes of this section.

SEC. 3. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the health care needs of California are met as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 1126

An act to amend Section 965 of the Government Code, making an appropriation for the payment of judgments and settlement claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 965 of the Government Code is amended to read:

965. (a) Upon the allowance by the State Board of Control of all or part of a claim for which the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists, and the execution and presentation of documents the board may require which discharge the state of all liability under the claim, the board shall designate the fund from which the claim is to be paid and the state agency concerned shall pay the claim from that fund Where no sufficient appropriation for the payment is available, the board shall report to the Legislature in accordance with Section 912.8. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) Notwithstanding subdivision (a), where no sufficient appropriation exists for the payment of claims, settlements, or judgments against the state arising from an action in which the state is represented by the Attorney General, the Attorney General shall report the claims, settlements, and judgments to the chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Ways and Means, who shall cause to be introduced legislation appropriating funds for the payment of the claims, settlements, or judgments.

SEC. 2. The sum of two million nine hundred fifty-four thousand five hundred sixty-eight dollars and forty-eight cents ($2,954,568.48) is hereby appropriated to the Secretary of the State Board of Control for the payment of judgments and settlement claims accepted by the State Board of Control, according to the following schedule:

(a) One million four hundred ninety-nine thousand two hundred fifty-four dollars and ninety-seven cents ($1,499,254.97) from the General Fund.

(b) One hundred thousand dollars ($100,000) from the Motor Vehicle Account in the Transportation Fund.

(c) One million three hundred fifty-five thousand three hundred thirteen dollars and fifty-one cents ($1,355,313.51) from funds appropriated in Section 2.00 of the Budget Act of 1989, as follows:

(1) Three hundred thirteen dollars and fifty-one cents ($313.51) from category (a) of Item 5240-001-001.

(2) One hundred five thousand dollars ($105,000) from Item 6610-001-001.

(3) One million two hundred fifty thousand dollars ($1,250,000) from category (a) of Item 6110-101-001.

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 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 1127

An act to amend Section 14838 of the Government Code, relating to small business.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 14838 of the Government Code is amended to read:

14838. In order to facilitate the participation of small business in state procurement, in construction contracts, and in service contracts, under the office of the State Architect or other state agencies which contract for the construction (including alteration, demolition, repair, or improvement) of state facilities, or the delivery of services, the directors of General Services and of such other agencies, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small and Minority Business, for the extent of participation of small businesses in state procurement, in construction contracts, and in service contracts

(b) Provide for small business preference in construction, the procurement of goods, or the delivery of services where

responsibility and quality are equal. The preference to small business shall be 5 percent of the lowest responsible bidder meeting specifications. However, the small business preference shall not exceed fifty thousand dollars ($50,000) for any bid, and the combined cost of preferences granted pursuant to this chapter and any other provision of law shall not exceed one hundred thousand dollars ($100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar ($50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses in the contract award.

(c) Give special consideration to small businesses by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses in their preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 14311, make awards, whenever feasible, to small business bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business contractor to qualify to bid on these subprojects.

(f) Except as provided in Sections 10392 and 10398 of the Public Contract Code, small business bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under any other provision of law shall not result in the denial of the award to a small business bidder. This provision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference granted by subdivision (b).

SEC. 2. Section 14838 of the Government Code is amended to read:

14838. In order to facilitate the participation of small business in state procurement, in construction contracts, and in service contracts, under the office of the State Architect or other state agencies which contract for the construction (including alteration, demolition, repair, or improvement) of state facilities, or the delivery of services, the directors of General Services and of such other agencies, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small and Minority Business, for the extent of participation of small businesses in state procurement, in construction contracts, and in service contracts.

(b) Provide for small business preference in construction, the procurement of goods, or the delivery of services where

responsibility and quality are equal. The preference to small business shall be 5 percent of the lowest responsible bidder meeting specifications. However, the small business preference shall not exceed fifty thousand dollars ($50,000) for any bid, and the combined cost of preferences granted pursuant to this chapter and any other provision of law shall not exceed one hundred thousand dollars ($100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar ($50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses in the contract award.

(c) Give special consideration to small businesses by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses in their preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 14311, make awards, whenever feasible, to small business bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business contractor to qualify to bid on these subprojects.

(f) Except as provided in Sections 10392 and 10398 of the Public Contract Code, small business bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under any other provision of law shall not result in the denial of the award to a small business bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business, the contract shall be awarded to the disabled veteran-owned small business. This provision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference granted by subdivision (b).

SEC. 3. Section 2 of this bill incorporates amendments to Section 14838 of the Government Code proposed by both this bill and AB 1829. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 14838 of the Government Code, and (3) this bill is enacted after AB 1829, in which case Section 1 of this bill shall not become operative.

CHAPTER 1128

An act to amend Section 11628 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11628 of the Insurance Code is amended to read:

11628. (a) No admitted insurer, licensed to issue and issuing motor vehicle liability policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, language, color, religion, national origin, ancestry, or the same geographic area; nor shall race, language, color, religion, national origin, ancestry, or location within a geographic area of itself constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

As used in this section "geographic area" means a portion of this state of not less than 20 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber. In order that geographic areas used for rating purposes may reflect homogeneity of loss experience, a record of loss experience for the geographic area shall include the breakdown of actual loss experience statistics by zip code area (as designated by the United States Postal Service) within each geographic area for family owned private passenger motor vehicles and lightweight commercial motor vehicles, under 1½-ton load capacity, used for local service or retail delivery, normally within a 50-mile radius of garaging, and which are not part of a fleet of five or more motor vehicles under one ownership. A record of loss experience for the geographic area, including that statistical data by zip code area, shall be submitted annually to the commissioner for examination by each insurer licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both. Loss experience shall include separate loss data for each type of coverage, including liability or physical damage coverage, underwritten An insurer may satisfy its obligation to report statistical data under this subdivision by providing its loss experience data to a rating or advisory organization for submission to the commissioner. This data shall be made available to the public by the commissioner annually after examination. However, the data shall be

released in aggregate form by zip code in order that no individual insurer's loss experience for any specific geographic area be revealed. Differentiation in rates between geographical areas shall not constitute unfair discrimination.

All information reported to the department pursuant to this subdivision shall be confidential.

As used in this section, "language" means the inability to speak, read, write, or comprehend the English language.

(b) No admitted insurer, licensed to issue and issuing motor vehicle liability insurance policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, refuse to issue that insurance to an applicant therefor, or cancel that insurance solely for the reason that the applicant for that insurance or any insured is employed in a specific occupation.

Nothing in this section shall prohibit an insurer from:

(1) Considering the occupation of the applicant or insured as a condition or risk for which a higher rate or discounted rate may be required or offered for coverage in the course and scope of his or her occupation.

(2) Charging a deviated rate to any classification of risks involving a specific occupation, or grouping thereof, if the rate meets the requirements of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1 and is based upon actuarial data which demonstrates a significant actual historical differential between past losses or expenses attributable to the specific occupation, or grouping thereof, and the past losses or expenses attributable to other classification of risks. For purposes of compiling that actuarial data for a specific occupation or grouping thereof, a person shall be deemed employed in the occupation in which that data is compiled if: (A) the majority of his or her employment during the previous year was in the occupation, or (B) the majority of his or her aggregate earnings for the immediate preceding three-year period were derived from the occupation, or (C) the person is a member in good standing of a union which is an authorized collective bargaining agent for persons engaged in the occupation.

Nothing in this section shall be construed to include in the definition of "occupation" active duty service in the Armed Forces of the United States, any status or activity which does not result in remuneration for work done or services performed, or self-employment in a business operated out of an applicant's or insured's place of residence or persons engaged in the renting, leasing, selling, repossessing, rebuilding, wrecking, or salvaging of motor vehicles.

(c) Nothing in this section shall limit or restrict the ability of an insurer to refuse to accept an application for or refuse to issue or cancel such insurance for the reason that it is a commercial vehicle or based upon the consideration of a vehicle's size, weight, design, or intended use.

(d) It is the intent of the Legislature that actuarial data by

occupation may be examined for credibility by the commissioner on the same basis as any other automobile insurance data which he or she is empowered to examine.

(e) Except as provided in Article 4 (commencing with Section 11620), nothing in this section or in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1 precludes an insurer from limiting the issuance of its insurance to persons who engage in, or have formerly engaged in, governmental or military service and their spouses, dependents, and former dependents.

(f) This section shall be known and may be cited as the "Rosenthal-Robbins Auto Insurance Nondiscrimination Law."

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 uncertainties in insurance regulation pertaining to the provision of the Insurance Code amended by this act, and in order to permit insurers to comply with this act without delay, it is necessary that this act go into immediate effect.

CHAPTER 1129

An act to amend Section 1211 of, to add Sections 1191.5, 1192.7, 1192.8, and 1192.9 to, and to repeal Section 1100.2 of, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 1100.2 of the Insurance Code is repealed.

SEC. 2. Section 1191.5 is added to the Insurance Code, to read:

1191.5. (a) Excess fund investments may be made by a domestic life insurer having admitted assets aggregating in value not less than one hundred million dollars ($100,000,000) in the purchase and sale of call options on interest-bearing obligations pursuant to subdivision (b) or (c). These investments may be made only in options on interest-bearing obligations issued by the United States of America, or any of its agencies or instrumentalities specified in Section 1180.

(b) An insurer may purchase call options pursuant to this section for the sole purpose of executing a closing purchase transaction for the interest-bearing obligation subject to the option. An insurer shall not purchase any other options pursuant to this section.

(c) An insurer may sell call options pursuant to this section only on interest-bearing obligations that it owns. An insurer shall not sell an interest-bearing obligation subject to an unexpired written call

option sold by it except pursuant to a closing purchase transaction under the call option.

SEC. 2.5. Section 1192.7 is added to the Insurance Code, to read:

1192.7. (a) A domestic life insurer having admitted assets aggregating in value not less than one hundred million dollars ($100,000,000) may make excess funds investments in participation certificates (1) which represent an undivided interest in an interest-bearing obligation issued by a corporation and (2) for which a resale market exists at the time the investment is made.

(b) No investment in a participation certificate may be made pursuant to this section unless the entire obligation is a form of investment which the insurer would be authorized to acquire pursuant to subdivision (a) of Section 1192.

(c) An investment may not be made under the authority of this section if at the time of making the investment it would result in the insurer then owning participation certificates described in this section in an amount exceeding 4 percent of the insurer's admitted assets as determined by the insurer's last preceding annual statement filed with the commissioner.

SEC. 3. Section 1192.8 is added to the Insurance Code, to read:

1192.8. (a) A domestic life insurer having admitted assets aggregating in value not less than one hundred million dollars ($100,000,000) may make excess fund investments pursuant to this section in interest-bearing notes, bonds, or obligations issued by (1) any operating business trust or limited partnership organized under the laws of any state of the United States, the District of Columbia, the Dominion of Canada, any province of the Dominion of Canada or (2) an authority established pursuant to the California Industrial Development Financing Act, Title 10 (commencing with Section 91500) of the Government Code. The issuer of the notes, bonds, or obligations through itself or its paying agent shall be obligated thereunder to make payments, with respect to the notes, bonds, or other obligations, directly to the insurer or the insurer's nominee.

(b) Except upon the prior written approval of the commissioner, an investment may not be made under the authority of this section unless the note, bond, or obligation is exchange traded. "Exchange-traded," as used in this subdivision, means listed and traded on a securities exchange subject to regulation, supervision, or control under a statute of the United States and acceptable to the commissioner.

(c) Without the prior written consent of the commissioner investment made pursuant to this section shall not exceed in the aggregate 10 percent of the life insurer's policyholder surplus.

(d) A request to the commissioner for (1) approval pursuant to subdivision (b) to invest in notes, bonds, or obligations that are not exchange-traded or (2) for consent to exceed the 10 percent limitation set forth in subdivision (c), shall be in writing and shall be accompanied by any supporting data and documentation that the commissioner may require. The commissioner shall require the

payment of a five thousand dollar ($5,000) fee in advance for the determination of whether to approve or disapprove each request. Each request shall be in writing and shall be deemed approved unless the commissioner disapproves it within 60 days with respect to requests under subdivision (c) or 20 days with respect to requests under subdivision (b), after the request has been filed in the commissioner's office.

(e) This section shall not be construed to increase or reduce the authority to invest in any operating business trust or limited partnership specifically permitted in other sections of this code.

SEC. 4. Section 1192.9 is added to the Insurance Code, to read:

1192.9. Notwithstanding Section 1100, an insurer may make excess funds investments in shares of an open-end diversified management investment company, as defined in the Federal Investment Company Act of 1940, that meets all of the following standards:

(a) It is registered with and reporting to the United States Securities and Exchange Commission.

(b) It is domiciled in the United States with all assets held in the United States by a bank, trust company, or other authorized custodian chartered by the United States, its territories, possessions, or states.

(c) It has assets in excess of one hundred million dollars ($100,000,000).

(d) Its annual management investment fee shall not exceed six-tenths of 1 percent of the average daily asset value, and no other fees or commissions shall be charged to the insurer by any person.

(e) All of its assets are composed of (1) debt obligations issued by or on behalf of the United States, its territories and possessions, the District of Columbia, and states or their political subdivisions, agencies, and instrumentalities, including industrial development obligations; (2) corporate debt obligations other than debt obligations of the insurer or any company affiliated with the insurer; or, (3) accounts, deposits, or obligations of banks or savings and loan associations. The assets shall be required to meet the requirements of and be authorized for investment by the insurer under Articles 3 (commencing with Section 1170) and 4 (commencing with Section 1190) of Chapter 2.

(f) Share certificates of the management investment company shall be issued to the insurer or be retained by a bank, trust company, or other entity other than the management investment company which is authorized by the United States to act as a transfer and dividend paying agent for the management investment company.

(g) All shares of the management investment company shall be of the same class with equal rights and privileges. Each share shall be entitled to one vote and to participate equally in dividends and distributions declared by the management investment company and in the net distributable assets of the management investment comany on liquidation. When issued, the share shall be fully paid and

nonassessable and shall have no preemptive, conversion, or exchange rights.

(h) Shareholders shall be entitled to require the management investment company to redeem all shares.

SEC. 5. Section 1211 of the Insurance Code is amended to read:

1211. Any domestic incorporated insurer, after investing an amount equal to its required minimum paid-in capital in securities specified in Article 3 (commencing with Section 1170), may invest in bona fide hedging transactions and positions in interest rate futures contracts or options on interest rate futures contracts within the meaning of the Commodity Exchange Act (Chapter 1 (commencing with Section 1) of Title 7, United States Code) and traded on an exchange or board of trade regulated under that act.

(a) For purposes of this section "interest rate futures contracts" means contracts for future delivery, in accordance with the rules of the exchange or board of trade on which the contracts are traded, of obligations issued or guaranteed by the government of the United States or any agency or instrumentality thereof, or certificates of deposit of banks or savings and loan associations the accounts of which are insured by an agency or instrumentality of the federal government. "Options on interest rate futures contracts," for purposes of this section, means put or call options, in accordance with the rules of the exchange or board of trade on which the options are traded, in interest rate futures contracts on obligations issued or guaranteed by the government of the United States or any agency or instrumentality thereof, or certificates of deposit of banks or savings and loan associations the accounts of which are insured by an agency or instrumentality of the federal government.

(b) Interest rate futures contracts may be purchased when upon execution, (1) the futures contract is specifically identified with a liability or a group of liabilities or the insurer reasonably expects to acquire in the ordinary course of its business an asset or group of assets which, in each case, is identified in its records as being associated with such futures contract and (2) the futures contract has a positive correlation (prices tend to move in the same direction with reasonably similar magnitude) with the identified asset, liability, or group of assets or liabilities.

Interest rate futures contracts may be sold when upon execution, (1) the futures contract is specifically identified with an asset or a group of assets or the insurer reasonably expects to incur in the ordinary course of its business a liability or group of liabilities which, in each case, is identified in its records as being associated with such futures contract and (2) the futures contract has a positive correlation (prices tend to move in the same direction with a reasonably similar magnitude) with the identified asset, liability, or group of assets or liabilities.

(c) Put or call options on interest rate futures contracts may be purchased when upon execution, (1) the option and its related interest rate futures contract is specifically identified with an asset,

liability, or group of assets or liabilities or the insurer reasonably expects to acquire in the ordinary course of business an asset, liability, or group of assets or liabilities which, in each case is identified in its records as being associated with the option and (2) the option and its related interest rate futures contract has a positive correlation (prices tend to move in the same direction with a reasonably similar magnitude) with the identified asset, liability, or a group of assets or liabilities. An insurer may sell an exchange traded put or call option on an interest rate futures contract only through an exchange and only for the purpose of a closing transaction. No other sales of options on interest rate futures contracts are authorized under this section.

(d) If an identified asset or liability or all of an identified group of assets or liabilities is sold or an expected identified asset or liability position is no longer expected to occur, the interest rate futures contract or option, or both, shall be closed out.

(e) Except with the prior approval of the commissioner, an investment shall not be made under the authority of subdivisions (b) and (c) if at the time of its making, the investment would result in an insurer hedging assets, liabilities, or anticipated assets or liabilities in an amount exceeding 5 percent of admitted assets plus 100 percent of the amount of the investments in notes or bonds secured by a first mortgage or lien upon real property as determined by the last preceding annual statement filed with the commissioner. The term "notes or bonds secured by a first mortgage or lien upon real property" for purposes of this section means notes or bonds secured by a first mortgage or lien upon a real property containing a residence of one to four units or upon which a residence of one to four units is to be constructed and all bonds, debentures, certificates, and notes set forth in Sections 1192.6 and 1180.

A request to exceed the limitations contained herein shall be in writing and shall be deemed approved unless the commissioner disapproves it within 60 days after the request has been filed in the commissioner's office. The commissioner shall require the payment of a one thousand dollar ($1,000) fee for the determination of whether to approve or disapprove the request to exceed the limitations.

(f) An insurer shall not engage in hedging transactions and positions in interest rate futures contracts or options on interest rate futures contracts except pursuant to this section.

(g) The commissioner may establish criteria for, and prescribe procedures to be followed by insurers effecting transactions and positions pursuant to this section.

CHAPTER 1130

An act to add Section 4496.17 to the Penal Code, and to amend Sections 2011, 2013, and 2020 of, and to add Sections 2019, 2023, and 2024 to, the Welfare and Institutions Code, relating to youths, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1 Section 4496.17 is added to the Penal Code, to read:

4496.17. The Department of the Youth Authority shall administer funds appropriated for juvenile facilities as specified in paragraph (2) of subdivision (a) of Section 4496.12.

SEC. 2. Section 2011 of the Welfare and Institutions Code is amended to read:

2011. (a) 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.

(b) If a public or private nonprofit agency or joint venture, or both, is granted an award pursuant to subdivision (a) for a youth shelter which will provide services for both runaway youths and abused and neglected children, the department shall credit the allocation of bond proceeds awarded to reflect the proportion of funds to be used by the recipient for services for runaway youths and the proportion of funds to be used for services for abused or neglected children.

SEC. 2.5. Section 2013 of the Welfare and Institutions Code is amended to read:

2013. (a) The State of California shall be entitled to recapture a portion of state funds from the recipient of a contract if, within 10 years after acquisition, 20 years after completion of construction, or 3 to 10 years after renovation, as provided in paragraph (1), (2), or (3) of subdivision (c) of Section 2012, either of the following occurs:

(1) The recipient of a contract 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.

SEC. 3. Section 2019 is added to the Welfare and Institutions Code, to read:

2019. The funds shall be given to applicants for youth shelters for abused and neglected children without regard to the priorities set forth in subdivision (a) of Section 2018.

SEC 3.3. Section 2020 of the Welfare and Institutions Code is amended to read:

2020. (a) 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 and shall fund each separately.

(b) (1) Funding for youth shelters shall be awarded as follows:

(A) At least 70 percent to shelters for runaway youths.

(B) A maximum of 30 percent to shelters for abused and neglected children Funds allocated for shelters for abused and neglected children shall be prioritized among no more than three counties of the 1st to 10th class, inclusive, as defined by Section 28020 of the Government Code. The criteria for selection of these counties shall be given to applicants in the following order of priority:

(i) Counties with existing youth shelters, as defined in subdivision (f) of Section 4496.04 of the Penal Code, with demonstrated overcrowding problems.

(ii) Counties which have a demonstrated need for additional youth shelter beds and which have initiated planning and the permit process for construction of a new shelter.

(2) Any remaining money that has not been awarded to shelters for abused or neglected children after the initial awards are made pursuant to Section 2011 shall be awarded to shelters for runaway youths.

(c) 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.

SEC. 3.5. Section 2023 is added to the Welfare and Institutions Code, to read:

2023. The department shall develop a statewide needs assessment which shall be completed and sent to the Legislature by May 3, 1991, with preliminary information provided to the Legislature by April 15, 1990, regarding the need for multipurpose youth centers and youth shelters for runaway youths. The needs assessment shall identify all of the following:

(a) The capability of existing centers and shelters presently to address the needs of California youths.

(b) The nature and extent of youth needs that are presently unmet or unaddressed by existing facilities

(c) The nature and extent of future need for multipurpose youth centers and youth shelters.

(d) Cost estimates for addressing needs identified in subdivisions (b) and (c).

(e) Other information, issues, and trends relevant to understanding and serving the youths under study.

SEC. 4. Section 2024 is added to the Welfare and Institutions Code, to read:

2024. The department shall administer funds appropriated for youth centers and youth shelters as specified in subdivision (b) of Section 4496.12 of the Penal Code.

SEC. 5. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the 1988 County Correctional Facility Capital Expenditure and Youth Facility Bond Fund to the Department of the Youth Authority for expenditure without regard to fiscal year for performing a statewide needs assessment required under Section 2023 of the Welfare and Institutions Code.

SEC. 5.5. It is the intent of the Legislature that any amount appropriated for administrative costs arising under Chapter 1535 of the Statutes of 1988 shall be pursuant to the annual Budget Act. The amount appropriated for those administrative costs shall not exceed 1.5 percent of the total amount of bonds authorized to be sold under the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988 for purposes specified in paragraph (2) of subdivision (a) and in subdivision (b) of Section 4496.12 of the Penal Code.

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 that this act shall have maximum implementation and that the Youth Authority will have the funds necessary to properly administer the bond program as specified in Section 4 of this act, it is necessary for this act to take effect immediately.

CHAPTER 1131

An act to amend Sections 69503.5 and 71008 of, and to repeal and add Sections 69503 and 69503.4 of, the Government Code, relating to records.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 69503 of the Government Code is repealed.

SEC. 2. Section 69503 is added to the Government Code, to read:

69503. (a) Notwithstanding any other provision of law relating to the destruction of court papers and records, after a case has been

closed any papers filed or lodged in a superior court action or proceeding that have not otherwise been designated for the special sample provided in subdivision (e), may be destroyed as authorized in subdivision (c). The destruction of all papers shall be in accordance with the procedure set forth in Section 69503.4.

(b) As used in this section, the following terms apply:

(1) "Closed" means a dismissal or final judgment has been entered, and the case file contains no indication that any further hearing is to be scheduled in the matter and the case is not on appeal or subject to review in any court.

(2) "Papers" mean documents, pleadings, motions, instruments, books, depositions, transcripts, minute orders, case folders, and other similar written material filed or lodged with the clerk of the superior court in connection with action and proceedings. "Papers" does not include evidentary exhibits, court management records such as indexes, or microformed records.

(3) "Microform" means the process of permanently preserving and certifying in accordance with Section 1531 of the Evidence Code an exactly reproducible image of a document, whether by microfilm, microfische, electronic, laser disc, or other generally accepted method whereby the public may conveniently access a record and obtain exact copies of the original as provided by law.

(4) "Regular civil case" means any civil action or proceeding for damages or specific relief except the following: probate, water rights, land title, domestic relations, adoption, mental health, and juvenile matters.

(5) "Domestic relations case" means any action or proceeding for dissolution, separation, paternity, harrassment, child or spousal support, or a uniform reciprocal enforcement of support action.

(6) "Historical records" means civil case records filed in any California court in any civil action or proceeding initiated prior to January 1, 1911.

(c) Destruction of papers filed, deposited, or lodged with the clerk of the superior court is authorized when the retention periods set forth in the following paragraphs have expired, and the designated documents have been microformed:

(1) All papers in a regular civil case may be destroyed one year after the case is closed provided that, if any of the following documents are contained in the court file, all of these documents shall be microformed:

(A) Judgment and stipulation for judgment.

(B) Dismissal order.

(C) Satisfaction of judgment.

(D) Confessions of judgment.

(E) Request for default.

(2) All papers in a domestic relations case may be destroyed five years after the case is closed provided that all of the following documents have been microformed:

(A) Petition

(B) Interlocutory judgments of dissolution.
(C) Final judgment.
(D) An order or modification signed by a judge which amends the interlocutory or final judgment.
(E) Financial declaration.
(F) Confession of judgment.
(G) Reciprocal support document.
(H) Minute order.

(3) A deposition or transcript of a preliminary hearing or coroner's inquest may be destroyed three years after the date of filing, provided that the entire document is microformed.

(4) In any other action or proceeding, all papers and any will connected with the case may be destroyed five years after the case is closed provided that all documents have been microformed.

(5) Any will delivered pursuant to Section 320 of the Probate Code may be destroyed if no case connected with the will has been filed and a period of eight years has elapsed since delivery of the will, provided that the entire document has been microformed.

(6) Any party may make an application to the court for the preservation of a record which would otherwise be destroyed. The presiding judge shall, unless for good cause shown the application is denied, order the papers microformed prior to destruction and the costs for this service shall be borne by the requesting party. The papers shall be given to the party making the application and the microformed copy retained by the court. There shall be no fee charged for making an application.

(d) The clerk of the superior court shall promptly seal and store at least one original of each microformed copy of papers in a manner and place that reasonably assures its preservation indefinitely against loss, theft, defacement, or destruction.

(e) In order to preserve judicial records of historical or other research interest, in each county, a scientifically valid sample of cases shall be retained by the clerk of the superior court. In each county, cases will be selected under the sampling plan at an average annual rate of not less than 10 percent or 100 cases, whichever is larger.

(1) The Judicial Council, in consultation with the clerks of the superior courts and with the advice of representatives of the historical and research communities, shall develop a plan for implementing the sampling procedure statewide.

(2) The Judicial Council shall ensure that the implementation plan adopted is consistent with sound scientific principles, provides for a representative sample of case records, and minimizes the administrative burden on the courts, while meeting the specified sample size requirements.

(3) The Judicial Council shall consider whether a statistically valid sample of case records from the class of smaller counties can be constructed without requiring the participation of every county in that class and, if so, shall identify a sample of these counties to carry out the special sampling plan. This procedure is the only one under

which a county may be eliminated from the sampling plan.

SEC. 3. Section 69503.4 of the Government Code is repealed.

SEC. 4. Section 69503.4 is added to the Government Code, to read:

69503.4. (a) Prior to the destruction of any court papers and records which are open to public inspection, the clerk of the superior court shall give notice of the proposed destruction to all of the following:

(1) The Secretary of State.

(2) Any city or county museum in the county.

(3) Any law school in the state accredited by the State Bar Association of California.

(4) Any university or college located in the State of California.

(b) Entities named in subdivision (a) who respond in writing that they do not wish to take possession of court records now or in the future shall no longer be noticed by the clerk of the superior court.

(c) If any or all of the entities named in subdivision (a) requests the court papers and records within 60 days after the date of mailing of the notice by the clerk of the superior court, the records and papers shall be permanently transferred to that entity upon written order of the presiding judge unless for good cause shown the request is denied. The cost of transferring the records and papers shall be borne by the requesting party.

(d) If no request for transfer has been received within six months, or in the case of historical records as provided in Section 69503, two years, after the date of mailing of the notice, the clerk of the superior court may destroy the papers and records not designated for the special sample as provided in subdivision (e) of Section 69503, pursuant to a written order of the presiding judge of the court. The clerk of the superior court shall enter destruction information on the index pursuant to Section 69842 or on a separate destruction index.

SEC. 5. Section 69503.5 of the Government Code is amended to read:

69503.5. Notwithstanding any other provision of law, a county clerk, on order of the presiding judge of the appellate department of the superior court, shall destroy a statement or transcript on appeal from the municipal or justice court on file in the appellate department of the superior court without retaining a micrographic film print or copy, five years after the decision becomes final.

SEC. 6. Section 71008 of the Government Code is amended to read:

71008. (a) All papers and records filed and kept in all proceedings in municipal and justice courts, may, upon the order of the presiding judge of any such court, be destroyed after the expiration of the minimum retention period set forth in subdivision (b) or (c), as applicable. The retention period shall be measured from the determination of the proceeding or of the forfeiture of bail in cases in which no other proceedings are had during a like period following such forfeiture.

(b) The minimum retention periods for all papers and records other than those set forth in subdivision (c) are, as follows:

(1) Two years for cases involving alleged violations of Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code or of any local ordinance adopted pursuant thereto, for cases relating to stopping, standing, or parking, and for cases involving alleged violations of Division 14 (commencing with Section 30501) of the Food and Agricultural Code or of any local ordinance adopted pursuant thereto relating to the regulation or licensing of dogs. Records for cases involving alleged violations of subdivision (b) or (c) of Section 11357 or subdivision (c) of Section 11360 of the Health and Safety Code may be destroyed after two years in accordance with Section 11361.5 of the Health and Safety Code.

(2) Three years for those records specified in Section 1269 of the Penal Code and for all other records not specified in this section.

(3) Three years for all infraction cases not specified in paragraph (1), and for any misdemeanor case involving an alleged violation of the Vehicle Code other than Sections 14601, 14601.1, 20002, 23103, 23104, 23105, 23106, 23152, and 23153.

(4) Except as specified in paragraph (5), five years for all other misdemeanor cases, including cases involving alleged violations of Section 14601, 14601.1, 20002, 23104, 23105, or 23106 of the Vehicle Code, and all felony cases.

(5) Seven years for any misdemeanor case involving an alleged violation of Section 23103, 23152, or 23153 of the Vehicle Code.

(6) Ten years in any civil action or special proceeding, including small claims actions, from the date on which judgment became final.

(7) Five years in any civil action or special proceeding, including small claims actions, from the date of commencement of the action or proceeding if the case is not prosecuted to judgment.

(8) Sixty days in any civil action or special proceeding including small claims actions from the date of clerk's entry of dismissal of the case in its entirety as requested by the plaintiff.

(9) Sixty days in any civil action or special proceeding, including small claims actions, from the date of the court's order to dismiss pursuant to Sections 583.210, 583.310, or 583.410 of the Code of Civil Procedure.

(c) The minimum retention period for the docket, register of actions, and indexes in any municipal or justice court action governed by paragraphs (4), (5), and (6) of subdivision (b) shall be 10 years, except that upon the written request of any party to an action involving the records governed by paragraphs (4), (5), and (6) of subdivision (b) the docket or register of actions shall be retained for an additional 10 years. In all other cases, the docket and minutes may be destroyed concurrently with other papers and records affecting the case.

(d) The dismissal of any civil or small claims action by the court pursuant to Sections 583.210, 583.310, or 583.410 of the Code of Civil Procedure, shall not be ordered unless the parties are notified that

the action is to be dismissed. Where a party files a written notice of opposition within 30 days of the mailing of the notice of intention to dismiss, the docket, register of actions, and index, shall be retained for an additional minimum period of time of one year.

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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same day that the act takes effect pursuant to the California Constitution.

CHAPTER 1132

An act to amend Sections 7011.7, 7085, 7085.3, 7085.4, and 7085.5 of the Business and Professions Code, and to amend Section 10 of Chapter 1311 of the Statutes of 1987, relating to contractors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 7011.7 of the Business and Professions Code is amended to read:

7011.7. The registrar shall review and investigate complaints filed in a manner consistent with this chapter and the Budget Act. It is the intent of the Legislature that complaints be reviewed and investigated as promptly as resources allow.

SEC. 2. Section 7085 of the Business and Professions Code is amended to read:

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvements as defined in Section 7151 and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a

contract involving works of improvement as defined in Section 7151.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee is in good standing.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

For the purposes of paragraph (1), "material damages" means damages greater than two thousand five hundred dollars ($2,500) and less than twenty-five thousand dollars ($25,000).

(b) (1) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the damage is equal to or less than two thousand five hundred dollars ($2,500), the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subivision (a).

(2) (A) A pilot project regarding the mandatory arbitration of verified complaints in which the damage is two thousand five hundred dollars ($2,500) or less is hereby established.

(B) The goal of the pilot project is to determine if mandatory arbitration is an appropriate method of resolving construction disputes between complainants and contractors in which the damage is two thousand five hundred dollars ($2,500) or less.

SEC. 3. Section 7085.3 of the Business and Professions Code is amended to read:

7085.3. Once the registrar determines that arbitration pursuant to subdivision (a) of Section 7085 would be a suitable means of resolving the dispute, the registrar shall notify the complainant and the licensee of this decision. The registrar shall also notify the complainant of the consequences of selecting administrative arbitration over judicial remedies and advise the parties of their rights to retain counsel at their own expense. The registrar shall forward an "agreement to arbitrate" to the complainant and the licensee. This agreement shall be returned to the registrar within 30 calendar days of the date that the agreement is mailed by the registrar. The return of this agreement by the parties shall authorize the registrar to proceed with administrative arbitration.

SEC. 4. Section 7085.4 of the Business and Professions Code is amended to read:

7085.4. (a) For cases that the registrar determines to refer to arbitration under subdivision (a) of Section 7085, once the complainant and the licensee authorize the registrar to proceed with administrative arbitration, the registrar shall refer the agreement to arbitrate to an arbitrator or an arbitration association approved by the board.

(b) Once the registrar determines that a complaint must be

referred to arbitration pursuant to subdivision (b) of Section 7085, the registrar shall notify the complainant and the licensee of that decision. The registrar shall inform the parties of the consequences of administrative arbitration over judicial remedies and shall advise the parties of their right to retain counsel at their own expense if they so choose. The registrar shall forward a notice to arbitrate to the complainant and the licensee. This notice shall be returned to the registrar within 30 calendar days of the date that the notice is mailed by the registrar. The complainant's failure to return an executed copy of the notice shall result in the closure of the complaint.

Notwithstanding Section 7085.5, a licensee's failure to return an executed copy of the notice shall not prohibit the registrar from referring the dispute to arbitration or bar the registrar from issuing an order enforcing any award resulting therefrom, pursuant to Section 7085.6, whether the award resulted from a contested hearing or a noncontested hearing.

SEC. 5. Section 7085.5 of the Business and Professions Code is amended to read:

7085.5. Arbitrations of disputes arising out of cases filed with or by the board shall be conducted in accordance with the following rules:

(a) All "agreements to arbitrate" shall include the names, addresses, and telephone numbers of the parties to the dispute, the issue in dispute, and the amount in dollars or any other remedy sought. The appropriate fee shall be paid by the board from the Contractors' License Fund.

(b) (1) The board or appointed arbitration association shall appoint an arbitrator in the following manner: immediately after the filing of the agreement to arbitrate, the board or appointed arbitration association shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date in which to cross off any names to which it objects, number the remaining names to indicate the order of preference, and return the list to the board or appointed arbitration association. If a party does not return the list within the time specified, all persons named in the list are acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the board or appointed arbitration association shall appoint an arbitrator to serve. If the parties fail to agree on any of the parties named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the submitted lists, the board or appointed arbitration association shall have the power to make the appointment from among other members of the panel without the submission of any additional lists. Each dispute shall be heard and determined by one arbitrator unless the board or appointed arbitration association, in its discretion, directs that a greater number of arbitrators be appointed.

(2) In all cases in which a complaint has been referred to

arbitration pursuant to subdivision (b) of Section 7085, the board or the appointed arbitration association shall have the power to appoint an arbitrator to hear the matter.

(c) No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Prior to accepting an appointment, the prospective arbitrator shall disclose any circumstances likely to prevent a prompt hearing or to create a presumption of bias. Upon receipt of that information, the board or appointed arbitration association shall immediately replace the arbitrator or communicate the information to the parties for their comments. Thereafter, the board or appointed arbitration association shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

(d) The board or appointed arbitration association may appoint another arbitrator if a vacancy occurs, or if an appointed arbitrator is unable to serve in a timely manner.

(e) (1) The board or appointed arbitration association shall provide the parties with a list of the times and dates, and locations of the hearing to be held. The parties shall notify the arbitrator, within seven calendar days of the mailing of the list, of the times and dates convenient to each party. If the parties fail to respond to the arbitrator within the seven-day period, the arbitrator shall fix the time, place, and location of the hearing. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who so desires may be present at the inspection.

(2) The board or appointed arbitration association shall fix the time, place, and location of the hearing for all cases referred to arbitration pursuant to subdivision (b) of Section 7085. An arbitrator may, at the arbitrator's sole discretion, make an inspection of the construction site which is the subject of the arbitration. The arbitrator shall notify the parties of the time and date set for the inspection. Any party who desires may be present at the inspection.

(f) Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(g) Hearings shall be adjourned by the arbitrator only for good cause.

(h) A record is not required to be taken of the proceedings. However, any party to the proceeding may have a record made at its own expense. The parties may make appropriate notes of the proceedings.

(i) The hearing shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the

case by both parties. Consistent with the expedited nature of arbitration, the arbitrator shall establish the extent of, and schedule for, the protection of relevant documents and other information, the identification of any witnesses to be called, and a schedule for any hearings to elicit facts solely within the knowledge of one party. The complaining party shall present its claims, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(j) The arbitration may proceed in the absence of any party who, after due notice, fails to be present. The arbitrator shall require the attending party to submit supporting evidence in order to make an award. An award for the attending party shall not be based solely on the fact that the other party has failed to appear at the arbitration hearing.

(k) The arbitrator shall be the sole judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be required.

(*l*) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the board or appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.

(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

(n) The hearing may be reopened on the arbitrator's own motion. The arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award.

(o) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within 10 calendar days of close of hearing, shall be deemed to have waived his or her right to object

(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection

therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the parties' last known addresses, or (B) by personal service.

(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.

(q) The award shall be made promptly by the arbitrator, and unless otherwise agreed by the parties, no later than 30 calendar days from the date of closing the hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator.

The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.

(r) The arbitrator may grant any remedy or relief which the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board including, but not limited to, specific performance of a contract. The arbitrator, in his or her sole discretion, may award costs or expenses.

(s) The award shall become final 30 calendar days from the date the arbitration award is issued. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.

(2) There is any other clerical error in the award, not affecting the merits of the controversy.

An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitrator, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.

The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the arbitrator or appointed arbitration association within 30 calendar days of the issuance of the award, before the

award becomes final. The award shall be in writing, and shall be signed by the arbitrator or a majority of them. If no appeal is filed within the 30-calendar day period, it shall become a final order of the registrar.

(t) Service of the award by certified mail shall be effective if a certified letter containing the award, or a true copy thereof, is mailed by the arbitrator or arbitration association to each party or to a party's attorney of record at their last known address, address of record, or by personally serving any party. Service may be proved in the manner authorized in civil actions.

(u) The expenses of one expert witness appointed by the board, when the services of an expert witness are requested by either party involved in arbitration pursuant to this article, shall be paid by the board. Parties who choose to present the findings of another expert witness as evidence shall pay for those services. Payment for expert witnesses appointed by the board shall be limited to the expert witness costs for inspection of the problem at the construction site, preparation of the expert witness' report, and expert witness fees for appearing or testifying at a hearing. All requests for payment to an expert witness shall be submitted on a form which has been approved by the registrar. All requests for payment to an expert witness shall be reviewed and approved by the board prior to payment. The registrar shall advise the parties that names of industry experts may be obtained by requesting this information from the registrar.

(v) The arbitrator shall interpret and apply these rules insofar as they relate to his or her powers and duties.

(w) The following shall apply as to court procedure and exclusion of liability:

(1) The board, the appointed arbitration association, or any arbitrator in a proceeding under these rules is not a necessary party in judicial proceedings relating to the arbitration.

(2) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.

SEC. 6. Section 10 of Chapter 1311 of the Statutes of 1987 is amended to read:

Sec. 10. For the purposes of implementing the arbitration program authorized by this act, the Contractors' State License Board, in concurrence with the Department of Consumer Affairs, shall:

(a) Develop and administer a training program for those employees of the board who will have the responsibility to define the scope of the dispute and negotiate the agreement to arbitrate between the parties.

(b) Develop a brochure regarding the arbitration program and

the rules of process to be given to the parties prior to entering into an agreement to arbitrate, and develop other forms as may be necessary to carry out the provisions of the program.

(c) Contract with a consultant to evaluate and assist with the program and report to the Legislature, on or before September 1, 1991, as to (1) the effectiveness of the pilot project established under subdivision (b) of Section 7085 for the resolution of construction disputes, and (2) the feasibility and costs of implementing mandatory arbitration statewide. This evaluation shall include a survey of program participants in the voluntary and the mandatory arbitration programs.

(d) Establish and maintain a list of board appointed arbitrators and board appointed arbitration associations for referrals of agreements to arbitrate.

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 better protect the public health, safety, and welfare against significant abuses by licensed contractors and unlicensed individuals who operate in the field of construction, it is necessary that this act go into immediate effect.

CHAPTER 1133

An act to amend Sections 11100, 11100.1, and 11106 of, to add Sections 11107 and 11107.1 to, and to repeal Section 11648 of, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.

(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methypseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt 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 that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person shall, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to a person in this state, require proper identification from the purchaser.

(2) For the purposes of this subdivision, "proper identification" means a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser which contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of any motor vehicle owned or operated by the purchaser, a letter of authorization from the business for which any substance specified in subdivision (a) is being furnished, which includes the business license number and address of the business, a full description of how the substance is to be used, and the signature of the purchaser. The person selling, transferring,

or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser.

(3) A violation of this subdivision is a misdemeanor.

(d) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person in this state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the Department of Justice determines that either of the following exist·

(1) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance.

(2) The recipient has established a record of utilization of the substance for lawful purposes

(e) This section shall not apply to any of the following.

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian

(4) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec 301 et seq.) or regulations adopted thereunder.

(f) (1) Any person specified in subdivision (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in the county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment

(g) (1) It is unlawful for any manufacturer, wholesaler, retailer,

or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) It is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) A violation of this subdivision is a misdemeanor.

SEC. 2. Section 11100.1 of the Health and Safety Code is amended to read:

11100.1. (a) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of receipt of the substance. However, the Department of Justice may authorize the submission of reports within 72 hours after the actual physical receipt of a specified substance with respect to repeated transactions between a furnisher and a recipient involving the same substance, if the Department of Justice determines that the recipient has established a record of utilization of the substance for lawful purposes. This section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164.

(b) (1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment in the state prison, or by imprisonment in the county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that fine and imprisonment.

SEC. 3. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person in this state or who receives from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall obtain a permit for the conduct of that business from the Department of Justice. However, no permit shall be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(b) Applications for permits shall be filed in writing and signed by

the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(c) The department may grant permits on forms prescribed by it, which shall be effective for not more than one year from the date of issuance. Applications and permits shall be uniform throughout the state, on forms prescribed by the department.

(d) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department which shall not exceed the application processing costs of the department.

(e) 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.

(f) Selling, transferring, or otherwise furnishing, or receiving any substance specified in subdivision (a) of Section 11100 without a permit, is a misdemeanor or a felony.

(g) (1) No person under 18 years of age shall be eligible for a permit under this section.

(2) No business for which a permit has been issued shall employ a person under 18 years of age in the capacity of a manager, agent, or representative.

(h) (1) An applicant for an initial permit shall submit with the application two sets of 10-print fingerprint cards for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the applicant shall submit two sets of 10-print fingerprint cards for each individual not previously fingerprinted under this section.

SEC. 4. Section 11107 is added to the Health and Safety Code, to read:

11107. (a) Any manufacturer, wholesaler, retailer, or other person who sells to any person in this state any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, where the value of the goods sold in the transaction exceeds one hundred dollars ($100) and the payment for the goods is made in cash or by cashiers check shall do the following:

(1) Require proper purchaser identification as specified in paragraph (2) of subdivision (c) of Section 11100. The person selling, transferring, or otherwise furnishing the goods specified in this section shall enter the proper purchaser identification information onto the bill of sale or a legible copy of the bill of sale and shall also affix his or her signature as witness to the identification of the purchaser.

(2) Retain the bill of sale or the legible copy of the bill of sale containing the purchaser identification information for three years in a readily presentable manner, and present the bill of sale or the

legible copy of the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General.

(b) A violation of this section is a misdemeanor.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Laboratory glassware" includes, but is not limited to, condensers, flasks, separatory funnels, and beakers.

(2) "Apparatus" includes, but is not limited to, heating mantles, ring stands, and rheostats.

(3) "Chemical reagent" means a chemical that reacts chemically with one or more precursors, but does not become part of the finished product.

(4) "Chemical solvent" means a chemical that does not react chemically with a precursor or reagent and does not become part of the finished product. A "chemical solvent" helps other chemicals mix, cools chemical reactions, and cleans the finished product.

SEC. 5. Section 11107.1 is added to the Health and Safety Code, to read:

11107.1. (a) Any manufacturer, wholesaler, retailer, or other person who sells to any person in this state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric choloride, sodium metal, lead acetate, paladium black, red phosphorous, Freon 11, Freon 12, sodium acetate, or acetic anhydride shall do the following:

(1) Require proper purchaser identification as specified in paragraph (2) of subdivision (c) of Section 11100. The person selling, transferring, or otherwise furnishing the substances specified in this section shall enter the proper purchaser identification information onto the bill of sale or a legible copy of the bill of sale and shall also affix his or her signature as witness to the identification of the purchaser.

(2) Retain the bill of sale or the legible copy of the bill of sale containing the purchaser identification information for three years in a readily presentable manner, and present the bill of sale or the legible copy of the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General.

(b) A violation of this section is a misdemeanor.

SEC. 6. Section 11648 of the Health and Safety Code is repealed.

SEC. 7. 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 these 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 does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1134

An act to amend Sections 1797.3, 1797.7, 1797.172, 1797.175, 1797.185, 1797.210, and 1797.214 of, and to add Sections 1797.63, 1797.112, and 1797.192 to, the Health and Safety Code, relating to emergency services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. It is the intent of the Legislature in enacting this act, to clarify the meaning of the standards for testing and certification as required for statewide recognition of certification as referred to in paragraph (1) of subdivision (a) of Section 1797.185 of the Health and Safety Code.

SEC. 2. Section 1797.3 of the Health and Safety Code is amended to read:

1797.3. The provisions of this division do not preclude the adoption of additional training standards for EMT-II and EMT-P personnel by local EMS agencies, consistent with standards adopted pursuant to Sections 1797.171, 1797.172, and 1797.214.

SEC. 3. Section 1797.7 of the Health and Safety Code is amended to read:

1797.7. (a) The Legislature finds and declares that the ability of some prehospital emergency medical care personnel to move from the jurisdiction of one local EMS agency which issued certification and authorization to the jurisdiction of another local EMS agency which utilizes the same level of emergency medical care personnel will be unreasonably hindered if those personnel are required to be retested and recertified by each local EMS agency.

(b) It is the intent of the Legislature in enacting this section and Section 1797.185 to ensure that EMT-P personnel who have met state competency standards for their basic scope of practice, as defined in Chapter 4 (commencing with Section 100135) of Division 9 of Title 22 of the California Code of Regulations, and are currently certified

are recognized statewide without having to repeat testing or certification for that same basic scope of practice.

(c) It is the intent of the Legislature that local EMS agencies may require prehospital emergency medical care personnel who were certified in another jurisdiction to be oriented to the local EMS system and receive training and demonstrate competency in any optional skills for which they have not received accreditation. It is also the intent of the Legislature that no individual who possesses a valid California EMT-P certificate shall be prevented from beginning working within the standard statewide scope of practice of an EMT-P if he or she is accompanied by an EMT-P who is currently certified in California and is accredited by the local EMS agency. It is further the intent of the Legislature that the local EMS agency provide, or arrange for the provision of, training and accreditation testing in local EMS operational policies and procedures and any optional skills utilized in the local EMS system within 30 days of application for accreditation as an EMT-P by the local EMS agency.

(d) It is the intent of the Legislature that subdivisions (a), (b), and (c) not be construed to hinder the ability of local EMS agencies to maintain medical control within their EMS system in accordance with the requirements of this division.

SEC. 4. Section 1797.63 is added to the Health and Safety Code, to read:

1797.63. "Certifying examination" or "examination for certification" means an examination designated by the authority for a specific level of prehospital emergency medical care personnel that must be satisfactorily passed prior to certification or recertification at the specific level and may include any examination or examinations designated by the authority, including, but not limited to, any of the following options determined appropriate by the authority:

(a) An examination developed either by the authority or under the auspices of the authority or approved by the authority and administered by the authority or any entity designated by the authority to administer the examination.

(b) An examination developed and administered by the National Registry of Emergency Medical Technicians.

(c) An examination developed, administered, or approved by a certifying agency pursuant to standards adopted by the authority for the certification examination.

SEC. 5. Section 1797.112 is added to the Health and Safety Code, to read:

1797.112. The Emergency Medical Services Personnel Fund is hereby created in the State Treasury and is continuously appropriated to the authority to maintain the authority's testing and personnel registry program and to make reimbursements to entities for the performance of functions for which fees are collected pursuant to subdivision (a) of Section 1797.185. The authority may

transfer unused portions of the Emergency Medical Services Personnel Fund to the Surplus Money Investment Fund.

SEC. 6. Section 1797.172 of the Health and Safety Code is amended to read:

1797.172. (a) The authority shall develop, and after the approval of the commission pursuant to Section 1799.50, shall adopt, minimum standards for the training and scope of practice for EMT-P.

(b) The director shall, in consultation with a committee of local EMS medical directors named by the Emergency Medical Directors Association of California, approve any addition to a local optional scope of practice for EMT-P's proposed by the medical director of a local EMS agency prior to implementation of the addition in the local system.

SEC. 7. 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 shall designate the examinations 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).

SEC. 8. Section 1797.185 of the Health and Safety Code is amended to read:

1797.185. (a) The authority shall establish criteria for the statewide recognition of the certification of EMT-P personnel in the basic scope of practice of those personnel. The criteria shall include, but need not be limited to, the following:

(1) Standards for training, testing, certification, and revocation of certification as required for statewide recognition of certification. The standards may include designation by the authority of the specific examinations required for certification, including, at the option of the authority, an examination provided by the authority. At the option of the authority, the standards may include a requirement for registration of EMT-P personnel with the authority or other entity designated by the authority.

(2) Conditions for local accreditation of EMT-P personnel as are reasonable in order to maintain medical control and the integrity of the local EMS system, as determined by the authority and approved by the commission.

(3) Provisions for local accreditation in approved optional scope of practice, if any, as allowed by applicable state regulations and statutes.

(4) Provisions for the establishment and collection of fees by the appropriate agency, which may be the authority or an entity designated by the authority to collect fees for the authority, for testing, certification, accreditation, and registration in the standard scope of practice. All fees collected for the authority in a calendar month by any entity designated by the authority pursuant to this section to collect fees for the authority shall be transmitted to the

authority for deposit into the Emergency Medical Services Personnel Fund within 30 calendar days following the last day of the calendar month in which the fees were received by the designated entity.

(b) After January 1, 1991, all regulations for EMT-P personnel adopted by the authority shall, where relevant, include provisions for statewide recognition of certification for the scope of practice of those personnel.

(c) On or before July 1, 1991, the authority shall amend all relevant regulations for EMT-P personnel to include criteria developed pursuant to subdivision (c) of Section 1797.7 and subdivision (b) of Section 1797.172 to ensure statewide recognition of certification for the scope of practice of those personnel.

(d) All future regulations for EMT-P personnel adopted by the authority shall, where relevant, include provisions for statewide recognition of certification for the standard scope of practice of those personnel.

SEC. 9. Section 1797.192 is added to the Health and Safety Code, to read:

1797.192. On or before July 1, 1991, the authority shall adopt standards for a standard statewide scope of practice which shall be utilized for the training and certification testing of EMT-P personnel for certification as EMT-P's. Local EMS systems shall not be required to utilize the entire standard scope of practice. Testing of EMT-P personnel for local accreditation to practice shall only include local operational policies and procedures and drugs, devices, or treatment procedures being utilized within that local EMS system pursuant to Sections 1797.172 and 1797.221.

SEC. 10. Section 1797.210 of the Health and Safety Code is amended to read:

1797.210. (a) 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, passage of the certifying examination designated by the authority, completion of any other requirements for certification established by the authority, and a determination that the individual is not precluded from certification for any of the reasons listed in Section 1798.200. The certificate shall be proof of the individual's initial competence to perform at the designated level.

(b) The medical director of the local EMS agency shall, at the interval specified by the authority, recertify an EMT-I, EMT-II, or EMT-P upon proof of the individual's satisfactory passage of the examination for recertification designated by the authority, completion of any continuing education or other requirements for recertification established by the authority, and a determination that the individual is not precluded from recertification because of any of the reasons listed in Section 1798.200.

SEC. 11. Section 1797.214 of the Health and Safety Code is amended to read:

1797.214. A local EMS agency may require additional training or

qualifications, for the use of drugs, devices, or skills in either the standard scope of practice or a local EMS agency optional scope of practice, which are greater than those provided in this chapter as a condition precedent for practice within such EMS area in an advanced life support or limited advanced life support prehospital care system consistent with standards adopted pursuant to this division.

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.

Furthermore, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by this act, because the local agency has the authority to levy service charges, fees, or assessments to pay for the program or level of service mandated by this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 13. 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 Emergency Medical Services Authority to implement a statewide central paramedic registry by the fall of 1989, it is necessary that this act go into immediate effect.

CHAPTER 1135

An act to amend Sections 422 and 1203.07 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 422 of the Penal Code is amended to read:

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 of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

For the purposes of this section, "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. 2. Section 1203.07 of the Penal Code is amended to read:

1203.07. (a) Notwithstanding Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale 14.25 grams or more of a substance containing heroin.

(2) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell 14.25 grams or more of a substance containing heroin

(3) Any person convicted of violating Section 11351 of the Health and Safety Code by possessing heroin for sale or convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell heroin, and who has one or more prior convictions for violating Section 11351 or Section 11352 of the Health and Safety Code.

(4) Any person who is convicted of violating Section 11378.5 of the Health and Safety Code by possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or any of its analogs as specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 of the Health and Safety Code, or any of the precursors of phencyclidine as specified in paragraph (2) of subdivision (f) of Section 11055 of the Health and Safety Code.

(5) Any person who is convicted of violating Section 11379.5 of the Health and Safety Code by transporting for sale, importing for sale, or administering, or offering to transport for sale, import for sale, or administer, or by attempting to import for sale or transport for sale, phencyclidine or any of its analogs or precursors.

(6) Any person who is convicted of violating Section 11379.5 of the Health and Safety Code by selling or offering to sell phencyclidine or any of its analogs or precursors.

(7) Any person who is convicted of violating Section 11379.6 of the Health and Safety Code by manufacturing or offering to perform an act involving the manufacture of phencyclidine or any of its analogs or precursors.

As used in this section "manufacture" refers to the act of any person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical

extraction or independently by means of chemical synthesis.

(8) Any person who is convicted of violating Section 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture, compound, or sell any controlled substance specified in subdivision (d) of Section 11054 of the Health and Safety Code, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), or specified in subdivision (d), (e), or (f) of Section 11055 of the Health and Safety Code, except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f).

(9) Any person who is convicted of violating Section 11380.5 of the Health and Safety Code by the use of a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Section 11378.5, 11379.5, or 11379.6 of the Health and Safety Code insofar as the violation relates to phencyclidine or any of its analogs or precursors.

(10) Any person who is convicted of violating subdivision (b) of Section 11383 of the Health and Safety Code by possessing piperidine, pyrrolidine, or morpholine, and cyclohexanone, with intent to manufacture phencyclidine or any of its analogs.

(11) Any person convicted of violating Section 11351, 11351.5, or 11378 of the Health and Safety Code by possessing for sale cocaine base, cocaine, or methamphetamine, or convicted of violating Section 11352 or 11379 of the Health and Safety Code, by selling or offering to sell cocaine base, cocaine, or methamphetamine and who has one or more convictions for violating Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, or 11379.5 of the Health and Safety Code. For purposes of prior convictions under Sections 11352, 11379, and 11379.5 of the Health and Safety Code, this subdivision shall not apply to the transportation, offering to transport, or attempting to transport a controlled substance.

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

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

CHAPTER 1136

An act to add Article 4 (commencing with Section 40080) to Chapter 6 of Part 23 of the Education Code, and to amend Sections 1808.1 and 12523.5 of, and to add Sections 642 and 12804.6 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Article 4 (commencing with Section 40080) is added to Chapter 6 of Part 23 of the Education Code, to read:

Article 4. Specialized Vehicle Driver Training Courses

40080. (a) This article governs the minimum training required for drivers to obtain or renew an endorsement or certificate described in Section 12517, 12519, or 12804.6 of the Vehicle Code.

(b) As used in this article, "department" means the State Department of Education.

40081 (a) The department shall develop or approve courses for training school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle drivers that will provide them with the skills and knowledge necessary to prepare them for certification or endorsement pursuant to Sections 12517, 12519, and 12804.6 of the Vehicle Code. The department shall seek the advice and assistance of the Department of Motor Vehicles and the Department of the California Highway Patrol in developing or approving those courses.

(b) Except as provided in subdivision (d), the department shall train or approve the necessary instructional personnel to conduct the driver training courses. For all schoolbus and school pupil activity bus (SPAB) driver instructor training, the department shall provide for and approve the course outline and lesson plans used in the course. For transit bus and farm labor vehicle driver training, the department shall approve the course outline and lesson plans used in the course.

(c) Except as provided in subdivision (d), all courses of study and training activities required by this article shall be approved by the department and given by, or in the presence of, an instructor in possession of a valid school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate of the appropriate class.

(d) As an alternative, instructors who have received a certificate from the Transportation Safety Institute of the United States Department of Transportation indicating that they have completed the Mass Transit Instructor Orientation and Training (Train-the-Trainer) course may train transit busdrivers in order to

meet the requirements for endorsement pursuant to Section 12804.6 of the Vehicle Code.

40082. (a) An original applicant for a certificate to drive a schoolbus, as defined by Section 545 of the Vehicle Code, shall have successfully completed a minimum 40-hour course of instruction. The course shall include at least 20 hours of classroom instruction in, but not limited to, all units of the Instructor's Manual for California's Bus Driver's Training Course. All classroom instruction shall be given by, or in the presence of, a state-certified instructor of the appropriate class. The course shall also include at least 20 hours of applicant behind-the-wheel training in all sections of the Instructor's Behind-the-Wheel Guide for California's Bus Driver's Training Course. Applicant behind-the-wheel training shall include driving vehicles comparable to those vehicles that will be driven by the applicant to transport pupils. All behind-the-wheel training shall be given by a state-certified instructor of the appropriate class or the delegated behind-the-wheel trainer as designated pursuant to Section 40084.5.

(b) Except as provided in subdivision (c), a driver who is holding a driver certificate or endorsement described in Section 40083, and is seeking a schoolbus certificate of the appropriate class, shall have successfully completed a minimum of five hours of classroom instruction, including, but not limited to, schoolbus laws and regulations, defensive driving, student loading and unloading, and the exceptional child. All classroom instruction shall be given by, or in the presence of, a state-certified instructor of the appropriate class. The driver shall also complete at least three hours of behind-the-wheel training in defensive driving practices, lane control, railroad grade crossing procedures, and student loading and unloading.

(c) A driver who has received training by an instructor who has received a certificate as described in subdivision (d) of Section 40081 may not be certified to drive a schoolbus in the manner described in subdivision (b).

40083. An original applicant for an endorsement or certificate to drive any bus defined by Section 546 or 642 of the Vehicle Code shall have successfully completed a minimum 35-hour course of instruction. The course shall include at least 15 hours of classroom instruction, including, but not limited to, all units of the Instructor's Manual for California's Bus Driver's Training Course. All classroom instruction shall be given by, or in the presence of, a state-certified instructor of the appropriate class, except that an instructor who has received a certificate as described in subdivision (d) of Section 40081 may provide the training for an original applicant for an endorsement to drive a bus defined by Section 642 of the Vehicle Code. The course shall also include at least 20 hours of applicant behind-the-wheel training in all sections of the Instructor's Behind-the-Wheel Guide for California's Bus Driver's Training Course. Applicant behind-the-wheel training shall include driving

vehicles comparable to those vehicles that will be used to transport passengers. All behind-the-wheel training for a certificate to drive a bus defined by Section 546 of the Vehicle Code shall be given by a state-certified instructor of the appropriate class or the delegated behind-the-wheel trainer as designated pursuant to Section 40084.5. All behind-the-wheel training for an endorsement to drive a bus defined by Section 642 of the Vehicle Code shall be given by a state-certified instructor of the appropriate class or the delegated behind-the-wheel trainer as designated pursuant to Section 40084.5, or the delegated behind-the-wheel trainer as designated by the instructor certified pursuant to subdivision (d) of Section 40081.

40084. An original applicant for a certificate to drive a farm labor vehicle shall have successfully completed a minimum 20-hour course of instruction. The course shall include at least 10 hours of classroom instruction, including, but not limited to, all units of the Instructor's Manual for California's Bus Driver's Training Course. All classroom instruction shall be given by, or in the presence of, a state-certified instructor of the appropriate class. The course shall also include at least 10 hours of applicant behind-the-wheel training in all sections of the Instructor's Behind-the-Wheel Guide for California's Bus Driver's Training Course. Applicant behind-the-wheel training shall include driving vehicles comparable to those that will be driven by the applicant to transport farm passengers. All behind-the-wheel training shall be given by a state-certified instructor of the appropriate class or the delegated behind-the-wheel trainer as designated pursuant to Section 40084.5.

40084.5. (a) All behind-the-wheel training required to obtain certificates pursuant to Sections 12517 and 12519 of the Vehicle Code shall be performed by an instructor certified by the department or by a delegated behind-the-wheel trainer, as designated by a state-certified instructor.

(b) A delegated behind-the-wheel trainer is someone who is selected and trained to assist in the behind-the-wheel training of drivers. The minimum standards for selection are as follows:

(1) One year experience as a driver of the appropriate type and size vehicle immediately preceding the date of selection as a delegated behind-the-wheel trainer.

(2) Possession of the appropriate license, certificates, and endorsements needed to drive and train in a particular type and size vehicle.

(3) A high school diploma or general education development equivalent.

(4) A driving record with no chargeable accidents within the past three years immediately preceding the date of selection.

(5) Successful completion of all training in the latest edition of the Instructor's Behind-the-Wheel Training Guide for California's Bus Driver's Training Course.

(6) Possession of the same basic knowledge and skills as a state-certified instructor.

(7) Successful completion of a written assessment test on current laws, regulations, and policies given by a state-certified instructor of the appropriate class.

(8) Successful completion of a driving performance test on all phases of behind-the-wheel and vehicle inspection training. The test shall be given by a state-certified instructor of the appropriate class.

(c) The state-certified instructor shall train and verify the competence of each delegated behind-the-wheel trainer to be utilized in training. This verification shall be documented and placed in the delegated behind-the-wheel trainer's file and a copy sent to the department.

40085. Applicants seeking to renew a certificate to drive a schoolbus as defined in Section 545 of the Vehicle Code or a school pupil activity bus as defined in Section 546 of the Vehicle Code shall have successfully completed at least 10 hours of original or renewal classroom instruction, or behind-the-wheel or in-service training during each 12 months of certificate validity. In-service training credit may be given by a state-certified driver instructor of the appropriate class to an applicant for attending or participating in appropriate driver training workshops, driver safety meetings, driver safety conferences, and other activities directly related to passenger safety and driver training. During the last 12 months of the special driver certificate validity, the 10 hours required shall consist of classroom instruction covering, but not limited to, current laws and regulations, defensive driving, accident prevention, emergency procedures, and passenger loading and unloading. Failure to successfully complete the required training during any 12-month period of certificate validity is cause for the Department of Motor Vehicles to cancel the busdriver certificate. All training required by Section 40089 may be accepted in lieu of the requirements of this section.

40085.5. Applicants seeking to renew an endorsement to drive a transit bus as defined in Section 642 of the Vehicle Code shall have successfully completed at least eight hours of original or renewal classroom instruction, or behind-the-wheel or in-service training during each 12 months of certificate validity. In-service training credit may be given by a state-certified driver instructor of the appropriate class, or an instructor certified pursuant to subdivision (d) of Section 40081, to an applicant for attending or participating in appropriate driver training workshops, driver safety meetings, driver safety conferences, and other activities directly related to passenger safety and driver training. During the last 12 months of the endorsement validity, the eight hours required shall consist of classroom instruction covering, but not limited to, current laws and regulations, defensive driving, accident prevention, emergency procedures, and passenger loading and unloading. Failure to successfully complete the required training during any 12-month period of certificate validity is cause for the Department of Motor Vehicles to cancel the busdriver endorsement. All training required

by Section 40089 may be accepted in lieu of the requirements of this section.

40086. Applicants seeking to renew a certificate to drive a farm labor vehicle shall have successfully completed two hours of classroom instruction for each 12 months of certificate validity covering, but not limited to, current laws and regulations, accident prevention, and defensive driving. Failure to successfully complete the required training during any 12-month period of certificate validity is cause for the Department of Motor Vehicles to cancel the farm labor vehicle driver license or certificate. All training required in Section 40089 may be accepted in lieu of the requirements of this section.

40087. (a) Except as provided in subdivision (b), driver training required by this article shall be properly documented on the State Department of Education Training Certificate T-01, and signed by a state-certified school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor of the appropriate class, and by the driver or applicant. The signatures certify that the instruction was given to, and received by, the applicant or driver, and that the applicant or driver displayed a level of competency necessary to drive the vehicle in a safe and competent manner. The applicant or driver shall present the completed State Department of Education Training Certificate T-01, to the examining state agency when applying for an endorsement or certificate; or, for renewal of an endorsement or certificate.

(b) Driver training provided by an instructor certified pursuant to subdivision (d) of Section 40081 shall be documented on a form developed by the Department of Motor Vehicles, with the consultation of the department. The form shall be signed by the instructor and by the applicant or driver. The signatures certify that the instruction was given to, and received by, the applicant or driver, and that the applicant or driver displayed a level of competency necessary to drive the vehicle in a safe and competent manner. The applicant or driver shall present the completed form to the Department of Motor Vehicles when applying for an endorsement or for renewal of an endorsement.

40088. (a) An applicant for a school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate shall successfully complete the appropriate instructor course given or approved by the department.

(b) An applicant for the course shall possess:

(1) A valid driver's license and endorsement valid for driving the vehicles for which the driver instructor rating is sought.

(2) A certificate or endorsement valid for driving the vehicles for which the driver instructor rating is sought.

(3) Five years of experience as a driver in the appropriate vehicle category, or two years experience of that driving experience and three years equivalent experience driving vehicles that require a class A or B driver's license.

(4) A high school diploma or General Education Development (GED) equivalent.

(5) A driving record with no chargeable accidents within the past three years preceding the date of application for the instructor certificate.

The department may waive any or all of the requirements of this subdivision as it determines is necessary to ensure that there are an adequate number of state-certified instructors in the state.

(c) (1) A state-certified schoolbus driver instructor of the appropriate class may instruct all applicants for a schoolbus, school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver's endorsement or certificate.

(2) A state-certified school pupil activity bus (SPAB) driver instructor of the appropriate class may instruct all applicants for a school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver's endorsement or certificate, but not a schoolbus.

(3) A state-certified transit bus instructor of the appropriate class may instruct all applicants for a transit bus or farm labor driver's endorsement or certificate, but not a school pupil activity bus (SPAB) or a schoolbus.

(4) A state-certified farm labor vehicle driver instructor may instruct applicants only for a certificate to drive a farm labor vehicle.

(d) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate shall be valid until suspended, revoked, or canceled if it is accompanied by a valid driver's license and a special driver's certificate or valid driver's license and endorsement of the appropriate class or is limited to classroom or in-service training only.

(e) The department may suspend or revoke a school pupil activity bus (SPAB), transit bus, schoolbus or farm labor driver instructor certificate for any of the following causes:

(1) The certificate holder falsified a State Department of Education Training Certificate.

(2) The certificate holder's driving privilege has been suspended or revoked.

(3) The certificate holder has committed an act listed in Section 1208 of Title 13 of the California Code of Regulations.

(f) The department may cancel the driver instructor certificate for any of the following causes:

(1) The certificate holder has voluntarily requested cancellation.

(2) The certificate holder has his or her driving privilege suspended or revoked.

(3) The certificate holder has failed to meet the provisions required for retention of the driver instructor certificate. This includes failure to meet the instructor training requirements prescribed by Section 40089.

(4) The certificate holder does not possess a valid driver's license, endorsement, or special driver's certificate of the appropriate class

(g) The department of Motor Vehicles may disallow the driver

training documentation provided pursuant to Section 40087 signed by any driver instructor certified pursuant to subdivision (d) of Section 40081 if the department finds that the instructor's certificate would have been suspended, revoked, or canceled for any of the reasons designated in subdivisions (e) and (f).

40089. (a) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor with no instructional limitations shall conduct at least 20 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel and 10 hours of classroom training, which need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to either classroom or behind-the-wheel training only shall conduct at least 10 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel or classroom training depending on the limitation. The training need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to in-service training only shall conduct at least 10 hours of in-service training each 12 months. All school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle driver instructor training conducted by department staff may be accepted in lieu of the requirements of this subdivision.

(b) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor may be limited to classroom instruction, behind-the-wheel training or in-service training only, as determined by the department.

(c) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor shall be limited to behind-the-wheel instruction in vehicles that the instructor is qualified to drive.

(d) All school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

40090. The department may assess fees to any instructor applicant who will be training drivers of any vehicle as defined in Section 642 of the Vehicle Code. The fee shall not be more than necessary to offset the department's reasonable costs.

40090.5. Employers shall take all action necessary to make available to every transit busdriver required to be trained pursuant to Section 40083 or 40085.5 the opportunity to be trained without the loss of wages or benefits.

SEC. 2. Section 642 is added to the Vehicle Code, to read:

642. A "transit bus" is any bus owned or operated by a publicly owned or operated transit system, or operated under contract with a publicly owned or operated transit system, and used to provide to the general public, regularly scheduled transportation for which a fare is charged. A general public paratransit vehicle is not a transit bus.

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 Section 12804.6, 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. 4. Section 12804.6 is added to the Vehicle Code, to read:

12804.6. (a) No person shall operate a transit bus transporting passengers unless that person has received from the department a certificate to operate a transit bus or is certified to drive a schoolbus or school pupil activity bus pursuant to Section 12517.

(b) All transit busdrivers shall comply with standards established in Section 40083 of the Education Code by July 1, 1994. The Department of Motor Vehicles shall establish an implementation program for transit busdrivers to meet these requirements.

(c) Implementation procedures for the issuance of transit busdrivers' certificates may be established by the Department of Motor Vehicles as necessary to implement an orderly transit busdriver training program.

(d) The department shall issue a transit busdriver certificate to any person who provides either of the following:

(1) Proof that the person is employed as a driver by a transit district and proof that he or she has complied with Section 40085.5 of the Education Code.

(2) Proof that the person has complied with Section 40083 of the Education Code.

(e) The department may charge a fee of ten dollars ($10) to an applicant for a certificate under this section.

(f) The department shall issue to the employer a copy of the certificate of each person issued pursuant to this section. This certificate shall be kept with, and shall become part of, the person's employee records for the purpose of inspection pursuant to Sections 1808.1 and 34501. It shall be unlawful for the employer to permit a person to drive a transit bus who does not have a valid certificate in his or her employee records.

SEC. 5. Section 12523.5 of the Vehicle Code is amended to read:

12523.5. (a) On or after July 1, 1989, no person shall operate a general public paratransit vehicle unless he or she has in his or her possession a valid driver's license of the appropriate class and either (1) a certificate issued by the department to permit the operation of a general public paratransit vehicle, or (2) a certificate issued by the department to drive a schoolbus or school pupil activity bus pursuant to Section 12517.

(b) Applicants for a certificate to drive a general public paratransit vehicle shall pay a fee of twelve dollars ($12) to the Department of the California Highway Patrol and shall present evidence that they have successfully completed a driver training course consisting of a minimum of 40 hours of instruction within the previous two years. The instruction shall have covered applicable laws and regulations and defensive driving practices, a minimum of eight hours of certified defensive driving, and a minimum of 20 hours of behind-the-wheel training in a vehicle to be used as a general public paratransit vehicle. Applicants seeking to renew a certificate valid for driving a general public paratransit vehicle shall present evidence that they have received two hours of refresher training during each 12 months of driver certificate validity.

(c) The driver certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol. The Department of Motor Vehicles may deny, suspend, or revoke a certificate valid for driving a general public paratransit vehicle for the causes specified in regulations adopted by the Department of the California Highway Patrol for schoolbus drivers.

(d) An operator of a general public paratransit vehicle shall do all of the following:

(1) Use seatbelts.

(2) Refrain from smoking.

(3) Report any accident reportable under Section 16000 to the Department of the California Highway Patrol.

SEC. 6. This act shall not alter the relationships between drivers and transit operators in relation to the costs of busdriver training, including, but not limited to, a driver's receipt of pay for time spent during driver training.

SEC. 7. 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 is required by this act for other costs pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 8. Notwithstanding any other provision of law, the Controller shall deduct, from any state funds allocated to any transit district for transportation purposes, the amount the district was reimbursed by the state for costs resulting from state mandates resulting from the act enacting this section. The deducted state funds shall revert to the unappropriated balance of the fund from which they were appropriated.

SEC. 9. This act shall become operative on July 1, 1990.

CHAPTER 1137

An act to amend Section 2025 of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to the provisions of subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of

court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to

make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office of the organization in California.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the

deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsucessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice or, in unlawful detainer actions, not later than five days before trial, whichever is sooner. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or

an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents

enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction

under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall

proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing , and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by

any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good

cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The

party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the original transcript of the testimony is available for reading and signing, unless the deponent and all these parties agree on the record to waive the reading and signing of the transcript of the testimony. For 30 days following this notice the deponent, either in person or by a signed letter to the deposition officer, may change the form or the substance of the answer to any question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it. For good cause shown the court may shorten this time.

The deposition officer shall indicate on the original any action taken by the deponent, or the failure of the deponent to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly disapproves the accuracy of the transcript by refusing to sign it, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition

officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment

of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who received, notice of the deposition may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical

or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 2. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to the provisions of subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall

give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office of the organization in California.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023

against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice or, in unlawful detainer actions, not later than five days before trial, whichever is sooner. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well

as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part,

the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion

of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The

original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o)

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request

of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record to waive the reading, correcting, and signing of the transcript of the testimony. For 30 days following this notice, the deponent may change the form or the substance of the answer to any question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same 30-day period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript , if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)" and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be

filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who received, notice of the deposition may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if

the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code

SEC. 3. Section 2 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and AB 157. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990; (2) each bill amends Section 2025 of the Code of Civil Procedure, and (3) this bill is enacted after AB 157, in which case Section 1 of this bill shall not become operative.