STATUTES OF CALIFORNIA

1989–90

REGULAR SESSION

1990 CHAPTERS

CHAPTER 1

An act to add Sections 14500.5, 14509, 14509.1, and 14510 to the Welfare and Institutions Code, relating to the Office of Family Planning, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature Filed with Secretary of State February 1, 1990.]

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

SECTION 1. Section 14500.5 is added to the Welfare and Institutions Code, to read:

14500.5. It is the intent of the Legislature that family planning includes, but is not limited to, an effective means to improve reproductive health by disease prevention and treatment, to reduce the incidence of unintended pregnancies, and to reduce the demand for abortions. It is the intent of the Legislature that no family planning shall be expended other than for the services enumerated in this chapter. It is also the intent of the Legislature that no funds received by a contractor pursuant to this chapter be used for abortions or services ancillary to abortions. For purposes of this chapter, the following definitions shall apply:

(a) "Family planning" means the process of establishing objectives for the number and spacing of children, and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods, natural family planning, abstinence methods, and the management of infertility. Family planning services include preconceptional counseling, maternal and fetal health counseling, and general reproductive health care, including diagnosis and treatment of infections and conditions, including cancer, which threaten reproductive capability, and other services as described in Section 14503, except for abortions and services ancillary to abortions as prohibited in Section 14509. Family planning does not include abortion, pregnancy testing solely for the purposes of referral for abortion or services ancillary to abortions, or pregnancy care which is not incident to the diagnosis of a pregnancy, except as otherwise provided for in this chapter.

(b) "Abortion as a method of family planning" means the deliberate choice of abortion over other methods to limit the number, gender, and spacing of children, including, but not limited to, contraception, abstinence, and natural family planning methods.

(c) "Department" means the State Department of Health Services.

(d) "Director" means the State Director of Health Services.

(e) "Contractor" means an agency, institution, or organization

approved by the department to provide family planning services pursuant to this chapter.

SEC. 2. Section 14509 is added to the Welfare and Institutions Code, to read:

14509. (a) The department shall enter into contracts with contractors to provide family planning services pursuant to this chapter.

(b) No funds received pursuant to contracts with the department pursuant to this chapter shall be used to perform abortions.

(c) No funds received pursuant to contracts with the department pursuant to this chapter shall be used to fund services ancillary to abortions, including, but not limited to, postabortion examinations. Nothing in this chapter shall be construed to limit the provision of pregnancy testing and counseling as required by the Office of Family Planning on the effective date of this section.

(d) Any person who contracts with the department pursuant to this chapter shall agree that during the term of the contract it will not be a group, clinic, or organization which, with funds provided pursuant to this chapter, advertises, advocates, or promotes abortion as a method of family planning, or which receives any fee or other consideration as payment for referrals for abortion services. Any person who contracts with the department pursuant to this chapter shall agree to the termination of the contract and to return all unexpended funds to the department which have been received from the department pursuant to that contract if the department finds that the contractor has violated this section.

SEC. 3. Section 14509.1 is added to the Welfare and Institutions Code, to read:

14509.1. (a) A contractor shall maintain records and accounts, including property, personnel, and financial records, in a form, format, and content that ensures a proper accounting for all family planning funds received pursuant to this chapter. These records shall be made available for examination during normal business hours, and shall be retained at a location determined by the director for four years after the expiration of the contract, with the exception of patient medical records which shall be retained for at least seven years. Records for nonexpendable personal property shall be retained for three years after final disposition.

(b) A contractor shall arrange for an independent audit of the family planning program. The audit shall be done in accordance with department directives and with generally accepted accounting principles for nonprofit corporations and governmental entities.

SEC. 4. Section 14510 is added to the Welfare and Institutions Code, to read:

14510. (a) The department shall include provisions in contracts with all contractors that explicitly describe the requirements and restrictions of this chapter.

(b) The department shall establish a copayment system for services provided pursuant to this chapter. No person whose

documented family income is at or below 100 percent of the federal poverty level shall be subject to copayments.

(c) The department shall require a contractor to obtain the signature of clients receiving services pursuant to this chapter that, under penalty of perjury, acknowledges that the client meets and complies with the income eligibility requirements of this chapter.

SEC. 5. Contracts awarded pursuant to Chapter 8.5 (commencing with Section 14500) of Part 3 of Division 9 of the Welfare and Institution Code shall be exempt from any requirements of review by the Department of General Services for fiscal year 1989–90.

SEC. 6. Any regulations required to be adopted by the State Department of Health Services for the purposes of implementing of Chapter 8.5 (commencing with Section 14500) of Part 3 of Division 9 of the Welfare and Institutions Code may be adopted as emergency regulations, and are hereby deemed necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

SEC. 7. The sum of twenty million dollars ($20,000,000) is hereby appropriated from the General Fund in augmentation of, and for the purposes of, the listed items of Section 2.00 of the Budget Act of 1989, as follows:

(a) To Item 4260-001-001, eight hundred forty-five thousand dollars ($845,000) for operations of the Office of Family Planning.

(b) To Item 4260-111-001, nineteen million one hundred fifty-five thousand dollars ($19,155,000) for operations of the Office of Family Planning.

SEC. 8. It is the intent of the Legislature that the funds appropriated by this act may be used by the State Department of Health Services to expand services, including, but not limited to, reopening of project sites, retroactive billing for eligible clients, and expansion of family planning services and outreach activities within existing project sites for the purposes of implementing Chapter 8.5 (commencing with Section 14500) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 9. Nothing in this act shall be construed to alter or amend Section 14503 of the Welfare and Institutions Code.

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:

This act amends and supplements the Budget Act of 1989 and adds substantive provisions to the law governing family planning. The 1989–90 fiscal year is already in progress, and to ensure that the programs funded by this act may continue to serve the public without interruption, it is necessary that this act take effect immediately.

CHAPTER 2

An act to amend Section 10213 of the Elections Code, and to amend Section 36503 of, and to add and repeal Section 36504.5 of, the Government Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 6, 1990. Filed with Secretary of State February 6, 1990.]

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

SECTION 1. Section 10213 of the Elections Code is amended to read:

10213. The order of precedence of offices on the ballot shall be as listed below for those offices and measures which apply to the election for which this ballot is provided. Beginning in the column to the left:

(a) Under the heading, PRESIDENT AND VICE PRESIDENT:

Nominees of the qualified political parties and independent nominees for President and Vice President.

(b) Under the heading, PRESIDENT OF THE UNITED STATES:

(1) Names of the presidential candidates to whom the delegates are pledged.

(2) Names of chairmen of unpledged delegations.

(c) Under the heading, STATE:

(1) Governor.

(2) Lieutenant Governor.

(3) Secretary of State.

(4) Controller.

(5) Treasurer.

(6) Attorney General.

(7) Insurance Commissioner.

(8) Member, State Board of Equalization.

(d) Under the heading, UNITED STATES SENATOR:

Candidates or nominees to the United States Senate.

(e) Under the heading, UNITED STATES REPRESENTATIVE:

Candidates or nominees to the House of Representatives of the United States.

(f) Under the heading, STATE SENATOR:
Candidates or nominees to the State Senate.
(g) Under the heading, MEMBER OF THE STATE ASSEMBLY:
Candidates or nominees to the Assembly.
(h) Under the heading, COUNTY COMMITTEE:
Members of County Central Committee.
(i) Under the heading, JUDICIAL:
(1) Chief Justice of California.
(2) Associate Justice of the Supreme Court.
(3) Presiding Justice, Court of Appeal.
(4) Associate Justice, Court of Appeal.
(5) Judge of the Superior Court.
(6) Judge of the Municipal Court.
(7) Judge of the Justice Court.
(8) Marshal.
(9) Constable.
(j) Under the heading, SCHOOL:
(1) State Superintendent of Public Instruction.
(2) County Superintendent of Schools.
(3) County Board of Education Members.
(4) College District Governing Board Members.
(5) Unified District Governing Board Members.
(6) High School District Governing Board Members.
(7) Elementary District Governing Board Members.
(k) Under the heading, COUNTY:
(1) County Supervisor.
(2) Other offices in alphabetical order by the title of the office.
(*l*) Under the heading, CITY:
(1) Mayor.
(2) Member, City Council.
(3) Other offices in alphabetical order by the title of the office.
(m) Under the heading, DISTRICT:
Directors or trustees for each district in alphabetical order according to the name of the district.

(n) Under the heading, MEASURES SUBMITTED TO VOTE OF VOTERS and the appropriate heading from subdivisions (a) through (m), above, ballot measures in the order, state through district shown above, and within each jurisdiction, in the order prescribed by the official certifying them for the ballot.

In order to allow for the most efficient use of space on the ballot in counties which use a voting system, as defined in Section 15009, the county clerk may vary the order of subdivisions (j), (k), (*l*), and (m) as well as the order of offices within these subdivisions; provided, however, that the office of State Superintendent of Public Instruction shall always precede any school, county, or city office.

SEC. 2. Section 36503 of the Government Code is amended to read:

36503. Unless otherwise required by Section 57379 and except as authorized by Section 36503.5, 36504, or 36504.5 a general municipal

election shall be held on the second Tuesday in April in each even-numbered year. Except as otherwise provided in this title, all elective city offices shall be filled by the city electorate at a general municipal election. City officers holding elective city office shall hold office for their prescribed terms from the Tuesday succeeding their election and until their successors are elected and qualified.

SEC. 3. Section 36504.5 is added to the Government Code, to read:

36504.5. (a) A city containing a population of 50,000 or less situated in a county of the first class, as set forth in Section 28022, may hold its general municipal election in 1990 on the first or third Tuesday in April of 1990.

(b) This section shall remain in effect only until January 1, 1991, and as of that date is repealed.

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 that the changes in the law proposed by this act be enacted in time for the applicable municipal and statewide elections in 1990, it is necessary that this act take immediate effect.

CHAPTER 3

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 February 8, 1990. Filed with Secretary of State February 8, 1990.]

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 3 of Chapter 970 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, quarter horse, Appaloosa, or Arabian 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, 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 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. 2. Section 19596.5 of the Business and Professions Code, as added by Section 4 of Chapter 970 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, quarter horse, Appaloosa, or Arabian 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.

(j) This section shall become operative on January 1, 1992.

SEC. 3. Section 19596.6 of the Business and Professions Code, as amended by Section 5 of Chapter 970 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 not 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, quarter horse, Appaloosa, or Arabian 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. 4. Section 19596.6 of the Business and Professions Code, as added by Section 6 of Chapter 970 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 not 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, quarter horse, Appaloosa, or Arabian 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. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for horseracing to remain viable through greater participation in the satellite system, commencing in 1990, it is necessary that this act take effect immediately.

CHAPTER 4

An act to amend Section 24100.3 of the Health and Safety Code, relating to aquatic safety, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 13, 1990. Filed with Secretary of State February 14, 1990]

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

SECTION 1. Section 24100.3 of the Health and Safety Code is amended to read:

24100.3. Persons providing aquatic instruction, including, but not limited to, swimming instruction, water safety instruction, water contact activities, and competitive aquatic sports, at a public swimming pool shall possess an American Red Cross Emergency Water Safety Course certificate, or have equivalent qualifications, as determined by the state department. In addition, these persons shall be certified in standard first aid and cardiopulmonary resuscitation (CPR). All of these persons shall meet these qualifications by January 1, 1991. Persons who only disseminate written materials relating to water safety, are not persons providing aquatic instruction within the meaning of this section.

The requirements of this section shall be waived under either of the following circumstances: (a) when one or more aquatic instructors possessing the American Red Cross Emergency Water Safety Course Certificate or its equivalent are in attendance continuously during periods of aquatic instruction, or (b) when one or more lifeguards meeting the requirements of Section 24100.1 are in attendance continuously during periods of aquatic instruction.

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 a sufficient supply of adequately trained personnel to conduct needed aquatic instruction, it is necessary that this act take effect immediately.

CHAPTER 5

An act to add Chapter 16 (commencing with Section 7420) to Title 7 of Part 3 of the Penal Code, relating to financing a prison and community-based correctional facilities construction program by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 21, 1990 Filed with Secretary of State February 22, 1990]

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

SECTION 1. Chapter 16 (commencing with Section 7420) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 16. NEW PRISON CONSTRUCTION BOND ACT OF 1990

7420. This chapter shall be known and may be cited as the New Prison Construction Bond Act of 1990.

7421. The State General Obligation Bond Law is adopted for the purpose of the issuance, sale and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this chapter, and the provisions of that law are included in this chapter as though set out in full in this chapter except that, notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of the bonds shall not exceed 20 years from the date of each respective series. The maturity of each respective series shall be calculated from the date of that series.

7422. There is in the State Treasury the 1990 Prison Construction Fund, which fund is hereby created. The proceeds of the sale of bonds authorized by this chapter shall be deposited in the fund. Upon request of the Department of Corrections and upon approval of the Director of Finance, appropriations or augmentations to appropriations made from the 1984 Prison Construction Fund established by Section 7202, the 1986 Prison Construction Fund established by Section 7302, or the 1988 Prison Construction Fund established by Section 7402, or any combination thereof, may be funded from the 1990 Prison Construction Fund. If the moneys are so funded, "fund" means the 1984 Prison Construction Fund, the 1986 Prison Construction Fund, or the 1988 Prison Construction Fund, or any combination thereof, as is appropriate. At least 30 days prior to requesting funding for appropriations or augmentations to appropriations for other bond acts as authorized by this section, the Department of Corrections shall notify the chairpersons of the fiscal committees in each house of the Legislature, and the chairperson and the vice chairperson of the Joint Legislative Budget Committee.

7423. The 1990 Prison Construction Committee is hereby created. The committee shall consist of the Controller, the Treasurer, and the Director of Finance, or their designated representatives. A majority may act for the committee. The Treasurer shall chair the committee. That committee shall be the "committee," as that term is used in the State General Obligation Bond Law.

When funds are appropriated to the Department of Corrections, the Department of Corrections is the "board" for the purpose of the State General Obligation Bond Law and this chapter. When funds are appropriated to the Department of Youth Authority, the Department of Youth Authority is the "board" for the purpose of the State General Obligation Bond Law and this chapter.

7424. The committee is hereby authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate principal amount of four hundred fifty million dollars ($450,000,000), exclusive of refunding bonds, in the manner provided in this chapter. That debt or debts, liability or liabilities, shall be created for the purpose of providing the fund to be used for the object and work specified in Section 7426.

7425. The committee may determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter, and if so, the amount of bonds then to be issued and sold. The committee may authorize the Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the Treasurer.

7426. The moneys in the fund shall be used for the acquisition, construction, renovation, remodeling, and deferred maintenance of state youth and adult correctional facilities.

7426.5. Moneys deposited in the fund may also be used for the refinancing of interim debt incurred for any of the purposes specified in Section 7426.

7427. (a) All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both the principal thereof and interest thereon.

(b) There shall be collected annually in the same manner and at the same time as other state revenue is collected that sum, in addition to the ordinary revenues of the state, that is required to pay the principal of and interest on those bonds, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of that revenue to do and perform each and every act which shall be necessary to collect that additional sum.

(c) All money deposited in the fund that has been derived from premiums or accrued interest on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

(d) All money deposited in the fund pursuant to any provision of law requiring repayments to the state that is financed by the proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund that money shall be applied as a reimbursement to the General Fund on account of the principal of and interest on the bonds which have been paid from the General Fund.

7428. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter such an amount as will equal the following:

(a) That sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to this chapter.

(b) That sum as is necessary to carry out the provisions of Section 7429, which sum is appropriated without regard to fiscal years.

7429. For the purpose of carrying out this chapter, the Director of Finance may by executive order authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the committee in accordance with this chapter. Any money made available under this section to the board shall be returned by the board to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this chapter. Those withdrawals from the General Fund shall be returned to the General Fund with interest at the rate which would otherwise have been earned by those sums in the Pooled Money Investment Account.

7430. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out the provisions of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

7431. Any bonds issued and sold pursuant to this chapter may be refunded by the issuance of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of the Government Code. Approval by the electors of the state for the issuance of bonds shall include the approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

7432. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the

purpose provided in Section 7426 but shall not be available for transfer to the General Fund to pay the principal of and interest on bonds. The money in the fund may be expended only as herein provided.

Notwithstanding any provision of this chapter or the State General Obligation Bond Law set forth in Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, if the Treasurer sells bonds pursuant to this chapter the interest on which is intended to be excluded from gross income from federal tax purposes, the Treasurer is authorized to maintain separate accounts for the investment of bond proceeds and the investment earnings on the proceeds, and the Treasurer is authorized to use or direct the use of the proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

7433. Money in the fund may only be expended pursuant to appropriations by the Legislature. The Department of Corrections and the Department of the Youth Authority, annually on or before January 10, shall submit their respective five-year facility master plans to the Legislature. Each plan shall include a program of proposed expenditures from the 1990 Prison Construction Fund.

7434. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Section 1 of this act shall take effect upon the adoption by the voters of the New Prison Construction Bond Act of 1990.

SEC. 3. (a) Notwithstanding Sections 3525 and 10218 of the Elections Code, Section 1 of this act shall be submitted to the voters at the June 5, 1990, direct primary election.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the June 5, 1990, statewide ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for the bond act contained in Section 1 of this act as expeditiously as possible, but not later than two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act contained in Section 1 of this act as expeditiously as possible, but not later than five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 1 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

SEC. 4. Notwithstanding any other provision of law, all ballots of the June 5, 1990, direct primary election shall have printed thereon and in a square thereof, the words: "New Prison Construction Bond Act of 1990," and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of four hundred fifty million dollars ($450,000,000) to provide funds to relieve overcrowding in the state's prisons and the Youth Authority facilities through new construction." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

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 New Prison Construction Bond Act of 1990 contained in Section 1 of this act be included on the June 5, 1990, statewide ballot, it is necessary that this act take effect immediately.

CHAPTER 6

An act to amend Section 81831 of, to repeal Section 81838 of, and to add Chapter 14.4 (commencing with Section 67345) to Part 40 of, the Education Code, relating to financing of higher education facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 22, 1990. Filed with Secretary of State February 22, 1990.]

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

SECTION 1. Chapter 14.4 (commencing with Section 67345) is added to Part 40 of the Education Code, to read:

CHAPTER 14.4. HIGHER EDUCATION FACILITIES BOND ACT OF JUNE 1990

Article 1. General Provisions

67345. This chapter shall be known and may be cited as the Higher Education Facilities Bond Act of June 1990.

67345.1. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the California State University, the California Community Colleges, and the California Maritime Academy. Each of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, several billion dollars.

(d) The purpose of the Higher Education Facilities Bond Act of June 1990 is to assist in meeting the capital outlay financing needs of California's public higher education system.

67345.2. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Higher Education Facilities Finance Committee created pursuant to Section 67353.

(b) "Fund" means the June 1990 Higher Education Capital Outlay Bond Fund created pursuant to Section 67346.

Article 2. Higher Education Facilities Bond Act Program

67346. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the June 1990 Higher Education Capital Outlay Bond Fund, which is hereby created.

67346.5. (a) The committee shall be and is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of funding aid to the University of California, the California State University, the California Community Colleges, and the Hastings College of the Law, and the California Maritime Academy for the construction, including the construction of buildings and the acquisition of related fixtures, the construction or improvement of off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990, renovation, and

reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, and for the equipping of new, renovated, or reconstructed facilities, and to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings. The addition of the Hastings College of the Law to this section is not intended to mark a change from the funding authorizations made by Section 67354, as contained in the Higher Education Facilities Bond Act of 1986, or Section 67334, as contained in the Higher Education Facilities Bond Act of 1988, but is intended to more clearly state what was intended by the Legislature in those sections as well.

(b) Moneys made available under Section 67347.5 or 67347.7 may be used to provide short-term loans to community colleges for the purchase of instructional equipment. Those loans shall be repaid from the first moneys available in the Capital Outlay Fund for Public Higher Education beginning in the 1990–91 fiscal year, or from proceeds of the bonds.

Article 3. Fiscal Provisions

67347. (a) Bonds in the total amount of four hundred fifty million dollars ($450,000,000), not including the amount of any refunding bonds issued in accordance with Section 67347.8, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the committee at any different times necessary to service expenditures required by the apportionments.

67347.1. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter. For purposes of the State General Obligation Bond Law, except as specified in Section 67347.7, each state agency administering an appropriation of the bond fund is designated the "board" for the projects funded by those appropriations.

67347.2. The committee shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments that are expressly authorized by the Legislature in

the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 67346.5 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

67347.3. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

67347.4. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 67347.5, appropriated without regard to fiscal years.

67347.5. For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

67347.6. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

67347.7. The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

For the purposes of requesting Pooled Money Investment Board loans in accordance with this section, "board" means: the President

of the University of California, the Dean of the Hastings College of the Law, the Chancellor of the California State University, the President of the California Maritime Academy, and the Chancellor of the California Community Colleges, each acting independently on his or her own behalf.

67347.8 Any bonds issued and sold pursuant to this chapter may be refunded by the issuance and sale or exchange of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. The approval by the electors of this state of the issuance and sale of bonds under this chapter includes approval of the issuance and sale or exchange of any bonds issued to refund either those bonds or any previously issued refunding bonds.

67347.9. Notwithstanding any provision of this chapter or the State General Obligation Bond Law set forth in Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, if the Treasurer sells bonds pursuant to this chapter the interest on which is intended to be excluded from gross income for federal tax purposes, the Treasurer shall be authorized to maintain separate accounts for the investment of bond proceeds and the investment earnings on these proceeds, and the Treasurer shall be authorized to use or direct the use of these proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

SEC. 2. Section 81831 of the Education Code is amended to read:

81831. The chancellor shall review and evaluate each proposed project with reference to the elements of the capital construction program specified in Section 81821. The review shall include the following elements:

(a) An architectural analysis to determine costs of the various phases of the project, with particular attention to be directed to the type of construction, unit costs, and the efficiency of particular buildings and facilities in terms of effective utilization of area.

(b) Determining the amount of federal funds available for the project, and taking appropriate measures to ensure that the project will qualify for the maximum amounts of federal funds practicable under the circumstances.

"Federal funds" means any construction and equipment moneys provided by the federal government to a community college district for the project or any part of the project, which are or will be available to the district for the project.

(c) Determining the total cost of the project, reducing the total cost by the amount of federal funds available therefor and determining the remainder thereof to be borne by the state.

(d) Determining the total of funds required for the first phase of the project to be provided by the state, and the total state

appropriation required to be provided for the project or one or more of its phases.

SEC. 3. Section 81838 of the Education Code is repealed.

SEC. 4. Section 1 of this act shall take effect upon the adoption by the voters of the Higher Education Facilities Bond Act of June 1990, set forth in Section 1 of this act.

SEC. 5. (a) Notwithstanding Sections 3525 and 10218 of the Elections Code, Section 1 of this act shall be submitted to the voters at the June 5, 1990, direct primary election.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the June 5, 1990, statewide ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for the bond act contained in Section 1 of this act as expeditiously as possible, but not later than two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act contained in Section 1 of this act as expeditiously as possible, but not later than five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 1 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

SEC. 6. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "Higher Education Facilities Bond Act of June 1990," and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of four hundred fifty million dollars ($450,000,000) to provide funds for the construction or improvement of facilities of California's public higher education institutions, which include the University of California's nine campuses, the California State University's 20 campuses, the 71 districts of the California Community Colleges, the Hastings College of the Law, the California Maritime Academy, and off-campus facilities of the California State University approved by the Trustees of the California State University on or before July 1, 1990. The use of funds authorized under this act includes, but is not necessarily limited to, the construction or improvement of classrooms,

laboratories, and libraries, and the implementation of earthquake and other health or safety improvements." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

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 bill would provide the people of California with an opportunity to provide funding in 1990 for critically needed higher education facilities. In order to provide the opportunity for this funding at the earliest possible time, it is necessary that this act take immediate effect.

CHAPTER 7

An act to add Sections 72.8 and 72.9 to the Harbors and Navigation Code, relating to waterways.

[Approved by Governor February 28, 1990. Filed with Secretary of State February 28, 1990]

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

SECTION 1. Section 72.8 is added to the Harbors and Navigation Code, to read:

72.8. The department, subject to a line item appropriation by the Legislature for each proposed project, may grant funds to a county, city, district, or federal agency for the construction of waterway public access facilities used primarily by rafters, canoeists, tubers, and kayakers.

Funds used to implement this section shall be derived from any bond act approved by the voters.

SEC. 2. Section 72.9 is added to the Harbors and Navigation Code, to read:

72.9. The department, subject to a line item appropriation by the Legislature for each proposed project, may acquire property to provide for waterway public access facilities used primarily by rafters, canoeists, tubers, and kayakers, and may also provide for the construction of those facilities, subject to the approval of any state agency that owns the property upon which the facilities will be constructed.

Funds used to implement this section shall be derived from any bond act approved by the voters.

CHAPTER 8

An act to amend Sections 51872.5, 51873.5, 51874, 51876, 51876.5, and 51878 of, and to repeal Section 51874.1 of, the Education Code, to amend Section 5 of Chapter 1307 of the Statutes of 1989, and to amend Section 5 of Chapter 1334 of the Statutes of 1989, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 28, 1990 Filed with Secretary of State February 28, 1990.]

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

SECTION 1. Section 51872.5 of the Education Code is amended to read:

51872.5. The responsibilities of the California Planning Commission for Educational Technology shall include the following:

(a) Prior to January 1, 1992, developing a state master plan for educational technology, including priorities to guide the use and integration of educational technology in the public elementary, secondary, and postsecondary schools, taking into account and building upon, existing district, regional, and statewide plans. The plan shall be presented to the Legislature, the Governor, the State Board of Education, the Superintendent of Public Instruction, the Board of Governors of the California Community Colleges, the Board of Trustees of the California State University, the Regents of the University of California, and the California Postsecondary Education Commission. The master plan shall include, but not be limited to, the following:

(1) Recommendations, as needed, for an organizational and governance structure, or structures, that oversees or coordinates, or both, educational technology activity in and across various educational segments.

(2) Recommendations for funding in support of the appropriate expanded use of technology in education.

(3) Identification of the following:

(A) Critical educational problems, including, but not limited to, the growing number of pupils who drop out of school, increased illiteracy rates, the shortage of teachers competent with the new instructional technologies, and the disparity in educational opportunities for rural and innercity pupils, and the role that technology may play in solving these problems.

(B) Unmet educational, training, and informational needs of schools, universities, government, business, and professional and

community organizations, and the role that technology may play in meeting the unmet needs.

(C) The viability of establishing an educational network, or linking existing networks, to provide the state's educational community increased capacity and efficiency in transmitting video, data, and voice signals via telecommunications.

(4) An assessment of the need for and feasibility of establishing comprehensive technology educational programs, with the goals of providing students with skills and knowledge on how to create and operate new technologies.

(5) Recommendations for evaluation and accountability mechanisms for state-funded educational technology programs utilizing, among other data, information provided by the Superintendent of Public Instruction, the State Board of Education, and the Educational Technology Committee in the evaluation process defined in Section 51876.5.

(6) A proposed method for continuously gathering and disseminating current information on all aspects of educational technology to the state's educators.

(7) A proposed strategy to implement the State Master Plan for Educational Technology.

(b) As part of its planning effort, the planning commission shall consult with educators, representatives of associations of technology-using educators, members of the business community, members of the Educational Technology Committee, the Superintendent of Public Instruction, and the State Board of Education. Commission members shall serve without compensation. The commission shall hire an executive director who is knowledgeable about California's educational system, including kindergarten through the postsecondary level. Support for the work of the commission shall be provided through the assistance of the staff at the California Postsecondary Education Commission and the statewide offices of the public colleges and universities. The California Postsecondary Education Commission shall convene the first meeting of the commission no later than March 30, 1990.

SEC. 2. Section 51873.5 of the Education Code is amended to read:

51873.5. The duties of the Educational Technology Committee shall include, but not be limited to, the following:

(1) Recommending to the State Board of Education and the Superintendent of Public Instruction priorities for public school kindergarten and grades 1 to 12, inclusive, educational technology funding, targeting identified educational needs.

(2) Advising the State Board of Education and the Superintendent of Public Instruction of continuing developments in information technologies and their application to education for purposes of enhanced learning.

(3) Advising the State Board of Education and the Superintendent of Public Instruction, pursuant to this article, on the

allocation of grants for educational software research and development, research and demonstration schools, school-based adoption grants and adaptation grants, research and development grants, grants to postsecondary educational institutions and grants to regional consortia.

(4) Advising the State Board of Education and the Superintendent of Public Instruction on efforts to ensure equal pupil access to educational technology programs, taking into account varied socioeconomic conditions, urban-rural differences, gender, and developments in knowledge of the learning process.

(5) Recommending to the State Board of Education and the Superintendent of Public Instruction an annual budget identifying proposed funding levels for the educational technology program.

(6) Advising the State Board of Education and the Superintendent of Public Instruction on guidelines to promote high quality educational technology instructional material and to improve coordinated software research and communications between educational technology developers and distributors, curriculum specialists, teachers, principals, cognitive scientists, and hardware companies.

(7) Advising the State Board of Education and the Superintendent of Public Instruction on devising methods for mobilizing and integrating private sector involvement in public school programs.

(8) Making recommendations to the State Board of Education and the Superintendent of Public Instruction regarding structure, criteria, and objectives for the evaluation of educational technology programs in accordance with evaluation criteria specified in Section 51876.5.

(9) Making recommendations to the State Board of Education and the Superintendent of Public Instruction regarding grant awards to public postsecondary educational institutions for any of the following purposes:

(A) Providing computer education courses as part of an approved teacher preparation program. Teacher preparation programs which provide computer education courses funded pursuant to this section shall, to the extent feasible, be developed in cooperation with regional consortia in order to meet regional teaching training needs.

(B) Conducting studies of computer assisted instruction.

(10) Advising the California Planning Commission for Educational Technology regarding the State Master Plan for Educational Technology.

SEC. 3. Section 51874 of the Education Code is amended to read:

51874. (a) Local assistance grants may be made under this article to local educational agencies that serve kindergarten and grades 1 to 12, inclusive, for educational technology applications, including, but not limited to, school-based adoption grants and adaptation grants, innovative research and development grants, and grants supporting educational technology research and demonstration schools.

Innovative research and development grants, that address educational needs in kindergarten and grades 1 to 12, inclusive, may also be awarded to public institutions of higher education, as deemed appropriate.

(b) The existing evaluation procedures for school-based program quality review and other appropriate local and state evaluation procedures shall be utilized in the assessment of the use, benefits, and impact of educational technology on the educational program. It is the intent of the Legislature that the evaluation procedures shall yield data on the educational outcomes resulting from the use of educational technology.

(c) Grant criteria shall be determined by the State Board of Education, with the advice of the Educational Technology Committee. The State Board of Education shall have final authority in the award of grant funds in accordance with this article.

(d) The application process for the grant programs established pursuant to this article shall be kept as simple as possible to facilitate maximum participation by local educational agencies.

SEC. 4. Section 51874.1 of the Education Code is repealed.

SEC. 5. Section 51876 of the Education Code is amended to read:

51876. (a) Each research and demonstration school, in addition to any other funding purposes designated under this section, shall study, on an ongoing basis, the current and potential impact of educational technology on pupil academic achievement within the educational process. The resulting data shall be reported to the State Board of Education, the Superintendent of Public Instruction, and the Educational Technology Committee. The State Board of Education and the Superintendent of Public Instruction shall provide the data to the Legislature, the Governor, and the California Planning Commission on Educational Technology for use in, among other things, the development of the state master plan for educational technology described in Section 51872.5.

(b) The Educational Technology Committee shall recommend strategies to the State Board of Education and the Superintendent of Public Instruction for statewide dissemination of information resulting from educational technology research and demonstration schools in order to facilitate replication. Educational technology research and demonstration schools, in concert with the regional resource consortia or other regional educational services agencies, shall establish a systematic plan to assist other local educational agencies in the state to improve their educational programs through the adoption or adaption of educational technology interventions, programs, and practices. State and regional agencies, in cooperation with the technology industry, shall be encouraged to cooperate with these demonstration schools to publicize successful practices.

(c) Grants for educational technology research and demonstration schools shall be awarded on the basis of ten dollars ($10) of state funding for every one dollar ($1) provided by the local educational agency.

SEC. 6. Section 51876.5 of the Education Code is amended to read:

51876.5. (a) Annual evaluation of the school-based adoption grants, research and development grants, and grants supporting educational technology research and demonstration schools can serve as a useful tool for self-assessment, program improvements, and state level accountability and planning.

For each year for which any project is funded under an educational technology matching grant pursuant to Section 51874.6, 51874.8, or 51875, the grant recipient shall submit to the State Board of Education a report based on the evaluation goals for educational technology programs established under this article. Those goals shall include the following:

(1) For educational technology research and development projects and research and demonstration schools, the assessment of subject matter mastery and enhancement of cognitive thinking skills as a result of technology-assisted instruction, as appropriate.

(2) For other matching grant programs, the documentation of the nature and extent of classroom applications of technologies as an instructional tool, and the identification of factors that may restrict the most effective use of educational technology.

(3) In all grant categories funded in accordance with this article, evaluation criteria shall include an assessment of the extent to which staff development resources are made available by the grant recipient, and the effectiveness of those resources to facilitate successful project implementation.

(b) The Superintendent of Public Instruction, with the advice of the Educational Technology Committee, shall develop evaluation criteria for recommendation to the State Board of Education. Evaluation criteria shall be developed to be consistent with program quality review criteria and procedures established for school improvement programs and shall emphasize educational outcomes.

(c) The Superintendent of Public Instruction shall annually evaluate a sample of projects supported by school-based adoption and adaptation grants, in order to identify those uses of project funds which are most cost-effective.

(d) For instructional television and regional resource consortia, the Superintendent of Public Instruction, with the advice of the Educational Technology Committee, shall evaluate the effectiveness of the program in assisting local educational agencies to implement educational technology.

(e) The Educational Technology Committee shall recommend to the State Board of Education and the Superintendent of Public Instruction a process for an independent evaluation of all program components. The evaluation, funded with program funds, shall include procedures to standardize evaluation data collection, and strategies for the effective utilization of evaluation information to develop policy for use of educational technology. Proposed policy revisions shall be made available to the California Planning

Commission on Educational Technology to be utilized in the development of the commission's recommendations for the state master plan for educational technology.

(f) The evaluations specified in this section shall contain methodologies and objectives which (1) emphasize educational outcomes, (2) are based on recommendations of the Educational Technology Committee, and (3) to the extent practicable, are consistent across projects, in order to identify effective programs and practices. Evaluation results shall be widely disseminated to local educational agencies, with particular emphasis on those projects judged most successful and adaptable by other educational agencies.

SEC. 7. Section 51878 of the Education Code is amended to read:

51878. (a) The Legislature hereby finds and declares all of the following:

(1) It is the intent of the Legislature that this section provide for the support and evaluation of a statewide network of regional consortia as a local resource for educational technology programs.

(2) In January 1989, a pilot network involving regional agencies and consortia, the California Technology Project, was established as an initiative of the Educational Technology Local Assistance Program.

(3) The California Technology Project has been established primarily to assist local educational agencies in planning, implementing, and evaluating educational technology programs and projects pursuant to this article.

(b) Educational Technology Program funds may be used to support the California Technology Project or other similar projects, as determined by the State Board of Education, with the advice of the Educational Technology Committee and the Superintendent of Public Instruction.

(c) The California Technology Project shall be subject to a comprehensive evaluation, as provided in accordance with criteria established in Section 51876.5. This evaluation shall assess the degree to which this pilot project effectively provides regional assistance to local educational agencies in the implementation of educational technology programs. This evaluation shall also include an assessment of the quality and impact of technology-related regional staff development services. Prior to March 1, 1990, there shall be a report of the findings of the evaluation, including recommendations for modification or continuation of the regional resource consortia project. This report shall be provided to the State Board of Education.

(d) The California Technology Project, or a similar regional resource consortia, shall do the following:

(1) Serve as a collaborative agency to link and coordinate the educational technology resources of institutions of higher education and other educational agencies and organizations, including, but not limited to, local educational agencies and instructional television regional agencies, and business and industry, to serve public

education in kindergarten and grades 1 to 12, inclusive.

(2) Identify school and district needs for regional educational technology support across California.

(3) Identify and train educators to provide regional and local assistance for the planning, implementation, and evaluation of educational technology programs and practices.

(4) Identify and disseminate information about effective educational technology resources, including, but not limited to, effective professional development programs, successful educational technology programs and practices, and other resources determined to be necessary for the local implementation of educational technology programs.

(5) Facilitate and assist in the identification and dissemination of information about high quality instructional technology programs including computer and video programs, laserdiscs, and other media, which support California's curriculum frameworks.

(6) Facilitate the establishment and coordination of regional resource consortia as well as the expansion of existing consortia to assist schoolsites and districts to plan and implement educational technology programs and practices.

SEC. 8. Section 5 of Chapter 1307 of the Statutes of 1989 is amended to read:

Sec. 5. Sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6 of this act shall become operative on January 1, 1991, except that Section 94304 of the Education Code shall be repealed on July 1, 1990.

SEC. 9. Section 5 of Chapter 1334 of the Statutes of 1989 is amended to read:

Sec. 5. In the event that the sum of fifty thousand dollars ($50,000) is not received for deposit in the California Planning Commission for Educational Technology Account from private donations, the state shall have no obligation to fund the salary of the executive director of the California Planning Commission for Educational Technology as provided for in subdivision (b) of Section 51872.5 of the Education Code.

SEC. 10. The Legislature hereby finds and declares that the amendments to Section 5 of Chapter 1307 of the Statutes of 1989 made by Section 8 state the intent of the Legislature that the repeal of Article 1 (commencing with Section 94300), Article 1.5 (commencing with Section 94310), Article 2 (commencing with Section 94311), Article 3 (commencing with Section 94320), Article 4 (commencing with Section 94330), and Article 5 (commencing with Section 94350) of Chapter 3 of Part 59 of the Education Code, shall become operative on January 1, 1991, and to further state the intent of the Legislature that the repeal of those articles is to occur simultaneously with the January 1, 1991, operative date for Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code, as added by Section 4 of Chapter 1307 of the Statutes of 1989. Accordingly, the Legislature finds and declares that the amendment to Section 5 of Chapter 1307 of the Statutes of 1989 in Section 8 of this

act is declaratory of existing law and that the words "Section 3" as used in Section 5, as evidenced by Senate Bill 190, as amended September 6, 1989, were intended to include all the provisions in Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code, but excluding the then proposed provisions in Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 of the Education Code subsequently, enacted pursuant to the provisions of Assembly Bill 1402 (Chapter 1239 of the Statutes of 1989).

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 require the State Board of Education and the Superintendent of Public Instruction to make data available for use in the development of a state master plan for educational technology pursuant to Section 51876 of the Education Code, and in order to require the superintendent, with the advice of the Educational Technology Committee, to evaluate the effectiveness of educational technology programs in assisting local educational agencies to implement educational technology at the earliest possible time pursuant to subdivision (d) of Section 51876.5 of the Education Code, it is necessary that this act take effect immediately.

CHAPTER 9

An act to amend Sections 11106, 12001, 12021, 12070, 12071, 12072, 12073, 12076, 12077, 12078, and 12082 of, to amend the heading of Article 4 (commencing with Section 12070) of Chapter 1 of Title 2 of Part 4 of, to add Section 12083 to, to repeal Chapter 3 (commencing with Section 12350) of Title 2 of Part 4 of, and to repeal Article 2 (commencing with Section 12560) of Chapter 6 of Title 2 of Part 4 of, the Penal Code, and to amend Sections 8100 and 8103 of, the Welfare and Institutions Code, relating to firearms.

[Approved by Governor March 3, 1990. Filed with Secretary of State March 5, 1990.]

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

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry concealed weapons, dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper

application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within 30 days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm.

A violation of this subdivision is a misdemeanor.

SEC. 1.5. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this chapter, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device, designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 16 inches in length. These terms also include any device which has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in this chapter, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, and 12073 of this code, and Sections 8100 and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of any such weapon.

(d) For the purpose of Sections 12025 and 12031 the term "firearm" shall also include any rocket, rocket propelled projectile launcher or similar device containing any explosive or incendiary material whether or not such device is designed for emergency or distress signaling purposes.

(e) For purposes of Sections 12070, 12071, and subdivisions (b), (c), and (d) of Section 12072, the term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code or a curio, or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(f) Nothing shall prevent a device defined as a "pistol," "revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

SEC. 2. Section 12021 of the Penal Code 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) Except as provided in subdivision (a), any person who has been convicted of a misdemeanor violation of Section 136.5, 140, 171b, 171c, 171d, 241, 243, 244.5, 245, 245.5, 246.3, 247, 417, 417.2, 626.9, subdivision (b) or (d) of Section 12034, subdivision (a) of Section 12100, 12320, or 12590 and who within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment. The court shall, on forms prescribed by the Department of Justice, notify the department of persons subject to this subdivision.

(d) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in the state prison or in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment. The court shall, on forms provided by the Department of Justice, notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, (2) is found to be a fit and proper subject to be dealt with under the juvenile court law, and (3) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in the state prison or in the county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment. The juvenile court shall, on forms prescribed by the Department of Justice, notify the department of persons subject to this subdivision. Notwithstanding any other provision of law, the forms required to be submitted to the

department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) 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. 3. The heading of Article 4 (commencing with Section 12070) of Chapter 1 of Title 2 of Part 4 of the Penal Code is amended to read:

Article 4. Licenses to Sell Firearms

SEC. 4. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall engage in the business of selling, leasing, transferring, advertising, offering, or exposing for sale, lease, or transfer of firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) As used in this article, engaging in the business of selling, leasing, or transferring of firearms does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to a court order or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) The sale, lease, or transfer of firearms by a person acting pursuant to subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer, offering, exposing for sale, lease, or transfer, or advertising for sale, lease, or transfer of firearms.

(c) As used in this section, "infrequent" means:

(1) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, "transaction" means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(2) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

SEC. 5. Section 12071 of the Penal Code is amended to read:

12071. (a) The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may

grant, licenses permitting the licensee to sell at retail within the city, county, or city and county, any firearms. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue, and shall be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture:

(1) (A) Except as provided in subparagraph (B), the business shall be carried on only in the building designated in the license.

(B) A person licensed pursuant to subdivision (a) may, for purposes of complying with Section 12082, take possession of the firearm and commence preparation of the register for the sale, delivery, or transfer of firearms at a gun show or event, as defined in paragraph (b) of Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle and the licensee has obtained a statewide gun show license from the Department of Justice pursuant to the procedure set forth in this subparagraph.

The Department of Justice shall issue a statewide gun show license to all persons licensed pursuant to subdivision (a) upon demonstration by the person that he or she currently possesses a valid license. The department shall adopt regulations to implement this license program.

The full costs incurred by the department in administering this program shall be recovered by fees assessed persons who apply for statewide gun show licenses.

All persons who receive statewide gun show licenses shall publicly display the license at any gun show at which the licensee conducts business as authorized by this subparagraph.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days

of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm capable of being concealed upon the person or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing transfers of firearms pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077 and subdivisions (a) and (b) of Section 12072.

(b) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the purchaser.

SEC. 5.1. Section 12071 of the Penal Code is amended to read:

12071. (a) The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may grant licenses, permitting the licensee to sell at retail within the city, county, or city and county, any firearms capable of being concealed upon the person. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraph (B), the business shall be carried on only in the building designated in the license.

(B) A person licensed pursuant to subdivision (a) may, for purposes of complying with Section 12082, take possession of the firearm and commence preparation of the register for the sale, delivery, or transfer of firearms at a gun show or event, as defined in paragraph (b) of Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle and the licensee has obtained a statewide gun show license from the Department of Justice pursuant to the procedure set forth in this subparagraph.

The Department of Justice shall issue a statewide gun show license to all persons licensed pursuant to subdivision (a) upon demonstration by the person that he or she currently possesses a valid license. The department shall adopt regulations to implement this license program.

The full costs incurred by the department in administering this program shall be recovered by fees assessed persons who apply for statewide gun show licenses.

All persons who receive statewide gun show licenses shall publicly display the license at any gun show at which the licensee conducts business as authorized by this subparagraph.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless, in the case of a pistol, revolver, or other firearm capable of being concealed upon the person, the purchaser or transferee presents to the dealer a validated firearm safety certificate.

(C) Unless unloaded and securely wrapped or unloaded and in a locked container.

(D) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity and age to the dealer.

(E) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol or revolver, or other firearm capable of being concealed upon the person, or imitation thereof, or placard

advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly process transfers of firearms pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077 and subdivisions (a) and (b) of Section 12072.

(c) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the purchaser.

(d) As used in this article, "a validated firearm safety certificate" means a validated basic firearm safety certificate issued to the purchaser or transferee by the Department of Fish and Game pursuant to Article 7 (commencing with Section 1230) of Chapter 3 of Division 2 of the Fish and Game Code.

SEC. 5.2. Section 12071 of the Penal Code is amended to read:

12071. (a) The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may grant licenses, permitting the licensee to sell at retail within the city, county, or city and county, any firearms capable of being concealed upon the person. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue, and shall be subject to the following conditions, for breach of any of which the license shall be subject to forfeiture.

(1) (A) Except as provided in subparagraph (B), the business shall be carried on only in the building designated in the license.

(B) A person licensed pursuant to subdivision (a) may, for purposes of complying with Section 12082, take possession of the firearm and commence preparation of the register for the sale, delivery, or transfer of firearms at a gun show or event, as defined in paragraph (b) of Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle and the licensee has obtained a statewide gun show license from the Department of Justice pursuant to the procedure set forth in this subparagraph.

The Department of Justice shall issue a statewide gun show license to all persons licensed pursuant to subdivision (a) upon demonstration by the person that he or she currently possesses a valid license. The department shall adopt regulations to implement this license program.

The full costs incurred by the department in administering this program shall be recovered by fees assessed persons who apply for statewide gun show licenses.

All persons who receive statewide gun show licenses shall publicly

display the license at any gun show at which the licensee conducts business as authorized by this subparagraph.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) If it is a pistol, revolver, or other firearm capable of being concealed upon the person, and it is capable of being equipped with a trigger-locking devise, unless it is equipped with a locking device.

(C) Unless unloaded and securely wrapped or unloaded and in a locked container.

(D) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity and age to the dealer.

(E) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol or revolver, or other firearm capable of being concealed upon the person, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing transfers of firearms pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077 and subdivisions (a) and (b) of Section 12072.

(b) (1) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle

operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the purchaser.

(2) As used in this article, "trigger-locking device" means a device which prevents the firearm from functioning, and which fully encloses and blocks the trigger and is locked by a padlock, key lock, combination lock, or similar locking device, is reusable, and which, when applied to the weapon, renders the weapon inoperable.

SEC. 5.3. Section 12071 of the Penal Code is amended to read:

12071. (a) The duly constituted licensing authorities of any city, county, or city and county shall accept applications for, and may grant licenses, permitting the licensee to sell at retail within the city, county, or city and county, any firearms capable of being concealed upon the person. If a license is granted, it shall be in the form prescribed by the Attorney General, effective for not more than one year from the date of issue.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraph (B), the business shall be carried on only in the building designated in the license.

(B) A person licensed pursuant to subdivision (a) may, for purposes of complying with Section 12082, take possession of the firearm and commence preparation of the register for the sale, delivery, or transfer of firearms at a gun show or event, as defined in paragraph (b) of Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle and the licensee has obtained a statewide gun show license from the Department of Justice pursuant to the procedure set forth in this subparagraph.

The Department of Justice shall issue a statewide gun show license to all persons licensed pursuant to subdivision (a) upon demonstration by the person that he or she currently possesses a valid license. The department shall adopt regulations to implement this license program.

The full costs incurred by the department in administering this program shall be recovered by fees assessed persons who apply for statewide gun show licenses.

All persons who receive statewide gun show licenses shall publicly display the license at any gun show at which the licensee conducts business as authorized by this subparagraph.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to

the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(B) Unless, in the case of a pistol, revolver, or other firearm capable of being concealed upon the person, the purchaser or transferee presents to the dealer a validated firearm safety certificate.

(C) If it is a pistol, revolver, or other firearm capable of being concealed upon the person and it is capable of being equipped with a trigger-locking device, unless it is equipped with a locking device.

(D) Unless unloaded and securely wrapped or unloaded and in a locked container.

(E) Unless the purchaser or transferee either is personally known to the dealer or presents clear evidence of his or her identity and age to the dealer.

(F) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol or revolver, or other firearm capable of being concealed upon the person, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly process transfers of pistols, revolvers, and other firearms capable of being concealed upon the person pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073 and 12077 and subdivisions (a) and (b) of Section 12072.

(c) As used in this article, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a state identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the

purchaser.

(d) As used in this article, "a validated firearm safety certificate" means a validated basic firearm safety certificate issued to the purchaser or transferee by the Department of Fish and Game pursuant to Article 7 (commencing with Section 1230) of Chapter 3 of Division 2 of the Fish and Game Code.

(e) As used in this article, "trigger-locking device" means a device which prevents the firearm from functioning, and which fully encloses and blocks the trigger and is locked by a padlock, key lock, combination lock, or similar locking device, is reusable, and which, when applied to the weapon, renders the weapon inoperable.

SEC. 6. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) Any person, corporation, or firm who shall knowingly supply, sell, or give possession or control of any firearm to any person within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall be punished by imprisonment in the state prison, or in a county jail for a period not exceeding one year, or by a fine of not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(2) No person, corporation, or dealer shall sell, deliver, or otherwise transfer any firearm to any person whom he or she has cause to believe to be within any of the prohibited classes by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(b) No person licensed under Section 12071 shall sell, deliver, or transfer any pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer licensed pursuant to Section 12071, whether or not acting pursuant to Section 12082, shall deliver a firearm to a purchaser or transferee, as follows:

(1) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days

of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser or transferee presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer or is personally known to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, in order for a person to sell or otherwise transfer a firearm, the parties to the transaction shall complete the transaction through a licensed dealer pursuant to Section 12082.

(e) Except as provided in paragraph (1) of subdivision (a), a violation of this section is a misdemeanor. A second or subsequent violation of this section shall be punished in accordance with the penalty and probation provisions of subdivision (c) of Section 12100 concerning subsequent convictions and probation.

SEC. 6.1. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) Any person, corporation, or firm who shall knowingly supply, sell, or give possession or control of any firearm to any person within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall be punished by imprisonment in the state prison, or in a county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(2) No person, corporation, or dealer shall sell, deliver, or otherwise transfer any firearm to any person whom he or she has cause to believe to be within any of the prohibited classes by Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(b) No person licensed under Section 12071 shall sell, deliver, or transfer any pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, who is licensed pursuant to Section 12071, whether or not acting pursuant to Section 12082, shall deliver a firearm to a purchaser or transferee, as follows:

(1) Prior to January 1, 1996, within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 15 days of the application for the purchase of

a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register, or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later. On or after January 1, 1996, within 10 days of the application for the purchase of any other firearm or, after notice by the department pursuant to subdivision (c) of Section 12076, within 10 days of the submission to the department of corrected copies of the register, or within 10 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) If the purchaser or transferee of a pistol, revolver, or other firearm capable of being concealed upon the person does not present to the dealer a validated firearm safety certificate.

(3) Unless the firearm is unloaded and securely wrapped or unloaded and in a locked container.

(4) Unless the purchaser or transferee presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer or is personally known to the dealer.

(5) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, in order for a person to sell or otherwise transfer a firearm, the parties to the transaction shall complete the transaction through a licensed dealer pursuant to Section 12082.

(e) Except as provided in paragraph (1) of subdivision (a), a violation of this section is a misdemeanor. A second or subsequent violation of this section shall be punished in accordance with the penalty and probation provisions of subdivision (c) of Section 12100 concerning subsequent convictions and probation.

SEC. 7. Section 12073 of the Penal Code is amended to read:

12073. (a) Every person in the business of selling, leasing or otherwise transferring a firearm, whether the seller, lessor, or transferor is a retail dealer, pawnbroker, or otherwise, except as provided by this chapter, shall keep a register in which shall be entered the information prescribed in Section 12077.

(b) This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transport of unloaded firearms as merchandise to other wholesale or retail dealers by mail, express or other mode of shipment, to points outside of the city or county wherein they are situated.

SEC. 8. Section 12076 of the Penal Code is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in

Section 12071, to the dealer, and the dealer shall require him or her to sign his or her legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing an incorrect birth date, or other information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register shall, on the date of sale, be placed in the mail, postage prepaid, and properly addressed to the Department of Justice at Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made.

The third copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within 30 days of receipt and no information shall be compiled therefrom.

(c) If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d) or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse both of the following:

(1) The department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section.

(2) Local mental health facilities for state-mandated local costs

resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department and the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) of this subdivision.

SEC. 9. Section 12077 of the Penal Code is amended to read:

12077. (a) The Department of Justice shall prescribe the form of the register described in Section 12074. Information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, purchaser's status as a mental patient, or whether purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly affixing an incorrect birth date or other information required to be provided for the register is guilty of a misdemeanor.

(b) (1) The original of each dealer's record of sale of a firearm document shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General or agents of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper

identification.

(2) Dealers shall use ink to complete each document.

(3) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(4) Each original shall contain instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(5) One firearm transaction shall be reported on each record of sale document.

SEC. 10. Section 12078 of the Penal Code is amended to read:

12078. (a) The preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser is employed, identifying the purchaser as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase. The certification shall be delivered to the seller at the time of purchase and the purchaser shall identify himself or herself as the person authorized in the certification. On the day the sale, delivery, or transfer is made, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer and the firearm as is indicated in Section 12077.

(b) Section 12070 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in such business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) Subdivision (d) of Section 12072 shall not apply to infrequent transfers of firearms by gift or bequest or intestate succession by one individual to another where both individuals are members of the same immediate family.

As used in this subdivision, "immediate family member" includes the third lineal degree of consanguinity.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent and temporary loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for repair,

provided the repair does not exceed three months in duration.

(f) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than pistols, revolvers, or other firearms capable of being concealed upon the person, at auctions conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

SEC. 11. Section 12082 of the Penal Code is amended to read:

12082. A person shall complete any sale or other transfer of a firearm through a dealer licensed pursuant to Section 12071 in accordance with this section in order to comply with the provisions of subdivision (d) of Section 12072. The Attorney General shall adopt regulations under this section to allow the seller or other transferor and the purchaser or transferee to complete a sale or other transfer through a dealer, and to allow those persons and the dealer to comply with the requirements of this section and of Sections 12071, 12072, 12076, and 12077 and to preserve the confidentiality of records. The register shall state the name and address of the seller or transferor of the firearm in addition to any other information required by Section 12077. The seller or transferor shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or transferee, if it is not prohibited, in accordance with the provisions of subdivision (c) of Section 12072. If the dealer cannot legally transfer the firearm to the purchaser or transferee, the dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 12071 and 12072, return the firearm to the transferor or seller if to do so is not in violation of subdivision (a) of Section 12072. If the dealer cannot legally return the firearm to the transferor or seller, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county who shall then dispose of the firearm in the manner provided by Sections 12028 and 12032. The purchaser or transferee may be required by the dealer to pay a fee not to exceed the actual cost of processing the application, including the amount of a fee which the Department of Justice may charge pursuant to subdivision (d) of Section 12076 plus a fee not to exceed ten dollars ($10) to the dealer for processing the transfer or sale.

A violation of this section by a dealer is a misdemeanor.

SEC. 12. Section 12083 is added to the Penal Code, to read:

12083. (a) The Department of Justice shall undertake a feasibility study concerning proposed changes in firearm statutes, particularly as they relate to this article, which would accomplish the following:

(1) Introduce a system whereby licensed firearm dealers may utilize an 800 hotline telephone number or a 976 telephone number in order to contact the Department of Justice to determine the eligibility of a person to purchase and possess a firearm.

(2) Reduce the current 15-day waiting period to a lesser waiting period as the result of the introduction of automation,

computerization, or other devices or means which have increased efficiency in screening the eligibility of persons to purchase and possess firearms.

(3) Establish a licensing procedure allowing individuals who possess particular kinds of identification and have certain personal historical background, including, for example, completion of a hunter safety course, to obtain a firearm without being subject to a background check for eligibility.

(4) If the federal government develops a system for immediate and accurate identification of felons, as described in Section 6213 of Public Law 100-690, establish a means for the Department of Justice to utilize that system.

(5) Implement a system whereby a firearm purchaser utilizes a record check similar to those checks utilized by private credit reporting agencies.

(6) Incorporate private entities into the background check process by the use of bonding requirements, employing private credit reporting procedures, and by adopting similar methods and procedures.

(7) Revise existing statutory licensing requirements in order that local licensing authorities implement essentially uniform licensing procedures under Section 12071.

(8) The Department of Justice shall provide the results of this feasibility study to the Legislature on or before July 1, 1991.

(b) The intent of this section is to encourage the rapid development and deployment of an alternative background check system by which it may be determined if prospective purchasers of all firearms are ineligible to purchase or possess a firearm. The full deployment of an alternative background check system is highly desirable and may greatly reduce, if not eliminate, the need for California to administer the existing background check system, as authorized by this article.

SEC. 13. Chapter 3 (commencing with Section 12350) of Title 2 of Part 4 of the Penal Code is repealed.

SEC. 14. Article 2 (commencing with Section 12560) of Chapter 6 of Title 2 of Part 4 of the Penal Code is repealed.

SEC. 15. Section 8100 of the Welfare and Institutions Code is amended to read:

8100. No person described in Section 8103 or who is a mental patient in any hospital or institution or on leave of absence from any hospital or institution shall own or have in his or her possession or under his or her custody or control, or purchase or receive or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon.

"Deadly weapon," as used in this section and Sections 8101, 8102, and 8103 means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

A violation of this section shall be a public offense punishable by imprisonment in the state prison, or in the county jail for not more

than one year or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 16. Section 8103 of the Welfare and Institutions Code is amended to read:

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

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

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207 or 209 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, 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, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States which includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

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

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

of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

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

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

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

(e) (1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person the court shall notify the person of this prohibition.

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

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall

be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes any such information for any other purpose is guilty of a misdemeanor. All such information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. Notwithstanding the preceding sentence, no person described in that sentence shall be ineligible to own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if, prior to being released, the person is declared by the facility to be a person who is likely to use firearms in a safe and lawful manner.

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

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm. The state summary criminal history may state that the person is prohibited from owning, possessing, controlling, receiving, or purchasing a firearm under this subdivision or any other provision of law.

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

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in

which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in Section 8103 with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. Notwithstanding any other provision of law, declarations, police reports, including criminal history information, and any other material, relevant and reliable evidence which is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

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

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

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

(3) Upon certification for intensive treatment, the facility, shall inform the person of that information specified in paragraph (3) of subdivision (f).

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

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

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

SEC. 17. 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. 18. (a) Section 5.1 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 1680. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 12071 of the Penal Code, and (3) SB 861 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1680, in which case Sections 5, 5.2, and 5.3 of this bill shall not become operative.

(b) Section 5.2 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and SB 861. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 12071 of the Penal Code, (3) AB 1680 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 861 in which case Sections 5, 5.1, and 5.3 of this bill shall not become operative.

(c) Section 5.3 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by this bill, AB 1680, and SB 861. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1991, (2) all three bills amend Section 12071 of the Penal Code, (3) this bill is enacted after AB 1680 and SB 861, in which case Sections 5, 5.1, and 5.2 of this bill shall not become operative.

SEC. 19. Section 6.1 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and AB 1680. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 12072 of the Penal Code, and (3) this bill is enacted after AB 1680, in which case Section 6 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 from the Dealers' Record of Sale Special Account of the General 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 10

An act to amend Sections 46601.5, 48204, and 48980 of, and to add and repeal Section 48204.1 of, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 7, 1990. Filed with Secretary of State March 8, 1990.]

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

SECTION 1. Section 46601.5 of the Education Code is amended to read:

46601.5. (a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian, to enter into an agreement for interdistrict attendance pursuant to Section 46600, shall, in considering that request, give consideration to the child care needs of the pupil.

(b) This section shall remain in effect only until June 30, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1995, deletes or extends that date.

SEC. 2. Section 48204 of the Education Code, as amended by Chapter 172 of the Statutes of 1986, is amended to read:

48204. Notwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following:

(a) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

An agency placing a pupil in such a home or institution shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26 of Division 3 of this title.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil whose parent or legal guardian has established the residence of the pupil in a home located within the boundaries of

that school district, provided that home is properly licensed as required by law. The person maintaining the home shall provide evidence to the school that a current license is in effect or that a license is not required under the law.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) An elementary school pupil, one or both of whose parents, or whose legal guardian, is employed within the boundaries of that school district.

(1) Nothing in this subdivision requires the school district within which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the pupil's parents or guardians is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the district's court-ordered or voluntary desegregation plan.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) Any district governing board prohibiting a transfer pursuant to paragraph (1), (2), or (3) shall identify, and communicate in writing to the pupil's parent or guardian, the specific reasons for that determination and shall ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision shall be calculated pursuant to Section 46607.

(6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:

(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2501, 3 percent of the average daily attendance of the district or 25 pupils, whichever is greater.

(C) For any district with an average daily attendance of 2501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever is greater.

(7) Pursuant to this subdivision, districts shall report annually to

the Superintendent of Public Instruction all of the following:

(A) The number of requests for interdistrict transfers.

(B) The number of pupils transferred out of the district.

(C) The number of pupils transferred into the district.

The State Department of Education shall summarize the school district reports and report to the Legislature annually. The report shall include the data described in Section 48204.1.

Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district whose boundaries include the location where one parent or both parents of a pupil is employed, or where a pupil's legal guardian is employed, the pupil shall not have to reapply in the next school year to attend a school within that school district.

(g) This section shall remain in effect only until June 30, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before June 30, 1995, deletes or extends that date. If that date is not deleted or extended, then, on and after July 1, 1995, pursuant to Section 9611 of the Government Code, Section 48204 of the Education Code, as amended by Section 3 of Chapter 1191 of the Statutes of 1980, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 3. Section 48204.1 is added to the Education Code, to read:

48204.1. (a) The State Department of Education shall provide data with respect to pupils who are deemed to have complied with the residency requirements for school attendance in a school district pursuant to subdivision (f) of Section 48204, as follows:

(1) The number of transfers, both in terms of a school district from which pupils are exiting and a school district to which pupils are transferring, based on fiscal reporting data which compensates school districts based on average daily attendance.

(2) The number of actual transfers out of a school district and into a school district pursuant to subdivision (f) of Section 48204.

(3) The number of requests by pupils to transfer out of the school district in which he or she resides, the number of requests for those pupils that are rejected, and the reasons for the rejection.

(4) The number of pupils submitting new transfer requests and the number of pupils resubmitting a request from a prior year.

(5) The percentage of the total average daily attendance that a school district may lose as a result of pupils exiting from a school district. This percentage may be calculated as the difference between the number of pupils who transferred out of the district and the number of pupils who transferred into the district divided by the total number of pupils enrolled in a school district.

(6) The ethnicity of pupils exiting from and transferring to a school district pursuant to subdivision (f) of Section 48204.

(b) This section shall remain in effect only until June 30, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted and become effective before June 30, 1995, deletes or

extends that date.

SEC. 4. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, 51240, and 51550, Article 3 (commencing with Section 56030) of Chapter 1 of Part 30, and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification shall also advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) School districts which elect to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(d) Until June 30, 1995, the notification shall also advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204.

SEC. 5. 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.

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 maintain certain statutory provisions relating to the residency requirements for public school attendance that will otherwise become inoperative on June 30, 1990, it is necessary that this act take effect immediately.

CHAPTER 11

An act to amend Section 22238 of the Education Code, and to amend Section 20215 of the Government Code, relating to the public retirement systems.

[Approved by Governor March 7, 1990. Filed with Secretary of State March 8, 1990]

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

SECTION 1. Section 22238 of the Education Code is amended to read:

22238. Notwithstanding any other provision of law, the board may, pursuant to Section 22222 and in conformance with its fiduciary duty as set forth in Section 22225.5, enter into correspondent agreements with private lending institutions in this state to utilize the retirement fund to assist system members and retirants, through financing, to obtain homes in this state.

The terms and conditions of the correspondent agreements shall address all of the following:

(a) That home loans be made available to currently employed members and retirants for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(b) That the private lending institution shall originate and service these home loans.

(c) That the recipients of the loans occupy the homes as their permanent residences pursuant to rules and regulations adopted by the board or as these terms are defined in the correspondent agreements.

(d) That home loans shall be available only for the purchase of homes in this state.

(e) That the amount and length of the loans shall include terms and conditions that set a loan to value ratio of: (1) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (2) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (3) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to the provisions of Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(f) That there may be prepayment penalties assessed on loans, the terms and conditions of which shall be set forth in the correspondent

agreement.

(g) That the criteria and terms for loans shall provide the greatest benefit to members and retirants consistent with the financial integrity of the program and the sound investment of the retirement fund.

(h) That loans shall not be made at a rate lower than the market rate.

(i) Any other terms and conditions as the parties to the correspondent agreement may deem appropriate.

(j) This section shall be known as, and may be cited as, the Dave Elder State Teachers' Retirement System Member Home Loan Program Act.

SEC. 2. Section 20215 of the Government Code is amended to read:

20215. Notwithstanding any other provision of law, the board may establish a program utilizing the retirement fund to assist system members and annuitants, through financing, to obtain homes in this state.

The board shall adopt regulations governing the program which shall, among other things, provide:

(a) That home loans be made available to currently employed members and annuitants for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(b) That private lending institutions in this state shall originate and service its home loans pursuant to agreements entered into between those institutions and the board.

(c) That the recipients of the loans occupy the homes as their permanent residences in accord with rules and regulations established by the board.

(d) That its home loans shall be available only for the purchase or refinancing of homes in this state and that under no condition shall a member or annuitant have more than one outstanding loan.

(e) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board which shall provide a loan to value ratio of: (1) for the first loan, except for three-family dwellings and four-family dwellings, a maximum of 95 percent of the first loan; (2) for the first loan on three-family dwellings and four-family dwellings, a maximum of 90 percent of the first loan; and (3) for each additional loan, a maximum of 80 percent of each additional loan. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to the provisions of Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(f) That there may be prepayment penalties assessed on its loans

in accordance with rules and regulations established by the board.

(g) That the criteria and terms for its loans shall provide the greatest benefit to members and annuitants consistent with the financial integrity of the program and the sound investment of the retirement fund.

(h) Any other terms and conditions as the board shall deem appropriate.

(i) This section shall be known as, and may be cited as, the Dave Elder Public Employees' Retirement System Member Home Loan Program Act.

CHAPTER 12

An act to amend and supplement the Budget Act of 1989 by augmenting Items 4260-101-001, 4260-101-890, 4260-111-001, and 6110-161-890 of Section 2.00 thereof, relating to the support of the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 8, 1990. Filed with Secretary of State March 9, 1990.]

I am reducing the $24,251,000 appropriation contained in Section 1 of Assembly Bill No. 250, by deleting the $500,000 appropriation to Item 4260-101-001. I am also deleting the $200,000 appropriation to Item 6110-161-890.

In addition to the necessary deficiency appropriation for California Children's Services, which I am approving, this bill also appropriates $500,000 from the General Fund for emergency ambulance services under the Medi-Cal program and $200,000 from the Federal Trust Fund for the Timpany Center in Santa Clara County.

It is inappropriate to place additional demands on our General Fund resources at this time. Unanticipated expenditures, such as the earthquake, and lower revenue estimates have reduced the projected Reserve for Economic Uncertainties from $1.1 billion, when the budget was signed last June, to $492 million today.

Moreover, I recently allowed legislation to become law which added $20 million to the budget of the Office of Family Planning. At that time, I also called upon the Legislature to reduce the 1990-91 expenditures by $44 million to replace the additional expenditures for family planning services during this fiscal year and next.

Not until the Legislature identifies these savings during the final budget process can serious consideration be given to any legislation that spends money, except for emergency expenditures. Otherwise, our reserve would be reduced to a level that would inadequately protect the State from fiscal uncertainties and emergencies for the remainder of the fiscal year.

The source of the $200,000 appropriation for the Timpany Center is federal carryover funds. All available carryover funds, however, have been distributed for local entitlements. Therefore, this proposal would create a deficiency in current special education funding.

With these reductions, I approve Assembly Bill No. 250.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The sum of twenty-four million two hundred fifty-one thousand dollars ($24,251,000) is hereby appropriated in accordance with the following schedule:

(a) Twenty-three million five hundred fifty-one thousand dollars

($23,551,000) from the General Fund, in augmentation of, and for the purposes of, the following items of Section 2.0 of the Budget Act of 1989:

(1) To Item 4260-101-001, five hundred thousand dollars ($500,000) for the Medi-Cal program for emergency ambulance services under the Medi-Cal program.

(2) To category (c) of Item 4260-111-001, twenty-three million fifty-one thousand dollars ($23,051,000) for payment of the California Children's Services Program for the 1987–88, 1988–89, and 1989–90 fiscal years, of which sum four million seventy-six thousand dollars ($4,076,000) shall be available for the payment of claims submitted by the County of Los Angeles for the 1987–88 and 1988–89 fiscal years.

(b) Seven hundred thousand dollars ($700,000) from the Federal Trust Fund, in augmentation of, and for the purposes of, the following items of Section 2.00 of the Budget Act of 1989:

(1) To Item 4260-101-890, five hundred thousand dollars ($500,000) for emergency ambulance services under the Medi-Cal program.

(2) To Item 6110-161-890, two hundred thousand dollars ($200,000) to be allocated by the Superintendent of Public Instruction to the Timpany Center in Santa Clara County, as follows:

(A) Notwithstanding Section 42242 of the Education Code, a sum not to exceed two hundred thousand dollars ($200,000) in Public Law 94-142 Part B carryover funds from Items 6110-001-890 and 6110-161-890 of Section 2.00 of the Budget Act of 1988 (Ch. 313, Stats. 1988) and the Budget Act of 1989 (Ch. 93, Stats. 1989) is reappropriated for purposes of this paragraph.

(B) Funds allocated pursuant to this paragraph shall be matched with funds provided from local sources. One dollar ($1) shall be provided from local sources for each two dollars ($2) allocated pursuant to this paragraph.

(C) The center shall certify to the superintendent that the funds allocated pursuant to this paragraph shall be used to provide services to persons under the age of 22.

(D) The Timpany Center shall provide a report to the Department of Education for dissemination to other districts regarding the functions, activities, and programs conducted by the center and the impact on the participating students. The report shall demonstrate how the Timpany Center programs serve as a pilot demonstration for other county special education programs. The report shall be made to the Department of Education by December 31, 1990, for statewide dissemination by March 31, 1991.

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 amends and supplements the Budget Act of 1989. The 1989–90 fiscal year is already in progress, and to ensure that the programs funded by this act may continue to serve the public

without interruption, it is necessary that this act take effect immediately.

CHAPTER 13

An act to add Section 1057.3 to the Civil Code, relating to transfers of property.

[Approved by Governor March 8, 1990. Filed with Secretary of State March 9, 1990]

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

SECTION 1. Section 1057.3 is added to the Civil Code, to read:

1057.3. (a) It shall be the obligation of a buyer and seller who enter into a contract to purchase and sell real property to ensure that all funds deposited into an escrow account are returned to the person who deposited the funds or who is otherwise entitled to the funds under the contract, if the purchase of the property is not completed by the date set forth in the contract for the close of escrow or any duly executed extension thereof.

(b) Any buyer or seller who fails to execute any document required by the escrow holder to release funds on deposit in an escrow account as provided in subdivision (a) within 30 days following a written demand for the return of funds deposited in escrow by the other party shall be liable to the person making the deposit for all of the following:

(1) The amount of the funds deposited in escrow not held in good faith to resolve a good faith dispute.

(2) Damages of treble the amount of the funds deposited in escrow not held to resolve a good faith dispute, but liability under this paragraph shall not be less than one hundred dollars ($100) or more than one thousand dollars ($1,000).

(3) Reasonable attorney's fees incurred in any action to enforce this section.

(c) Notwithstanding subdivision (b), there shall be no cause of action under this section, and no party to a contract to purchase and sell real property shall be liable, for failure to return funds deposited in an escrow account by a buyer or seller, if the funds are withheld in order to resolve a good faith dispute between a buyer and seller. A party who is denied the return of the funds deposited in escrow is entitled to damages under this section only upon proving that there was no good faith dispute as to the right to the funds on deposit.

(d) Upon the filing of a cause of action pursuant to this section, the escrow holder shall deposit the sum in dispute, less any cancellation fee and charges incurred, with the court in which the action is filed and be discharged of further responsibility for the funds.

(e) Neither any document required by the escrow holder to

release funds deposited in an escrow account nor the acceptance of funds released from escrow, by any principal to the escrow transaction, shall be deemed a cancellation or termination of the underlying contract to purchase and sell real property, unless the cancellation is specifically stated therein. If the escrow instructions constitute the only contract between the buyer and seller, no document required by the escrow holder to release funds deposited in an escrow account shall abrogate a cause of action for breach of a contractual obligation to purchase or sell real property, unless the cancellation is specifically stated therein.

(f) For purposes of this section:

(1) "Close of escrow" means the date, specified event, or performance of prescribed condition upon which the escrow agent is to deliver the subject of the escrow to the person specified in the buyer's instructions to the escrow agent.

(2) "Good faith dispute" means a dispute in which the trier of fact finds that the party refusing to return the deposited funds had a reasonable belief of his or her legal entitlement to withhold the deposited funds. The existence of a "good faith dispute" shall be determined by the trier of fact.

(3) "Property" means real property containing one to four residential units at least one of which at the time the escrow is created is to be occupied by the buyer. The buyer's statement as to his or her intention to occupy one of the units is conclusive for the purposes of this section.

(g) Nothing in this section restricts the ability of an escrow holder to file an interpleader action in the event of a dispute as to the proper distribution of funds deposited in an escrow account.

CHAPTER 14

An act to amend Sections 21628 and 21647 of the Business and Professions Code, and to add Section 71603.6 to the Government Code, relating to governmental regulation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 9, 1990. Filed with Secretary of State March 9, 1990]

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

SECTION 1. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer or 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 be 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.

(h) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledgor adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

SEC. 2. 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, except coins, monetized bullion, or

"commercial grade ingots" as defined in subdivision (d) of Section 21627, 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 in return for the surrender of the property.

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

(3) If a pledgor seeks to redeem property that is subject to a hold,

the pawnbroker, 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.

(d) Whenever information regarding allegedly lost or stolen property is entered into the Department of Justice automated property system or automated firearms system, and the property is thereafter identified and found to be in the possession of a pawnbroker, secondhand dealer, or coin dealer, and the property is thereafter placed on a hold pursuant to this section and the hold, including any additional hold, is allowed to lapse, or 60 days elapse following the delivery of the notice required to be given by this section to the person who reported the property to be lost or stolen without a claim being made by that person, whichever is later, the pawnbroker, secondhand dealer, or coin dealer may mail under a Certificate of Mailing issued by the United States Post Office, addressed to the law enforcement agency that placed the property on hold, a written request to delete the property listing from the Department of Justice automated property system or automated firearms system, as is applicable. Within 30 days after the request has been mailed, the law enforcement agency shall either cause the property listing to be deleted as requested or place a hold on the property. If no law enforcement agency takes any further action with respect to the property within 45 days after the mailing of the request, the pawnbroker, secondhand dealer, or coin dealer may presume that the property listing has been deleted as requested and may thereafter deal with the property accordingly, and shall not be subject to liability arising from the failure of the removal of the property listing from the Department of Justice automated property system or automated firearms system.

SEC. 3. Section 71603.6 is added to the Government Code, to read:

71603.6. Notwithstanding any other provision of this article, the Board of Supervisors of Santa Barbara County by ordinance or resolution may designate the marshal of the Santa Maria Judicial District as ex officio constable of the Solvang Judicial District. The marshal and deputy marshals shall serve as designated without additional compensation.

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 correct chaptering errors in previous legislation and to assure that this legislation becomes effective before the filing deadline for the position of constable for the Solvang Justice Court, it is necessary that this act take effect immediately.

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.

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 15

An act to amend Sections 12926 and 12945 of the Government Code, relating to employment.

[Approved by Governor March 12, 1990. Filed with Secretary of State March 12, 1990.]

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

SECTION 1. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(b) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(c) "Employer," except as hereinafter provided, includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly; the state or any political or civil subdivision thereof and cities.

"Employer" does not include a religious association or corporation not organized for private profit.

(d) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(e) "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances,

terms or conditions of employment, or of other mutual aid or protection.

(f) "Medical condition" means any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(g) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age.

(h) "Physical handicap" includes impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.

(i) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(j) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

SEC. 2. Section 12945 of the Government Code is amended to read:

12945. It shall be an unlawful employment practice unless based upon a bona fide occupational qualification:

(a) For any employer, because of the pregnancy, childbirth, or related medical condition of any female employee, to refuse to promote her, or to refuse to select her for a training program leading to promotion, provided she is able to complete the training program at least three months prior to the anticipated date of departure for her pregnancy leave, or to discharge her from employment or from a training program leading to promotion, or to discriminate against her in compensation or in terms, conditions, or privileges of employment.

(b) For any employer to refuse to allow a female employee affected by pregnancy, childbirth, or related medical conditions either:

(1) To receive the same benefits or privileges of employment granted by that employer to other persons not so affected who are similar in their ability or inability to work, including to take disability or sick leave or any other accrued leave which is made available by the employer to temporarily disabled employees. For purposes of this section, pregnancy, childbirth, and related medical conditions are treated as any other temporary disability. However, no employer shall be required to provide a female employee disability leave on account of normal pregnancy, childbirth, or related medical condition for a period exceeding six weeks. Nothing in this section shall be construed to require an employer to provide his or her employees with health insurance coverage for the medical costs of pregnancy, childbirth, or related medical conditions. The inclusion in any such health insurance coverage of any provisions or coverage relating to medical costs of pregnancy, childbirth, or related medical

conditions shall not be construed to require the inclusion of any other provisions or coverage, nor shall coverage of any related medical conditions be required by virtue of coverage of any medical costs of pregnancy, childbirth, or other related medical conditions.

(2) To take a leave on account of pregnancy for a reasonable period of time; provided, the period shall not exceed four months. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions. Nothing herein shall be construed to limit the provisions of paragraph (1) of subdivision (b).

An employer may require any employee who plans to take a leave pursuant to this subdivision to give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave.

(c) (1) For an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

(2) For any employer to refuse to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where such transfer can be reasonably accommodated, provided, however, that no employer shall be required by this section to create additional employment which the employer would not otherwise have created, nor shall the employer be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job.

(d) This section shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth, or medical conditions related to pregnancy or childbirth under any other provisions of this part, including subdivision (a) of Section 12940.

(e) The provisions of this section, that is Section 12945, except paragraph (2) of subdivision (b), shall be inapplicable to any employer subject to Title VII of the federal Civil Rights Act of 1964.

SEC. 3. The amendment made to Section 12926 of the Government Code by Section 1 of this act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 16

An act to amend Sections 65088.1, 65089, 65089.3, and 65089.4 of, and to add Sections 14525.6, 65089.5, and 65089.6 to, the Government Code, relating to transportation.

[Approved by Governor March 12, 1990. Filed with Secretary of State March 12, 1990]

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

SECTION 1. Section 14525.6 is added to the Government Code, to read:

14525.6. The Auditor General shall annually conduct a review of allocations and expenditures at the state level of transportation funds made available by Chapters 105, 106, and 108 of the Statutes of 1989, to determine whether the purposes for which those funds are allocated and expended conform to the requirements of Chapters 105, 106, and 108 of the Statutes of 1989. Not later than March 1, 1992, and by March 1 of each year thereafter, the Auditor General shall submit a report on the results of that review to the Governor and to the Legislature.

SEC. 2. Section 65088.1 of the Government Code, as added by Section 9 of Chapter 106 of the Statutes of 1989, is amended to read:

65088.1. As used in this chapter the following terms have the following meanings:

(a) Unless the context requires otherwise, "regional agency" means the agency responsible for preparation of the regional transportation improvement program.

(b) Unless the context requires otherwise, "agency" means the agency responsible for the preparation and adoption of the congestion management program.

(c) "City" includes a city and county.

(d) "Commission" means the California Transportation Commission.

(e) "Department" means the Department of Transportation.

(f) "Urbanized area" has the same meaning as is defined in the 1990 federal census for urbanized areas of more than 50,000 population.

(g) "Interregional travel" means trips that have neither origin nor destination within the boundary of the congestion management program.

SEC. 3. Section 65089 of the Government Code, as added by Section 9 of Chapter 106 of the Statutes of 1989, is amended to read:

65089. (a) A congestion management program shall be developed, adopted, and annually updated for every county that includes an urbanized area, and shall include every city and the county. The program shall be adopted at a noticed public hearing of the agency. The program shall be developed in consultation with,

and with the cooperation of, the transportation planning agency, regional transportation providers, local governments, the department, and the air pollution control district or the air quality management district, either by the county transportation commission, or by another public agency, as designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county.

(b) The program shall contain all of the following elements:

(1) (A) Traffic level of service standards established for a system of highways and roadways designated by the agency. The system shall include at a minimum all state highways and principal arterials. No highway or roadway designated as a part of the system shall be removed from the system. All new state highways and principal arterials shall be designated as part of the system. Level of service (LOS) shall be measured by Circular 212, (or by the most recent version of the Highway Capacity Manual), or by a uniform methodology adopted by the agency which is consistent with the Highway Capacity Manual. The determination as to whether an alternative method is consistent with the Highway Capacity Manual shall be made by the regional agency, except that the department shall make this determination instead if either (i) the regional agency is also the agency, as those terms are defined in Section 65088.1, or (ii) the department is responsible for preparing the regional transportation improvement plan for the county.

(B) In no case shall the LOS standards established be below the level of service E or the current level, whichever is farthest from level of service A, except where a segment or intersection has been designated as deficient and a deficiency plan has been adopted pursuant to Section 65089.3.

(2) Standards established for the frequency and routing of public transit, and for the coordination of transit service provided by separate operators.

(3) A trip reduction and travel demand element that promotes alternative transportation methods, such as carpools, vanpools, transit, bicycles, and park-and-ride lots; improvements in the balance between jobs and housing; and other strategies, including flexible work hours and parking management programs.

(4) A program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems, including an estimate of the costs associated with mitigating those impacts. In no case shall the program include an estimate of the costs of mitigating the impacts of interregional travel. The program shall provide credit for local public and private contributions to improvements to regional transportation systems. However, in the case of toll road facilities, credit shall only be allowed for local public and private contributions which are unreimbursed from toll revenues or other state or federal sources. The agency shall calculate the amount of the credit to be provided.

(5) A seven-year capital improvement program to maintain or improve the traffic level of service and transit performance standards developed pursuant to paragraphs (1) and (2), and to mitigate regional transportation impacts identified pursuant to paragraph (4), which conforms to transportation-related vehicle emissions air quality mitigation measures.

(c) The agency, in consultation with the regional agency, cities, and the county, shall develop a uniform data base on traffic impacts for use in a countywide transportation computer model and shall approve transportation computer models of specific areas within the county that will be used by local jurisdictions to determine the quantitative impacts of development on the circulation system that are based on the countywide model and standardized modeling assumptions and conventions. The computer models shall be consistent with the modeling methodology adopted by the regional planning agency. The data bases used in the models shall be consistent with the data bases used by the regional planning agency. Where the regional agency has jurisdiction over two or more counties, the data bases used by the agency shall be consistent with the data bases used by the regional agency.

SEC. 4. Section 65089.3 of the Government Code, as added by Section 9 of Chapter 106 of the Statutes of 1989, is amended to read:

65089.3. (a) The agency shall monitor the implementation of all elements of the congestion management program. Annually, the agency shall determine if the county and cities are conforming to the congestion management program, including, but not limited to, all of the following:

(1) Consistency with levels of service and performance standards, except as provided in subdivisions (b) and (c).

(2) Adoption and implementation of a trip reduction and travel demand ordinance.

(3) Adoption and implementation of a program to analyze the impacts of land use decisions, including the estimate of the costs associated with mitigating these impacts.

(b) (1) A city or county may designate individual deficient segments or intersections which do not meet the established level of service standards if, prior to the designation, at a noticed public hearing, the city or county has adopted a deficiency plan which shall include all of the following:

(A) An analysis of the causes of the deficiency.

(B) A list of improvements necessary for the deficient segment or intersection to maintain the minimum level of service otherwise required and the estimated costs of the improvements.

(C) A list of improvements, programs, or actions, and estimates of costs, that will (i) measurably improve the level of service of the system, as defined in subdivision (b) of Section 65089, and (ii) contribute to significant improvements in air quality, such as improved public transit service and facilities, improved nonmotorized transportation facilities, high occupancy vehicle

facilities, and transportation control measures. The air quality management district or the air pollution control district shall establish and periodically revise a list of approved improvements, programs, and actions which meet the scope of this paragraph. If an improvement, program, or action is on the approved list and has not yet been fully implemented, it shall be deemed to contribute to significant improvements in air quality. If an improvement, program, or action is not on the approved list, it shall not be implemented unless approved by the local air quality management district or air pollution control district.

(D) An action plan, consistent with the provisions of Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, that shall be implemented, consisting of improvements identified in paragraph (B), or improvements, programs, or actions identified in paragraph (C), that are found by the agency to be in the interest of the public's health, safety and welfare. The action plan shall include a specific implementation schedule.

(2) A city or county shall forward its adopted deficiency plan to the agency. The agency shall hold a noticed public hearing within 60 days of receiving the deficiency plan. Following the hearing, the agency shall either accept or reject the deficiency plan in its entirety, but the agency may not modify the deficiency plan. If the agency rejects the plan, it shall notify the city or county of the reasons for that rejection.

(c) The agency, after consultation with the regional agency, the department, and the local air quality management district or air pollution control district, shall exclude from the determination of conformance with level of service standards, the impacts of any of the following:

(1) Interregional travel.

(2) Construction, rehabilitation, or maintenance of facilities that impact the system.

(3) Freeway ramp metering.

(4) Traffic signal coordination by the state or multijurisdictional agencies.

(5) Traffic generated by the provision of low and very low income housing.

(d) For the purposes of this chapter, the impacts of a trip which originates in one county and which terminates in another county shall be included in the determination of conformance with level of service standards with respect to the originating county only. A roundtrip shall be considered to consist of two individual trips.

SEC. 5. Section 65089.4 of the Government Code, as added by Section 9 of Chapter 106 of the Statutes of 1989, is amended to read:

65089.4. (a) If, pursuant to the annual monitoring provided for in Section 65089.3, the agency determines, following a noticed public hearing, that a city or county is not conforming with the requirements of the congestion management program, the agency shall notify the city or county in writing of the specific areas of

nonconformance. If, within 90 days of the receipt of the written notice of nonconformance, the city or county has not come into conformance with the congestion management program, the governing body of the agency shall make a finding of nonconformance and shall submit the finding to the commission and to the Controller.

(b) Upon receiving notice from the agency of nonconformance, the Controller shall withhold apportionments of funds required to be apportioned to that nonconforming city or county by Section 2105 of the Streets and Highways Code, until the Controller is notified by the agency that the city or county is in conformance.

SEC. 6. Section 65089.5 is added to the Government Code, to read:

65089.5. Failure to complete or implement a congestion management program shall not give rise to a cause of action against a city or county for failing to conform with its general plan, unless the city or county incorporates the congestion management program into the transportation element of its general plan.

SEC. 7. Section 65089.6 is added to the Government Code, to read:

65089.6. A proposed development specified in a development agreement entered into prior to July 10, 1989, shall not be subject to any action taken to comply with this chapter, except actions required to be taken with respect to the trip reduction and travel demand element of a congestion management program pursuant to paragraph (3) of subdivision (b) of Section 65089.

SEC. 7. Sections 6 and 7 of this act shall not become operative unless Senate Constitutional Amendment 1 is approved by the voters at the June 5, 1990, direct primary election.

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 17

An act to amend Section 877.5 of the Code of Civil Procedure, relating to liability.

[Approved by Governor March 13, 1990. Filed with Secretary of State March 13, 1990.]

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

SECTION 1. Section 877.5 of the Code of Civil Procedure is amended to read:

877.5. (a) Where an agreement or covenant is made which provides for a sliding scale recovery agreement between one or more, but not all, alleged defendant tortfeasors and the plaintiff or plaintiffs:

(1) The parties entering into any such agreement or covenant shall promptly inform the court in which the action is pending of the existence of the agreement or covenant and its terms and provisions.

(2) If the action is tried before a jury, and a defendant party to the agreement is called as a witness at trial, the court shall, upon motion of a party, disclose to the jury the existence and content of the agreement or covenant, unless the court finds that this disclosure will create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

The jury disclosure herein required shall be no more than necessary to inform the jury of the possibility that the agreement may bias the testimony of the witness.

(b) As used in this section, a "sliding scale recovery agreement" means an agreement or covenant between a plaintiff or plaintiffs and one or more, but not all, alleged tortfeasor defendants, which limits the liability of the agreeing tortfeasor defendants to an amount which is dependent upon the amount of recovery which the plaintiff is able to recover from the nonagreeing defendant or defendants. This includes, but is not limited to, agreements within the scope of Section 877, and agreements in the form of a loan from the agreeing tortfeasor defendant or defendants to the plaintiff or plaintiffs which is repayable in whole or in part from the recovery against the nonagreeing tortfeasor defendant or defendants.

(c) No sliding scale recovery agreement is effective unless, at least 72 hours prior to entering into the agreement, a notice of intent to enter into an agreement has been served on all nonsignatory alleged defendant tortfeasors. However, upon a showing of good cause, the court or a judge thereof may allow a shorter time. The failure to comply with the notice requirements of this subdivision shall not constitute good cause to delay commencement of trial.

CHAPTER 18

An act to amend Section 667.5 of the Penal Code, relating to sentencing.

[Approved by Governor March 13, 1990. Filed with Secretary of State March 13, 1990.]

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.

(13) A violation of Section 12308.

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 19

An act to amend Sections 34051, 34052, 34071, 34072, 34073, 34074, 34076, 34077, 34079, 34080, 34081, 50661.5, and 50662.7, as added by Chapter 6 of the 1989–90 First Extraordinary Session of, to amend Section 50671.5, as added by Chapter 4 of the 1989–90 First Extraordinary Session of, to amend Section 50517.7 of, to add Section 34075 to, and to repeal Sections 34051, 34052, 34071, 34072, 34073, 34074, 34075, 34076, 34077, 34079, 34080, 34081, 50661.5, and 50662.7, as added by Chapter 5 of the 1989–90 First Extraordinary Session of, to repeal Sections 50661.5 and 50671.5, as added by Chapter 3 of the 1989–90 First Extraordinary Session of, to repeal Section 50661.5, as added by Chapter 4 of the 1989–90 First Extraordinary Session, and to repeal Section 34075, as added by Chapter 6 of the 1989–90 First Extraordinary Session of, the Health and Safety Code, to repeal Section 5028 of the Public Resources Code, as added by Chapter 4 of the 1989–90 First Extraordinary Session, and to amend Section 7 of Chapter 6 of the 1989–90 First Extraordinary Session, relating to natural disaster, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 13, 1990. Filed with Secretary of State March 13, 1990.]

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

SECTION 1. Section 34051 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34051. For the purpose of providing disaster relief to victims of a natural disaster, as defined by Section 8680.3 of the Government Code, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of the Government Code, financial assistance may be provided to disaster victims as prescribed in this part. Funds appropriated for the purposes authorized by this part shall be expended only to the extent that other federal, state, local, private insurance resources, or private institutional lending sources are not available or do not provide the assistance or coverage needed, except for assistance provided pursuant to Section 34052.

SEC. 2. Section 34051 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 3. Section 34052 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34052. For the purpose of providing disaster relief in communities subject to a natural disaster, the department shall award funds pursuant to Chapter 3.1 (commencing with Section 50515) or Chapter 3.5 (commencing with Section 50530) of Part 2 of Division 31, provided that funds have been made available for this purpose. Notwithstanding subdivision (b) of Section 50531, funds shall be used for housing for persons of low and moderate income, with first priority given to funding housing for persons of low income.

SEC. 4. Section 34052 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 5. Section 34071 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34071. "Eligible recipient" as used in this chapter means an agency of local government or a nonprofit organization which is able to provide or contract with recognized community organizations to provide, emergency or temporary shelter for the homeless.

SEC. 6. Section 34071 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 7. Section 34072 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34072. The department shall accept applications for funding pursuant to this chapter from local governmental agencies and nonprofit organizations which are eligible recipients and which are, at the time the application is made, prepared to provide emergency shelter to persons who have been rendered homeless as the result of a natural disaster.

SEC. 8. Section 34072 of the Health and Safety Code, as added by

Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 9. Section 34073 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34073. (a) Notwithstanding Section 50803.5, in the event of a natural disaster, applications for funding from the Natural Disaster Emergency Shelter Program shall be submitted directly to the department. The department shall assume direct responsibility for the review and evaluation of all applications, and shall be responsible for determining applicant eligibility and the need for the proposed activities.

(b) The initial notice of funding provided by the department for funds shall be transmitted as soon as practicably possible, but in no event later than 15 days after the statute providing that funding is chaptered.

SEC. 10. Section 34073 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 11. Section 34074 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34074. (a) Funds awarded, as a result of a natural disaster, may be used for any of the following:

(1) Rent vouchers which may be used within or outside the jurisdiction for which they were issued.

(2) Temporary expansion of existing shelters.

(3) Creation, acquisition, rehabilitation, or lease of temporary shelters, equipment of buildings and sites for use as emergency shelters.

(4) Operation of shelters.

(5) Administration of emergency shelter programs.

(b) Any eligible recipient awarded funding as a result of a natural disaster shall be required to use the funds to provide emergency shelter to persons who have been rendered homeless as a result of the natural disaster. Recipients shall practice nondiscrimination in the provision of the shelter and shall use the funds to supplement, not supplant, other federal, state, and local programs providing social services, health care, and housing assistance, and to meet any other qualifications the department finds necessary to carry out the intent of the Natural Disaster Emergency Shelter Program.

SEC. 12. Section 34074 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 13. Section 34075 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 14. Section 34075 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 15. Section 34075 is added to the Health and Safety Code, to read:

34075. The limitations imposed by Section 50805 on the amounts that the department may allocate for administrative or operating

expenses and the requirement that not less than 20 percent of the moneys in the Emergency Housing and Assistance Fund shall be allocated to nonurban counties shall not apply to the provisions of this chapter.

SEC. 16. Section 34076 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34076. The department shall establish the types of expenses which are included within the meaning of operating and administrative expenses for purposes of this chapter. These expenses shall include, at a minimum all of the following:

(a) Operation expenses relating to supervising and counseling clients in obtaining permanent shelter, job placement, and other sources of support.

(b) Administrative expenses relating to telephone charges, office space rent, salary and benefits for administrative staff personnel, office supplies, photocopying and printing, and mail and accounting services.

SEC. 17. Section 34076 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 18. Section 34077 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34077. (a) For the purposes of this section, "the act" means Title IV of the Stewart B. McKinney Homeless Assistance Act, as approved on July 22, 1987, cited as Public Law 100-77 and provided for in H.R. 558, and regulations promulgated thereunder by the United States Department of Housing and Urban Development.

(b) Notwithstanding any other provision of law or any guideline adopted pursuant to this chapter, an eligible recipient who receives funds pursuant to this chapter, or who has an outstanding obligation to provide shelter services as a result of previously receiving funds under the act may charge rent for transitional housing not in excess of the amount allowed by the act. However, any proceeds collected from residents of a shelter pursuant to this subdivision shall be maintained and accounted for in a separate account and shall be utilized, to the extent necessary, to pay for any security deposit imposed pursuant to Section 1950.5 of the Civil Code on any resident leaving the shelter and renting a permanent dwelling.

(c) An eligible recipient who receives funds pursuant to this chapter, or who has an outstanding obligation to provide shelter services as a result of previously receiving funds pursuant to this chapter, shall not deny shelter to any person or family because of that person's or family's inability to pay rent or any portion thereof.

SEC. 19. Section 34077 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 20. Section 34079 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34079. Individuals who are eligible to participate in a deposit guarantee or grant contract shall be limited to persons who have been rendered homeless as a result of the natural disaster. First priority for assistance shall be families with minor children.

SEC. 21. Section 34079 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 22. Section 34080 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34080. The parties to a deposit guarantee or grant contract shall be the local agency or organization, the tenant, and the rental property owner. The terms of the contract shall include all of the following:

(a) The owner of the rental property shall agree to allow the security deposit to be paid over a specified number of months as an addition to the regular rental payment, rather than as a lump-sum payment.

(b) Upon execution of the agreement, the local agency or organization shall encumber or reserve in a special fund as a guarantee of the contract, an amount equal to no less than 80 percent of the outstanding balance of the security deposit owed by the tenant to the landlord.

(c) The tenant shall agree to a payment schedule of a specified number of months in which time the total amount of the required deposit shall be paid to the property owner.

(d) At any time during the operation of the guarantee, the property owner shall make all claims first against amounts of the security deposit actually paid by the tenant and secondarily against the guarantee. At no time during or after the tenancy may the property owner make claims against the guarantee in excess of that amount agreed to as the guarantee.

(e) If a deduction from the guarantee fund is required, it may be accomplished only to the extent permitted by the contract and in the manner provided by law, including notice to the local agency or organization. The tenant shall have no direct use of guarantee funds, including funds which may be referred to as "last month's rent."

The department shall make available to local agencies and organizations receiving deposit guarantee or grant contracts forms deemed necessary for the contracts and the determination of eligibility. However, local agencies and organizations may develop and use their own forms as long as the forms meet the requirements of the deposit guarantee and grant program.

SEC. 23. Section 34080 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 24. Section 34081 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

34081. A local agency or organization receiving a deposit guarantee and grant contract may utilize up to 5 percent of the

allocation for costs of administering and operating its security deposit guarantee and grant program.

SEC. 25. Section 34081 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 26. Section 50517.7 of the Health and Safety Code is amended to read:

50517.7. In counties in which a disaster has been declared by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code and for a period of 12 months after the declaration, the department may provide grants from the fund established by subdivision (b) of Section 50517.5, subject to the following terms and conditions, which are applicable only to this section:

(a) Grants may be made to local public entities, nonprofit corporations, and housing owners comprised of either homeowners who are agricultural employees or owners of rental property used primarily by agricultural households.

(b) The department may enter into master agreements with nonprofit corporations or local public entities or it may enter into contracts directly with housing owners to carry out the activities authorized by this section.

(c) The department may make grants directly to housing owners or through master agreements for the cost of preparation of applications for funds, and supervision of expenditures from the fund, including, but not limited to estimates, work writeups, bidding supervision, and inspections. Funds granted pursuant to this subdivision shall not be secured by, and subject to, the liens required by Section 50517.5.

(d) The department, either directly or through master agreements, may provide grants to housing owners which shall be used for housing rehabilitation or acquisition and rehabilitation, and related costs, other than those costs accruing pursuant to subdivision (c). Only those funds from the fund which are actually utilized pursuant to this subdivision shall be secured by, and subject to, the liens required by Section 50517.5.

(e) The department may waive the matching requirements of subdivision (c) of Section 50517.5.

SEC. 27. Section 50661.5 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

50661.5. (a) There is hereby created in the State Treasury the California Disaster Housing Rehabilitation Fund into which shall be paid all moneys appropriated by the Legislature pursuant to subdivision (b) or transferred pursuant to subdivision (c) for housing rehabilitation loans pursuant to Sections 50662.7 and 50671.5. All interest or other increments resulting from the investment of moneys in the California Disaster Housing Rehabilitation Fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Notwithstanding Section 13340 of the

Government Code, all money in that fund is continuously appropriated to the department for the following purposes:

(1) For making deferred-payment rehabilitation loans pursuant to Sections 50662.7 and 50671.5.

(2) For related administrative expenses of the department.

(3) For related administrative expenses of any entity contracting with the department, pursuant to Sections 50662.7 and 50671.5 in an amount, if any, as determined by the department, to enable the entities to implement a program pursuant to those sections.

(b) There shall be paid into the fund the following:

(1) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(2) Any moneys transferred from the Special Fund for Economic Uncertainties, pursuant to subdivision (c).

(3) Any other moneys which may be made available to the department for the purposes of this section from any other source or sources.

(c) In the event of a natural disaster, as defined in Section 8680.3 of the Government Code, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties established by Section 16418 to the California Disaster Housing Rehabilitation Fund, provided 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.

(d) Payments of principal and interest on loans issued pursuant to Sections 50662.7 and 50671.5 shall be deposited in the General Fund. When the director determines that all necessary loans have been completed, any unused funds, as determined by the director, shall be transferred to the General Fund.

SEC. 28. Section 50661.5 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 29. Section 50661.5 of the Health and Safety Code, as added by Chapter 4 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 30. Section 50661.5 of the Health and Safety Code, as added by Chapter 3 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 31. Section 50662.7 of the Health and Safety Code, as added by Chapter 6 of the 1989–90 First Extraordinary Session, is amended to read:

50662.7. For the purpose of providing disaster relief to those owners of owner-occupied dwellings that were damaged or destroyed as a result of a natural disaster defined by Section 8680.3 of the Government Code, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of the Government Code, financial assistance may be provided to disaster victims as prescribed in this chapter under the following special conditions, which shall prevail over conflicting provisions of this chapter and administrative regulations:

(a) The loans shall be provided in any city, county, or city and county proclaimed by the Governor to be in a state of disaster (1)

to persons who do not qualify for loan assistance from an agency of the United States for rehabilitation of the damage caused by a natural disaster, (2) to the extent that federally provided or assisted financing may be insufficient to accomplish the necessary rehabilitation, and (3) to the extent required to enable the recipient to obtain and afford loan assistance from an agency of the United States to finance the necessary rehabilitation. The loans shall be made only to households that are victims of a natural disaster and only to the extent that other federal and state resources, or private insurance proceeds or private institutional lending sources, are not available or do not provide the assistance or coverage needed to rehabilitate or reconstruct their homes.

(b) The loans shall be for the purpose of rehabilitating, including reconstructing, dwellings that are owner-occupied or would be owner-occupied but for the damage caused by the natural disaster. Loan funds shall be used to fund work necessary to bring damaged dwellings into compliance with minimum rehabilitation standards or to finance the reconstruction of dwellings destroyed as a result of the natural disaster, except in the case of manufactured housing or mobilehomes, which shall be brought into compliance with the standards set forth in Chapter 4 (commencing with Section 18025) of Part 2 of Division 13. For the purposes of this section, "owner-occupied dwellings" include single-family units, attached owner-occupied units, condominiums, townhouses, cooperatives, any duplex in which the owner occupies one unit, and manufactured homes, including mobilehomes.

(c) The maximum loan amount shall not exceed thirty thousand dollars ($30,000), except that the department may waive this limitation in individual cases to permit compliance with health and safety standards, seismic safety standards, and general property improvements relating to these standards. In the case of manufactured homes or mobilehomes, loan funds shall be used to bring the dwelling into compliance with Chapter 4 (commencing with Section 18025) of Part 2 of Division 13.

(d) The loan, together with any existing indebtedness encumbering the secured property, shall not exceed 100 percent of the after-rehabilitation value of the property, except that the department may waive this limitation in individual cases to ensure, when necessary, compliance with health and safety standards, seismic safety standards, and general property improvements relating to these standards pursuant to subdivisions (b) and (c).

(e) The department shall not consider either individual or family income in determining eligibility for a loan under this section.

(f) The outstanding balance of a loan provided under this section, including principal and accrued interest thereon, shall be due and payable when either: (1) the borrower transfers ownership of the rehabilitated property, or (2) fails to occupy the rehabilitated property as his or her principal place of residence, whichever comes first. After the initial recordation of the deed of trust securing the

department's loan, the department shall not subordinate its deed of trust to additional or other financing except in cases of extreme hardship necessary to protect the health or safety of the occupants or to the extent that the total principal of loans senior to the department's loan is unchanged or decreased and the department's security interest is not jeopardized, as determined by the department.

(g) The department may make loans directly to borrowers, or contract for the administration under this section of loans with one or more entities that it determines to have the necessary experience to successfully administer the loan program, including, but not limited to, local public agencies and private organizations. The department may authorize, under that contract, the payment of expenses incurred by the entities in administering the loan program and may prescribe the conditions pursuant to which the entities shall administer the loans.

(h) Sections 50663 and 50668 do not apply to loans made pursuant to this section.

(i) The department may set aside or use funds that are made available for the purposes of this section for the purpose of curing or averting an owner's default on the terms of any loan or other obligation where that default would jeopardize the department's security in the owner-occupied housing assisted pursuant to this section. The payment or advance of funds by the department pursuant to this subdivision shall be exclusively within the department's discretion, and no person shall be deemed to have any entitlement to the payment or advance of those funds. The amount of any funds expended by the department pursuant to this subdivision shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand.

(j) Any rule, policy, or standard of general application employed by the Department of Housing and Community Development in implementing this section 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.

(k) Fund allocations made pursuant to this section shall not be subject to review or approval by the Loan Committee of the Department of Housing and Community Development operating pursuant to Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of Title 25 of the California Code of Regulations.

(*l*) In order to be eligible for one or more loans pursuant to this section, the borrower shall agree to both of the following conditions: (1) all buildings shall be connected to their foundation systems as necessary to meet the seismic requirements of the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials in a manner approved by the department, which may include seismic strengthening of foundation cripple walls, and affixing or bolting sill plates to the foundation, and (2) all water heaters shall be braced, anchored, or strapped to resist falling or

horizontal displacement due to earthquake motion. The loan shall include an amount sufficient to meet those requirements.

SEC. 32. Section 50662.7 of the Health and Safety Code, as added by Chapter 5 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 33. Section 50671.5 of the Health and Safety Code, as added by Chapter 4 of the 1989–90 First Extraordinary Session, is amended to read:

50671.5. For the purpose of providing disaster relief to owners of rental housing and the tenants residing in rental housing that was damaged or destroyed as a result of a natural disaster as defined by Section 8680.3 of the Government Code, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of the Government Code, financial assistance may be provided to disaster victims as prescribed in this chapter under the following special conditions, which shall prevail over conflicting provisions of this chapter and administrative regulations:

(a) Funds may be used for the purpose of refinancing in conjunction with rehabilitation, acquiring and rehabilitating or rehabilitating, including reconstruction of, rental housing developments, which were damaged or destroyed as a result of the natural disaster. The loans shall only be made in a city, county, or city and county proclaimed by the Governor to be in a state of disaster to assist rental housing developments that are damaged or destroyed by a natural disaster and only to the extent that other federal and state resources, or private insurance proceeds or private institutional lending sources, are not available or do not provide the assistance or coverage needed to rehabilitate or reconstruct that housing. The loans may be provided (1) to persons who do not qualify for loan assistance from an agency of the United States for rehabilitation of the damage caused by a natural disaster, or, (2) to the extent that federally provided or assisted financing may be insufficient to accomplish the necessary rehabilitation or would require rent increases above the rent charged for the units prior to the disaster. As to damaged rental housing, the loan funds shall be used to bring the housing into compliance with applicable health and safety standards and seismic safety standards, and to make property improvements that are related to that compliance. If reconstruction is precluded on the original project site due to documented soil, geological or other conditions which cannot be mitigated at a reasonable cost or the cost of the rehabilitation or reconstruction would exceed 110 percent of the value after reconstruction, the department may approve reconstruction on a comparable site in the immediate neighborhood provided that the project serves the same tenant population as prior to the natural disaster. However, loan funds shall not be used for acquisition of real property.

(b) Rental housing developments, for this purpose, shall include, but not be limited to, single- or multifamily rental dwellings, apartments, residential hotels, rental mobilehomes, mobilehome parks, group homes for senior citizens or the disabled, buildings of

mixed residential rental and commercial use, and buildings of mixed owner-occupant and rental use. Rental housing developments may contain one or more units.

(c) The loans need not be made in support of the programs specified in Section 50663.

(d) As a condition of assistance to under this section, sponsors of rental housing developments shall agree to the restrictions set forth in this subdivision with respect to assisted units. The proportion of assisted units shall at least be equal to the proportion of project costs financed pursuant to this section to total eligible project costs.

(1) Where a loan under this section funds only the rehabilitation of a rental housing development, assisted units shall remain restricted only until such time as the subsequent initial occupant voluntarily vacates the assisted unit.

(2) Where a loan under this section funds both rehabilitation and acquisition of a rental housing development, assisted units shall remain restricted as provided in this section for the entire original term of the loan.

(3) Initial rents for assisted units shall not exceed the rent charged for the unit immediately prior to the natural disaster. After one year of initial occupancy, and annually thereafter, the rents for assisted units may be increased by the sponsor 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 the base year in which rents are initially established. A sponsor may appeal to the department for a greater adjustment in rents necessary to ensure the fiscal integrity of the rental housing development.

(4) The restrictions provided by this subdivision shall be binding on any and all successors-in-interest of the original borrower and regardless of any sale, transfer, or conveyance of the rental housing development or prepayment of the loan.

(5) If any unit undergoing rehabilitation or reconstruction pursuant to funding under this section is subject to a currently applicable regulatory agreement between the department and a housing sponsor, that agreement shall prevail over this subdivision.

(6) In addition to the other requirements of this chapter, the department may require terms and conditions as it determines necessary to meet the needs of the disaster area and its victims, to ensure the fiscal integrity of the rental housing development, and to protect the interests of the state. The department shall require that priority in occupancy in any unit assisted pursuant to this section shall be given first to occupants of rental units assisted pursuant to this section who were displaced by the natural disaster or the resulting rehabilitation of the assisted rental units. Second priority shall be given to other persons who were displaced from housing as a result of the natural disaster.

(e) In allocating funds, the department shall consider the availability of other resources to assist rental housing and the

occupants of that rental housing and shall give priority to those applicants in jurisdictions with the greatest housing need resulting from the disaster and the fewest resources to address those needs.

(f) (1) The department may waive the maximum loan amounts and per-unit loan amounts established by regulation as it determines necessary to serve the disaster victims. Loans made pursuant to this section for rehabilitation shall have a term of up to 20 years. Loans made pursuant to this section for acquisition and rehabilitation shall have a term of up to 30 years. Repayment of the principal amount of any loan provided under this section, or of any interest on that loan, shall not be required until the end of the loan term.

(2) Any loan under this section for the rehabilitation of units where the borrower maintains all of the assisted units at affordable rents for lower income tenants for a period of not less than 10 years subsequent to the loan shall be forgiven in a percentage amount that equals the percentage of the loan period during which the units are continuously maintained by the borrower at affordable rents and occupied by lower income households as defined by Section 50079.5. If a borrower maintains the assisted units at affordable rents for not less than 10 years subsequent to the loan, and subsequently sells the assisted rental property to a nonprofit organization that agrees to maintain all of the assisted units at affordable rents as specified by the department for a period of time equal to the remaining loan period, the loan forgiveness percentage amount applicable under this subdivision to that borrower's rehabilitation loan shall not be less than the ratio of 15 years to the original term of that loan.

(g) A loan shall not exceed 100 percent of the combined costs of rehabilitation and refinancing existing indebtedness or rehabilitation and acquistion costs. However, the loan, together with any existing indebtedness encumbering the secured property, shall not exceed 100 percent of the after-rehabilitation value of the property, except that the department may waive this limitation in individual cases when necessary to ensure compliance with health and safety standards, seismic safety standards, and general property improvements relating to these standards, pursuant to subdivision (a).

(h) A loan may be made to a local public agency to rehabilitate vacant rental housing that it owns and operates.

(i) When a loan will be used in conjunction with federal or other state housing assistance or tax credits and a conflict exists between the other state or federal program requirements and this chapter with regard to determining maximum allowable rents, the requirements of this chapter may be waived only to the extent necessary to permit the federal or other state financial participation or eligibility for tax credits.

(j) Tenants of rental housing developments rehabilitated with assistance provided under this section who are displaced as a result of either the rehabilitation work, or both the natural disaster and the subsequent rehabilitation work, shall be entitled to relocation

benefits pursuant to, and subject to, the requirements of Section 7265.3 of the Government Code. Sponsors of assisted rental housing developments shall be responsible for providing the benefits and assistance. The costs of the benefits and the assistance provided to tenants shall be eligible for funding by a loan provided pursuant to this section. Benefits and assistance provided hereunder shall not duplicate benefits or assistance for temporary housing received by tenants from any other public source or from insurance proceeds.

(k) The department may make loans directly to owners of rental housing, or contract for the administration of loans under this section with entities that it determines to have the necessary experience to successfully administer the loan program, including, but not limited to, local public agencies and private organizations. The department may authorize, under that contract, the payment of expenses incurred by the entities in administering the loan program and may prescribe the conditions pursuant to which the entities shall administer the loans.

(*l*) The department may set aside or use funds that are made available for the purposes of this section for the purpose of curing or averting a housing sponsor's default on the terms of any loan or other obligation where that default would jeopardize the financial integrity of a rental housing development or the department's security in the rental housing development assisted pursuant to this section. The payment or advance of funds by the department pursuant to this subdivision shall be exclusively within the department's discretion, and no person shall be deemed to have any entitlement to the payment or advance of those funds. The amount of any funds expended by the department pursuant to this subdivision shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand.

(m) To the extent that any housing unit or other structure that was damaged or destroyed is reconstructed pursuant to this section with substantially the same number of units, it shall be deemed to be "existing housing" for purposes of subdivision (d) of Section 37001.5.

(n) Any rule, policy, or standard of general application employed by the Department of Housing and Community Development in implementing the provisions of this section 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.

(o) Fund allocations made pursuant to this section shall not be subject to review or approval by the Loan Committee of the Department of Housing and Community Development operating pursuant to Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of Title 25 of the California Code of Regulations.

(p) In order to be eligible for one or more loans pursuant to this section, the borrower shall agree that: (1) all buildings shall be connected to the foundation systems except those of unreinforced masonry wall construction as necessary to meet the seismic requirements of the 1973 Edition of the Uniform Building Code of

the International Conference of Building Officials in a manner approved by the department, which may include seismic strengthening of foundation cripple walls, and affixing or bolting sill plates to the foundation, (2) for all buildings of unreinforced masonry wall construction, all repairs and seismic retrofits shall comply with earthquake hazard mitigation programs established pursuant to Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code, and, (3) all water heaters shall be braced, anchored, or strapped to resist falling or horizontal displacement due to earthquake motion. The loans shall include an amount sufficient to meet these requirements.

SEC. 34. Section 50671.5 of the Health and Safety Code, as added by Chapter 3 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 35. Section 5028 of the Public Resources Code, as added by Chapter 4 of the 1989–90 First Extraordinary Session, is repealed.

SEC. 36. Section 7 of Chapter 6 of the 1989–90 First Extraordinary Session is amended to read:

Sec. 7. The sum of forty-one million five hundred thousand dollars ($41,500,000) is hereby appropriated from the Special Fund for Economic Uncertainties for allocation in accordance with the following schedule:

(1) The sum of thirty-two million dollars ($32,000,000) to the California Disaster Housing Rehabilitation Fund for housing rehabilitation loans pursuant to Section 50662.7 of the Health and Safety Code.

(2) The sum of nine million five hundred thousand dollars ($9,500,000) to the Natural Disaster Community Assistance Account, for allocation as follows:

(A) The sum of five million dollars ($5,000,000) to the Emergency Housing and Assistance Fund established pursuant to Section 50800.5 of the Health and Safety Code, to be expended for the purposes authorized by Chapter 2 (commencing with Section 34070) of Part 1.6 of the Division 24 of the Health and Safety Code and for related administrative expenses of the Department of Housing and Community Development.

(B) The sum of one million dollars ($1,000,000) to the Rural Predevelopment Loan Fund established pursuant to Section 50516 of the Health and Safety Code, to be expended for the purposes of Section 34052 of the Health and Safety Code.

(C) The sum of one million dollars ($1,000,000) to the Urban Predevelopment Loan Fund established pursuant to Section 50531 of the Health and Safety Code, to be expended for the purposes of Section 34052 of the Health and Safety Code.

(D) The sum of one million dollars ($1,000,000) to the Department of Housing and Community Development for the purposes specified in Section 34053 of the Health and Safety Code, to be used to continue the operation of migrant centers as needed to respond to the October 17, 1989, earthquake and aftershocks that occurred in northern California.

(E) The sum of one million dollars ($1,000,000) to the Department of Commerce for the operation of the Rural Emergency Assistance Housing Infrastructure Program (Article 6 (commencing with Section 15373.96) of Chapter 2.5 of Part 6.7 of Division 3 of Title 2 of the Government Code).

(F) The sum of five hundred thousand dollars ($500,000) to the Emergency Housing and Assistance Fund established pursuant to Section 50800.5 of the Health and Safety Code, to be allocated by the Department of Housing and Community Development for the purposes of the residential rental security guarantees and grants authorized under Section 34078 of the Health and Safety Code.

SEC. 37. 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 provide for the urgent housing needs of residents of California who suffered serious personal and property losses as a result of the earthquake that occurred in northern California on October 17, 1989, it is necessary that this act take effect immediately.

CHAPTER 20

An act to amend Section 15364.52 of, and to add Section 15330.1 to, the Government Code, relating to state government.

[Approved by Governor March 13, 1990 Filed with Secretary of State March 13, 1990.]

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

SECTION 1. Section 15330.1 is added to the Government Code, to read:

15330.1. Trademarks developed by the department, including, but not limited to, "The Californias," that enhance the fulfilling of the department's responsibilities and programs shall not be construed as an agency of, or official endorsement by, the State of California.

SEC. 2. Section 15364.52 of the Government Code is amended to read:

15364.52. (a) There is hereby created in state government a California Tourism Commission, located within the Department of Commerce, which shall consist of the Secretary of the Business, Transportation and Housing Agency, who shall serve as the chairperson of the commission; the Director of Commerce, who shall serve as vice chairperson of the commission and nine other members appointed as follows:

(1) Five members shall be appointed by the Governor who are able persons, professionally active in the tourism industry

representing diverse segments of that industry.

(2) One Member of the Senate shall be appointed by the Senate Rules Committee and one Member of the Assembly shall be appointed by the Speaker of the Assembly. These members shall be ex officio, nonvoting members of the commission.

(3) Two members, who are able persons professionally active in the tourism industry representing diverse segments of that industry, shall be appointed one each by the Senate Rules Committee and the Speaker of the Assembly.

(b) The Director of the Office of Tourism shall serve as secretary to the commission, and shall keep the minutes and records of all commission meetings and provide staff and whatever supportive services necessary to the activities of the commission.

(c) The commission shall meet quarterly and at other times and places as the chairperson may designate for the purpose of transacting the commission's business. Each commission member shall serve without compensation but shall be reimbursed for traveling and other expenses necessarily incurred in the performance of duties.

(d) The commission shall, in cooperation with the Office of Tourism, the department, and the agency, adopt, and annually update, a tourism marketing plan for the State of California which includes both domestic and international tourism promotion. The plan shall, to the extent practical and feasible, do all of the following:

(1) Serve as a guide for effectuating the California Tourism Policy Act, within available resources.

(2) Include an assessment of the activities and accomplishments of the Office of Tourism.

(3) Outline the intended program of tourism promotion and visitor service activities for the oncoming year.

(4) Delineate the ways, means, and programs by which tourism shall be promoted, including any cost-effective marketing methods and techniques to be employed.

(5) Identify resources as are reasonably necessary, from all sources both public and private, to accomplish these promotion and marketing activities.

(6) Identify and articulate cooperative or shared cost programs, or opportunities for these ventures, with private entities.

(7) Identify licensing opportunities, including licensing agents.

(8) Contain other information, data, or recommendations which may be germane to the marketing efforts of California pursuant to the intent of this chapter.

(e) The commission, in cooperation with the Office of Tourism, may convene such committees consisting of qualified professionals and experts in various segments of the tourism industry as may be required to aid in the preparation of, or revision of, the marketing plan, or parts thereof, and as may from time to time be appropriate to further the purposes of this chapter.

(f) The commission shall work to the maximum extent practicable

with those private associations, nonprofit corporations, organizations, or other private entities whose purpose includes the promotion of California tourism.

(g) Members of the California Tourism Commission and the staff of the Office of Tourism, when traveling to foreign countries or attending international travel trade shows, shall do so in cooperation with the California State World Trade Commission to preserve its ambassadorial function.

CHAPTER 21

An act to add Section 1597.055 to the Health and Safety Code, relating to child care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 13, 1990. Filed with Secretary of State March 13, 1990.]

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

SECTION 1. Section 1597.055 is added to the Health and Safety Code, immediately following Section 1597.05, to read:

1597.055. (a) Notwithstanding any other educational requirements, a person may be hired as a teacher in a day care center if he or she satisfies all of the following conditions:

(1) Is 18 years of age or older.

(2) Possesses a regional occupation program certificate of training in child care occupations issued by a regional occupational program which is accredited by the Western Association of Schools and Colleges.

(3) Has completed at least 95 hours of classroom instruction in child care and development and child care occupations and at least 150 hours in supervised field experience in a licensed day care center or comparable group child care program.

(b) Subsequent to being hired pursuant to subdivision (a), a teacher shall make satisfactory progress towards meeting the educational requirement for a fully qualified teacher, as specified in departmental regulations. For purposes of this section, "satisfactory progress" shall mean completion, with passing grades, of a minimum of two units each semester or the equivalent number of units each quarter until the educational requirement is satisfied. Six of the required semester or equivalent number of quarter units of early childhood education from an accredited university or college shall be completed during the next two consecutive regular semesters or equivalent quarters.

(c) A teacher hired pursuant to this section shall not be exempt from satisfying any other noneducation requirements imposed by law on teachers in day care centers and shall have on-site supervision

by a fully qualified teacher until six of the units specified in subdivision (b) are completed.

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 continued certification of qualified child care professionals and their continued availability, it is necessary that this act go into effect immediately.

CHAPTER 22

An act to amend Section 502.01 of, and to repeal Section 502.1 of, the Penal Code, relating to crime.

[Approved by Governor March 13, 1990. Filed with Secretary of State March 14, 1990.]

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

SECTION 1. Section 502.01 of the Penal Code is amended 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 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 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 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 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. 2. Section 502.1 of the Penal Code is repealed.

CHAPTER 23

An act to add Chapter 12.47 (commencing with Section 8878.50) to Division 1 of Title 2 of the Government Code, relating to financing the reconstruction, repair, replacement, relocation, and seismic retrofitting of state and local government buildings by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 14, 1990. Filed with Secretary of State March 14, 1990.]

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

SECTION 1. Section 2 of this act shall be known and may be cited as the Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990.

SEC. 2. Chapter 12.47 (commencing with Section 8878.50) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 12.47. EARTHQUAKE SAFETY AND PUBLIC BUILDINGS REHABILITATION BOND ACT OF 1990

Article 1. General Provisions

8878.50. This chapter shall be known and may be cited as the Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990.

8878.51. The Legislature finds and declares all of the following:

(a) California is likely to experience moderate to severe earthquakes in the foreseeable future, and increased efforts to reduce earthquake hazards should be encouraged and supported.

(b) Hundreds of state and local government buildings which are vulnerable to severe earthquake damage continue to be a serious danger to the lives of thousands of state and local government employees and the people who must visit and depend on these buildings in which vital services are often provided.

(c) The Loma Prieta Earthquake of October 17, 1989, caused damage to state-owned buildings resulting in relocations of state government operations into more expensive leased facilities and some state buildings are now vacant. These facilities should be rehabilitated or replaced in order to reduce the long-term costs of providing state government services.

(d) It is the responsibility of state and local governments to provide, to the greatest extent feasible, their employees and the public throughout the state with buildings that are safe, accessible, and able to withstand earthquake forces without endangering occupants or significantly disrupting the performance of essential

services.

(e) Therefore, the purposes of this bond act are to:

(1) Fund retrofitting, reconstruction, repair, replacement, or relocation of state-owned buildings or facilities which have earthquake or other safety deficiencies.

(2) Provide financial assistance to local governments for earthquake safety improvements in structures housing those agencies critical to the delivery of essential government functions in the event of emergencies and disasters.

8878.52. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the Earthquake Safety and Public Buildings Rehabilitation Finance Committee created pursuant to subdivision (a) of Section 8878.111.

(b) "Commission" means the Seismic Safety Commission.

(c) "Fund" means the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 created pursuant to Section 8878.55.

(d) "Local government" means any city, county, city and county, or special district.

(e) "Office" means the Office of Emergency Services.

(f) "Project" means a program of work to retrofit, reconstruct, repair, replace, or relocate, for local government-owned facilities only, a building, facility, or both, which is owned by any city, county, city and county, or special district and which is included in an application for a grant of funds.

(g) "State Architect" means the Office of the State Architect.

(h) "State building or facility" means any building or structure owned by a state agency, which is identified pursuant to Section 8878.60, except for vehicular bridges, roadways, highways, or any facilities or buildings owned by the University of California or the California State University.

(i) "Local government building or facility" means an existing essential services building, as defined in Section 16007 of the Health and Safety Code, or an emergency or public safety local building as identified in Section 8878.99, which is owned by a city, county, city and county, or special district.

(j) "Retrofit" means to either strengthen the structure of a building or facility, or to provide the means necessary to reduce the seismic force level experienced by a building or facility during an earthquake, so as to significantly reduce hazards to life safety while concomitantly providing for the substantially safe egress of occupants during and immediately after such an earthquake.

Article 2. Earthquake Safety and Public Buildings Rehabilitation Fund of 1990

8878.55. The Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 is hereby created. The proceeds of bonds issued and sold pursuant to this chapter for the purposes of the

programs established in Article 3 (commencing with Section 8878.60) and Article 4 (commencing with Section 8878.90) shall be deposited in the fund and shall be available, upon appropriation by the Legislature, for expenditure pursuant to this chapter for the following purposes:

(a) Two hundred fifty million dollars ($250,000,000) for the following:

(1) Financing the costs of retrofitting, reconstruction, repair, replacement, or relocation of state buildings or facilities which are seismically unsafe or have other safety deficiencies. For these projects, allowable costs include the cost of abating falling hazards; the cost of engineering, architectural, financial, and legal services; preparation of plans, specifications, studies, surveys, and estimates; administrative expenses; land acquisition for replacement projects, direct construction, or rehabilitation; and costs necessary or incidental to the project.

(2) Investigating state buildings which have been determined to be, or are suspected to be, inadequate for earthquake safety and associated fire and life safety deficiencies, asbestos, other toxics, or falling hazards, and handicap accessibility deficiencies.

(b) Fifty million dollars ($50,000,000) for the following:

(1) Financial assistance to local governments for the costs of retrofitting, reconstructing, repairing, replacing, or relocating earthquake-unsafe buildings or facilities, including, but not limited to, the abatement of falling hazards.

(2) Financial assistance to local governments for the costs of working drawings, plan reviews, and inspections to effect a significant life-hazard reduction. The costs of preliminary plans may be reimbursed upon the appropriation for the project. Reasonable administrative costs of administering state agencies may be appropriated from this source.

(c) Projects approved pursuant to subdivision (b) shall be limited to buildings or facilities which provide essential services or emergency or public safety services which meet the requirements of Section 8878.99 and for which local matching funds equaling at least 25 percent of the total cost of the seismic rehabilitation portion of the project are guaranteed.

(d) Notwithstanding any other provision of this section, the Seismic Safety Commission may, to further the objectives of subdivision (a) or (b), and if appropriated by the Legislature, use up to 1 percent of the proceeds of the bonds issued and sold pursuant to this chapter that are deposited into the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 to research methods, techniques, and technologies to identify and analyze existing potentially hazardous buildings and facilities, including, but not limited to, unreinforced masonry construction, as well as for the additional purposes of researching and developing methods, techniques, and technologies for seismic safety retrofitting of the buildings, as well as helping to develop and prepare building

standards and administrative regulations relating to the retrofitting of the buildings for seismic safety purposes.

(1) All research funds appropriated pursuant to this subdivision shall be administered and disbursed according to guidelines established by the commission.

(2) These guidelines shall set forth the terms and conditions upon which the commission is prepared to fund research projects pursuant to this subdivision. The guidelines do not constitute rules, regulations, orders, or standards of general application.

Article 3. State Buildings or Facilities

8878.60. (a) State building or facility projects eligible for retrofitting, reconstruction, repair, replacement, relocation, or other seismic hazard abatement shall be based upon criteria established by the State Architect. The criteria shall include the factor of the population at risk of injury and may include, but are not limited to, the report by H.J. Degenkolb and Associates to the Seismic Safety Commission dated April 19, 1981, Seismic Safety Commission Report Number 604, as revised on December 31, 1987, or any updates of those reports received and adopted by the Seismic Safety Commission.

(b) If the state building or facility is designated as a historic building as defined in Section 18955 of the Health and Safety Code, the State Architect shall consult with the Office of Historic Preservation before proposing to demolish the building or facility.

(c) The State Architect may determine that because of the age, material used in construction, potential for ground failure in an earthquake, or the type of construction or the design of the structure, it would be more cost-effective to replace or relocate rather than rehabilitate the state building or facility. Upon that determination, the Director of General Services may submit to the Department of Finance a recommendation that the building be replaced or relocated. Upon receipt of the recommendation, the Director of Finance shall review and consider that recommendation and may recommend to the Governor inclusion of this project in the annual Budget Bill or any other legislative bill.

8878.61. The Director of General Services shall provide to the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house of the Legislature a listing of expenditures for activities pursuant to this article by January 10 each year. This information shall be submitted either in the Governor's Budget documents or a separate report.

Article 4. Local Government Buildings

8878.90. (a) The State Architect, with the consultation of the Seismic Safety Commission and the Office of Emergency Services, shall establish criteria for projects potentially eligible for an

appropriation from the Legislature, pursuant to subdivision (b) of Section 8878.55 based on factors including the populations at risk of injury and the cost-effectiveness of remedial actions.

(b) The State Architect shall establish the criteria for potential funding pursuant to subdivision (b) of Section 8878.55 based upon the following order of seismic hazard reduction priorities:

(1) Abatement of falling hazards, as defined by the State Architect with the consultation of the Seismic Safety Commission, that are structural or nonstructural components of buildings or facilities and that pose serious threats to life, including, but not limited to, parapets, appendages, cornices, hanging objects, and building cladding.

(2) The seismic retrofitting of those buildings or facilities for which partial, localized, or phased seismic retrofits will significantly reduce collapse hazards with minimal disruption to either the operation of the buildings or facilities or disruption of the occupants of the buildings or facilities.

(3) All other buildings or facilities requiring seismic retrofitting.

8878.95. Applications for funds for local government buildings under this article shall be made to the State Architect in the form and with the supporting material as prescribed by the State Architect.

8878.96. Any appropriation of bond funds pursuant to this article may include provisions as agreed by the parties thereto, and the contract shall include, but not be limited to, all of the following:

(a) An estimate of the reasonable cost of the project.

(b) An agreement by the State Architect to grant to the local government, during the progress of construction or following completion of construction as agreed by the parties, an amount which equals no more than 75 percent of the portion of construction costs found by the State Architect to be eligible for a state grant.

(c) An agreement by the local government to (1) proceed expeditiously with, and complete, the project, (2) commence operation of the project upon completion thereof, (3) properly operate and maintain the project in accordance with the applicable provisions of law, and (4) provide for payment of the local government's share of the cost of the project.

(d) At least 25 percent of the total cost for the seismic rehabilitation of the project, for the purposes specified in subdivision (b) of Section 8878.55, shall be paid by the local government.

8878.97. The State Architect shall provide to the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house of the Legislature a listing of expenditures for activities pursuant to this article by January 10 of each year. This information shall be submitted either in the Governor's Budget documents or a separate report.

8878.98. Allocations are limited to only the seismic rehabilitation portion of the improvement project, as determined by the State Architect. To the extent that other elements of work are proposed, a cost-sharing formula shall be developed by the State Architect

which will be applicable to planning and design costs for the total project. The retrofitting portion of any project shall, to the greatest extent possible, be conducted during the same general period of time that life safety hazards, including, but not limited to, asbestos-related hazards or fire and panic safety hazards, are abated, or when periodic renovation or maintenance of the essential services building is performed.

8878.99. (a) Allocations made by the State Architect to local governments shall only be used to improve existing essential services buildings, as defined in Section 16007 of the Health and Safety Code, and emergency and public safety local buildings, including, but not limited to, county hospitals, courthouses, and city halls to resist earthquakes, and remain operational after a major earthquake. The allocations may be made with respect to all, or any part, of the building, but the allocations shall be used only for seismic retrofitting.

(b) Improvements to essential services facilities of local governments shall be considered in the order prescribed by the State Architect, consistent with subdivision (b) of Section 8878.100.

(c) Notwithstanding any other provision of law, except for Section 8878.90, if a local government determines, and the State Architect concurs, that because of the age, material used in construction, potential for ground failure in an earthquake, or the type of construction or the design of the structure that it would be more cost-effective to replace or relocate rather than rehabilitate the potentially eligible essential services facility or emergency or public safety local building, an allocation of up to that amount determined to be necessary for the seismic retrofit of the original structure, but not to exceed the actual cost of replacement and relocation, may be applied to the construction of the replacement facility under the following conditions:

(1) The essential services contained in the original facility shall be relocated to the replacement facility.

(2) If a new facility is constructed, the original facility shall not be eligible for additional funding under this program.

(3) If the original essential services facility or emergency or public safety local building is designated as an historic building as defined in Section 18955 of the Health and Safety Code, the State Architect shall consult with the Office of Historic Preservation before agreeing to any proposal to demolish the facility.

8878.100. Funds shall be distributed by the State Architect in the following manner:

(a) Upon receipt of an application by a local government for a grant pursuant to this article, the office or the State Architect may propose improvements to the project which will meet regional needs in a cost-effective manner. These improvements may include, but need not be limited to, structural strengthening, hardening of communication equipment, providing emergency power equipment, and other capital improvements which can be

demonstrated as part of an emergency response plan which has a description of the critical facilities needed to support emergency response. The office, the State Architect, and the applicant may agree to include these capital improvements in the grant.

(b) In coordination with the Seismic Safety Commission and the Office of Emergency Services, and with the input of the potentially eligible local governments, the State Architect, consistent with Section 8878.90, shall establish a priority list of the types of potentially eligible local government buildings and facilities which are eligible to receive a state grant pursuant to this article.

(c) After completion of the priority list, the State Architect shall present this list of potentially eligible local government buildings and facilities to the Department of Finance for its review and consideration of whether to recommend to the Governor to include this list in the Budget Bill or other legislative proposal. The Legislature may review and appropriate funds available under this bond act for specific projects on the list which it deems appropriate.

(d) The State Architect shall allocate funds to local governments for the seismic retrofit of buildings or facilities based upon projects and appropriations approved in the Budget Bill or some other bill by the Legislature as provided in this section. Payments shall be made on a progress basis.

8878.101. (a) An application for an allocation pursuant to this article shall not be recommended for approval by the State Architect unless the project meets the minimum seismic safety standards as established by the State Architect. Preliminary design work, including preliminary plans and a detailed cost estimate for the project shall be completed and submitted with the application.

(b) Any proposal for a project addressing more than seismic retrofit shall include a certification by the project architect or consulting engineer of the portion of the cost required for the eligible seismic improvements.

(c) If the project involves an essential services building, no allocation of funds may be made unless the State Architect finds that the project or the project plan is consistent with the Essential Services Building Seismic Safety Act of 1986 (Chapter 2 (commencing with Section 16000) of Division 12.5 of the Health and Safety Code).

8878.102. For a local government to be eligible for funding, the local government must have complied with Chapter 12.2 (commencing with Section 8875) and also have an emergency plan approved by the office as being consistent with the state planning guidelines and the State Emergency Plan and the most recent catastrophic emergency response plan. The local government shall also have a priority list that identifies those facilities which are not expected to be operational after a major earthquake and which are critical to carrying out the emergency plan.

8878.103. First priority for allocations of funds shall be given to projects located in seismic hazard zone 4, as defined and illustrated

in Chapter 23 (commencing with Section 2301) of Part 2 of Title 24 of the California Code of Regulations, and projects located in San Diego and Sacramento Counties. The office shall certify that the local government projects are needed for emergency response to a major earthquake.

8878.104. Operation and maintenance costs shall be the responsibility of the grantee and may not be considered as part of the project cost. Costs for planning preliminary engineering studies, including preliminary plans, may be reimbursed following the receipt of an allocation of funds, subject to approval by the State Architect.

8878.105. Funds allocated pursuant to this article shall be available for expenditure by the local government within three years of the awarding of the allocation.

8878.106. (a) The office and the State Architect, after public notice and hearing and with the concurrence of the Seismic Safety Commission, shall establish guidelines necessary to carry out the purposes of this article. The guidelines shall include, but not be limited to, criteria and procedures for establishing the eligibility of the applicant, but shall not constitute rules, regulations, orders, or standards of general application.

(b) The office and the State Architect, with the concurrence of the Seismic Safety Commission, shall establish guidelines that will carry out this article and provide an adequate emergency response capability after a major earthquake. The guidelines may provide for the denial of funds when the purposes of this article may most economically and efficiently be attained by means other than the construction of the proposed project.

(c) The office and the State Architect, with the concurrence of the Seismic Safety Commission, may subsequently revise the guidelines as necessary to implement provisions of this chapter for any other reason to carry out the purposes of this article.

(d) Guidelines established pursuant to the provisions of this section shall not constitute rules, regulations, orders, or standards of general application.

8878.107. The office shall notify local governments that may be eligible for grants pursuant to this article of the following:

(a) The purposes of this article.

(b) The guidelines established by the office and the State Architect.

Article 5. Fiscal Provisions

8878.109. Bonds in the total amount of three hundred million dollars ($300,000,000), exclusive of refunding bonds issued pursuant to Section 8878.118, or so much thereof as is necessary, may be issued and sold to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5. A sum, not to exceed

three hundred million dollars ($300,000,000) of the bond proceeds shall be deposited in the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 for the purposes of this chapter. All bonds herein authorized which have been duly sold and delivered as provided herein shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereof.

8878.110. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

8878.111. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Earthquake Safety and Public Buildings Rehabilitation Finance Committee is hereby created. For the purposes of this chapter, the Earthquake Safety and Public Buildings Rehabilitation Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, the Director of Finance, the Director of General Services, or a designated representative of each of those officials. The Treasurer shall serve as the chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of this chapter and the State General Obligation Bond Law, the entity designated as the "board" means the Department of General Services.

(c) The committee designated in subdivision (a) may adopt guidelines establishing requirements for administration of its financing programs to the extent necessary to protect the validity of, and tax exemption for, interest on the bonds. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

8878.112. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 8878.55, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

8878.113. There shall be collected annually in the same manner and at the same time as other state revenue is collected, a sum of money in addition to the ordinary revenues of the state, sufficient to pay the principal of, and interest on, these bonds as provided herein, and all officers required by law to perform any duty in regard to the collection of state revenues shall collect that additional sum.

8878.114. Notwithstanding Section 13340, there is hereby

appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out Section 8878.115, appropriated without regard to fiscal years.

8878.115. For the purposes of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds which would otherwise be deposited in that fund.

8878.116. All moneys derived from premium and accrued interest on bonds sold shall be reserved and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

8878.117. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

8878.118. Any bonds issued and sold pursuant to this article may be refunded by the issuance of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4. Approval by the electors of the state for the issuance of these bonds shall include the approval of any bonds issued to refund any bonds originally issued or previously issued refunding bonds.

8878.119. The "board" may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312, for the purposes of carrying out this chapter. The amount of any request shall not exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. The applicable board shall execute those documents as are required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 to be allocated by the board designated in subdivision (c) of Section 8878.111 in accordance with this chapter.

8878.120. Notwithstanding any provision of this chapter or the State General Obligation Bond Law set forth in Chapter 4

(commencing with Section 16720) of Part 3 of Division 4, if the Treasurer sells bonds pursuant to this chapter the interest on which is intended to be excluded from gross income for federal tax purposes, the Treasurer shall be authorized to maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds, and the Treasurer shall be authorized to use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

8878.121. Notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of any bonds authorized by this chapter shall not exceed 20 years from the date of each respective series. The maturity of each series shall be calculated from the date of each series.

8878.122. All moneys deposited in the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 pursuant to any provision of law requiring repayments to the state which are financed by the proceeds of bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund, that money shall be applied as a reimbursement to the General Fund on account of principal and interest on the bonds which has been paid from the General Fund.

Article 6. Miscellaneous Provisions

8878.123. The administrative provisions of Article 3 (commencing with Section 8878.60) and Article 4 (commencing with Section 8878.95) may be amended by statute without submission to the voters.

8878.124. Charges incurred by the Attorney General in protecting the state's interest in the grant funds under this chapter shall be payable from proceeds of bond sales for the purposes of this chapter. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as a program expense not to exceed one hundred fifty thousand dollars ($150,000).

8878.125. (a) The proceeds from the sale of the bonds pursuant to this act shall not replace or supplant funds available from the Federal Emergency Management Agency (FEMA). If funds are received from FEMA for costs applied for under this chapter, then proceeds from the fund shall not be allocated, or if already allocated, then the fund shall be reimbursed for any ineligible amount.

(b) No allocations shall be made from the fund for local buildings or facilities which qualified for state or federal assistance under the Natural Disaster Assistance Act (Chapter 7.5 (commencing with Section 8680)) for retrofitting, reconstruction, repair, replacement, or relocation of structures damaged by a disaster until the Office of

Emergency Services determines either: (1) that reasonable efforts have been made to secure other state and federal funds, or (2) that the other sources of funding are insufficient to make the necessary seismic improvements. Similarly, no such allocations from the fund shall be made for state buildings or facilities unless the Department of Finance determines either: (1) the responsible agency has made reasonable efforts to secure other state and federal funds, or (2) that the other sources of funding are insufficient to correct state buildings or facilities which are seismically unsafe or suffer from other safety deficiencies.

8878.126. (a) No local government building or facility that is listed or is eligible for listing on the National Register of Historic Places or listed on any officially sponsored state or local register or inventory of historic places, may be demolished, destroyed, or significantly altered, except for restoration to preserve or enhance its historical value, unless the local government finds that the structure presents a clear and imminent threat to the public of bodily harm or of damage to adjacent property which threat cannot be mitigated by isolation or other measures less damaging than removal, or unless the State Office of Historic Preservation determines, pursuant to subdivision (b), that the structure may be demolished, destroyed, or significantly altered.

(b) Any local government may apply to the State Office of Historic Preservation for its determination as to whether a structure meeting the description set forth in subdivision (a) shall be demolished, destroyed, or significantly altered. That determination shall be based upon the extent of damage to the structure, the structure's historic significance, and any other factor deemed by the State Office of Historic Preservation to be relevant. In making that determination, the State Office of Historic Preservation shall consider the recommendation of a team selected by the State Office of Historic Preservation composed of three residents with historic preservation expertise who reside in the affected county.

SEC. 3. Section 2 of this act shall become operative upon the adoption by the people of the Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990 as set forth in Section 2 of this act.

SEC. 4. (a) Notwithstanding Sections 3525, 3578, and 10218 of the Elections Code, Section 2 of this act shall be submitted to the voters at the June 5, 1990, direct primary election.

(b) The Secretary of State shall ensure the placement of Section 2 of this act on the June 5, 1990, statewide ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for the bond act contained in Section 2 of this act as expeditiously as possible, but not later than two days after the

effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act contained in Section 2 of this act as expeditiously as possible, but not later than five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act contained in Section 2 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of that code, be mailed at least 14 days before the election.

(f) Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990," and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of three hundred million dollars ($300,000,000) to provide funds for the reconstruction, seismic retrofitting, repair, replacement, and relocation of state and local government buildings which are unsafe primarily due to earthquake-related dangers." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(g) Where the voting in the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 4.5. Notwithstanding any other provision of law, and in accordance with Section 3569 of the Elections Code, the Secretary of State may contract with one or more private entities to accomplish the purposes set forth in subdivisions (a), (b), (e) and (f) of Section 4 of this act.

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 specified provisions of this act may properly be operative upon adoption by the voters at the direct primary election to be held on June 5, 1990, it is necessary that this act take effect immediately.

CHAPTER 24

An act to add Chapter 21.4 (commencing with Section 17660) to Part 10 of the Education Code, relating to funding school construction through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 14, 1990. Filed with Secretary of State March 14, 1990.]

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

SECTION 1. Chapter 21.4 (commencing with Section 17660) is added to Part 10 of the Education Code, to read:

CHAPTER 21.4. 1990 SCHOOL FACILITIES BOND ACT

Article 1. General Provisions

17660. This chapter shall be known and may be cited as the 1990 School Facilities Bond Act.

17660.10. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the State School Building Finance Committee created pursuant to Section 15909.

(b) "Fund" means the State School Building Lease-Purchase Fund.

Article 2. Program Provisions

17660.15. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the fund.

17660.20. (a) All moneys deposited in the fund shall be available to provide aid to school districts of the state in accordance with the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700)), the purposes authorized under Section 17660.30, and all acts amendatory thereof and supplementary thereto, to provide funds to repay any money advanced or loaned to the State School Building Lease-Purchase Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

(b) Only those statutes, regulations, guidelines, and other laws in effect on or before March 11, 1990, shall apply to the allocation of moneys made available under this chapter for the purposes of Chapter 22 (commencing with Section 17700).

17660.30. (a) Of the proceeds from the sale of bonds pursuant to

this chapter, not more than two hundred sixty million dollars ($260,000,000) may be used for one or more of the following purposes:

(1) Project funding for applicant districts under Chapter 22 (commencing with Section 17700) that are eligible for that funding, but that lack funding priority due to the size of pupil enrollment in the district.

(2) The identification, assessment, or abatement of hazardous asbestos in school facilities, pursuant to either Chapter 22 (commencing with Section 17700) or Section 39619.6.

(3) The acquisition of portable classrooms for use in accordance with Chapter 25 (commencing with Section 17785).

(4) The reconstruction or modernization of facilities within the meaning of Chapter 22 (commencing with Section 17700).

(5) The funding of child care facilities pursuant to Section 8477.

(b) Of the proceeds from the sale of bonds pursuant to this chapter, forty million dollars ($40,000,000) shall be used for the purchase and installation of air-conditioning equipment and insulation materials, and related costs, pursuant to Section 42250.1 for schools operated on a year-round multitrack schedule in a manner that increases school capacity and reduces or eliminates the district's need for the construction of additional classroom space.

(c) Notwithstanding subdivision (b), in the event the board determines that the amount made available under that subdivision exceeds the amount necessary to fund the qualified recipients of the apportionment authorized under that subdivision, as indicated by those applications for that funding received by the board on or before June 30, 1991, the board may expend any portion of that excess for any one or more of the purposes described in subdivision (a).

Article 3. Fiscal Provisions

17660.40. Bonds in the total amount of eight hundred million dollars ($800,000,000), exclusive of refunding bonds, or so much thereof as is necessary, may be issued and sold to provide funds to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

17660.45. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter

as though set forth in full in this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board."

17660.50. Upon request of the board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Section 17660.20, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to provide funds for the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to provide funds for those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

17660.53. The board may request the Pooled Money Investment Board for a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, and may execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. The loan shall be deposited in the fund for the purpose of carrying out the provisions of this chapter. The amount of the loan shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purposes of this chapter.

17660.55. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

17660.60. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 17660.70, appropriated without regard to fiscal years.

17660.65. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be

required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

17660.70. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, together with interest at the rate paid on moneys in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this chapter.

17660.75. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

17660.80. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. The approval by the electors of the state of the issuance and sale of bonds under this chapter includes approval of any bonds issued to refund either those bonds or any previously issued refunding bonds.

17660.85. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 2. Section 1 of this act shall become operative upon the adoption by the people of the 1990 School Facilities Bond Act, as set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding Sections 3525, 3528, 3529, 3578, and 10218 of the Elections Code or any other provision of law, a ballot measure that sets forth the 1990 School Facilities Bond Act, as set forth in Section 1 of this act, shall be submitted to the people of the State of California for their ratification at the statewide election to be held June 5, 1990, and shall appear as the first proposition on the ballot.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the June 5, 1990, statewide ballot, in substantial compliance with any statutory time requirements applicable to the submission of statewide measures to the voters at a statewide election.

(c) Notwithstanding Section 3531 of the Elections Code, the Attorney General shall prepare and return to the Secretary of State a ballot title for the bond act provisions contained in Section 1 of this act as expeditiously as possible, but no later than two days after the effective date of this act.

(d) Notwithstanding Section 3572 of the Elections Code, the Legislative Analyst shall prepare an impartial analysis of the bond act provisions contained in Section 1 of this act as expeditiously as possible, but no later than five days after the effective date of this act, and the analysis shall not be submitted to a review committee.

(e) The Secretary of State shall include, in the ballot pamphlet mailed pursuant to Section 3578 of the Elections Code, the information specified in Section 3570 of that code regarding the bond act provisions contained in Section 1 of this act.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding the bond act provisions to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall, notwithstanding Section 3578 of the Elections Code, be mailed at least 14 days before the election.

SEC. 3.5. Notwithstanding any other provision of law, and in accordance with Section 3569 of the Elections Code, the Secretary of State may contract with one or more private entities to accomplish the purposes set forth in subdivisions (a), (b), and (e) of Section 3 of this act.

SEC. 4. Notwithstanding any other provision of law, all ballots of the election shall have printed thereon and in a square thereof, the words: "1990 School Facilities Bond Act," and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of eight hundred million dollars ($800,000,000), to provide capital outlay for construction or improvement of public schools." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

Where the voting of the election is done by means of voting machines used pursuant to law in the manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with the provisions of this section.

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 provide in a timely manner for the funding, from state general obligation bond proceeds, of critical school facilities construction needs, it is necessary that this act take effect immediately.

CHAPTER 25

An act to amend Section 8664.5 of the Fish and Game Code, relating to fishing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 15, 1990. Filed with Secretary of State March 15, 1990.]

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

SECTION 1. Section 8664.5 of the Fish and Game Code is amended to read:

8664.5. (a) Notwithstanding Sections 8693 and 8724, gill nets and trammel nets shall not be used in those portions of District 17 between a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County and a line extending 252° magnetic from Yankee Point, Carmel Highlands, in Monterey County in waters 20 fathoms or less in depth at mean lower low water.

(b) Notwithstanding Sections 8693 and 8724, gill nets and trammel nets shall not be used in that portion of District 18 north of a line extending due west from Point Sal in Santa Barbara County in waters 15 fathoms or less in depth at mean lower low water, in that portion of District 18 north of a line extending due west from Santa Rosa Creek in San Luis Obispo County in waters 20 fathoms or less in depth at mean lower low water, or in that portion of District 18 between a line extending 180° magnetic from the mouth of Pico Creek in San Luis Obispo County to a line extending due west from Cape San Martin in Monterey County in waters 30 fathoms or less in depth at mean lower low water. However, the director may, by public announcement, allow the use of gill or trammel nets in all, or any part, of the area of District 18 south of Point San Luis in San Luis Obispo County for a specified period if the director determines, on the basis of written findings, that the use of those nets will not result in any accidental take of sea otters. The director shall immediately rescind the authorization pursuant to this subdivision if the director determines that further use of those nets may result in the accidental entanglement or take of sea otters.

(c) Notwithstanding Sections 8693 and 8724, any person using gill nets or trammel nets in those portions of Districts 17 and 18 from a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County to a line extending due west from Santa Rosa Creek in San Luis Obispo County in waters between 20 fathoms and 40 fathoms in depth at mean lower low water shall comply with all of the following requirements in order to ensure adequate monitoring of fishing effort to protect marine mammals:

(1) Prior to the use, the person shall notify the department that gill nets or trammel nets will be set in the area.

(2) The person shall give adequate notification, as determined by

the department, to the department at its office in Monterey or Morro Bay at least 24 hours prior to each fishing trip to ensure full compliance and cooperation with the monitoring program. The department may require that an authorized monitor be on board the vessel. The department shall determine whether on board, at sea, or shoreside monitoring is appropriate. If the authorized monitor is not on board the fishing vessel, the fishing vessel operator and the authorized monitor shall make every effort to remain in radio contact if the radio equipment is made available to the monitor.

(3) To ensure the effectiveness of the monitoring program, gill nets and trammel nets may be set or pulled only between one-half hour after sunrise and one-half hour before sunset.

(4) A permit may be revoked and canceled pursuant to Section 8681 for failure to comply with the department's notification and monitoring requirements.

(d) If the director determines that the use of gill or trammel nets is having an adverse impact on any population of any species of seabird, marine mammal, or fish, the director shall issue an order prohibiting or restricting the use, method of use, size, or materials used in the construction of either or both types of those nets in all or any part of District 10 or 17, or in all or any part of District 18 north of a line extending due west from Point Conception in Santa Barbara County for a specified period. The order shall take effect no later than 48 hours after its issuance. The director shall hold a properly noticed public hearing in a place convenient to the affected area within one week of the effective date of the order to describe the action taken and shall take testimony as to the effect of the order and determine whether any modification of the order is necessary.

(e) For purposes of this section, "adverse impact" means either of the following:

(1) The danger of irreparable injury to, or mortality in, any population of any species of seabird, marine mammal, or fish which is occurring at a rate that threatens the viability of the population as a direct result of the use of gill nets or trammel nets.

(2) The impairment of the recovery of a species listed as an endangered species or threatened species pursuant to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3) or a species of seabird, marine mammal, or fish designated as fully protected under this code, as a direct result of the use of gill nets or trammel nets.

(f) This section does not apply to any gill net with meshes 3½ inches or less in length in any portion of District 18 between Yankee Point in Monterey County and Point Sal in Santa Barbara County.

(g) The department shall explore, as alternatives to the use of gill and trammel nets, what fishing gear and methods may be used to take California halibut in areas closed pursuant to this section. The department shall consider issuing experimental gear permits pursuant to Section 8606 for authorizing the use of the alternative

fishing gear and methods in the California halibut fishery in those areas.

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

In order to prevent a gap in the regulation of gill and trammel nets by the expiration of the emergency regulations of the department, it is necessary that this act take effect immediately.

CHAPTER 26

An act to add Sections 156, 156.1, 156.2, and 156.3 to, and to repeal Article 2.8 (commencing with Section 290) of Chapter 2 of Part 1 of Division 1 of, the Health and Safety Code, relating to health care.

[Approved by Governor March 15, 1990. Filed with Secretary of State March 15, 1990]

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

SECTION 1. Section 156 is added to the Health and Safety Code, to read:

156. The State Department of Health Services shall administer a statewide program for the prenatal testing for genetic disorders and birth defects, including, but not limited to, ultrasound, amniocentesis, chorionic villus sampling, and blood testing for genetic disorders and birth defects.

SEC. 2. Section 156.1 is added to the Health and Safety Code, to read:

156.1. The department shall:

(a) Establish criteria for eligibility for the prenatal testing program. Eligibility shall include definition of conditions and circumstances which result in a high risk of a detectable genetic disorder or birth defect.

(b) Develop an education program designed to educate physicians and surgeons and the public concerning the uses of prenatal testing and the availability of the program.

(c) Ensure that genetic counseling be given in conjunction with prenatal testing at the approved prenatal diagnosis centers.

(d) Designate sufficient prenatal diagnosis centers to meet the need for these services. Prenatal diagnosis centers shall have equipment and staff trained and capable of providing genetic counseling and performing prenatal diagnostic procedures and tests, including the interpretation of the results of the procedures and tests.

(e) Administer a program of subsidy grants for approved nonprofit prenatal diagnosis centers. The subsidy grants shall be awarded based on the reported number of low-income women referred to the center, the number of prenatal diagnoses performed in the previous year at that center, and the estimated size of unmet need for prenatal diagnostic procedures and tests in its service area. This subsidy shall be in addition to fees collected under other state programs.

(f) Establish any rules, regulations, and standards for prenatal diagnostic testing and the allocation of subsidies as the director deems necessary to promote and protect the public health and safety and to implement this chapter.

SEC. 3. Section 156.2 is added to the Health and Safety Code, to read:

156.2. The participation by any individual in the prenatal testing program shall be wholly voluntary and shall not be a prerequisite to eligibility for, or receipt of, any other service or assistance from, or to participation in, any other program.

SEC. 4. Section 156.3 is added to the Health and Safety Code, to read:

156.3. All prenatal diagnosis centers shall meet standards developed by the department and shall agree to accept patients from state funded or administered programs, including, but not limited to, Medi-Cal, Regional Centers, Maternal and Child Health, California Children's Services, Genetically Handicapped Persons Program, and Family Planning. Only prenatal diagnosis centers meeting standards developed by the department shall be eligible for reimbursement under these state programs.

SEC. 5. Article 2.8 (commencing with Section 290) of Chapter 2 of Part 1 of Division 1 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 27

An act to amend Sections 1108, 10223, 17007, 23521.5, and 27031 of the Elections Code, relating to elections.

[Approved by Governor March 15, 1990 Filed with Secretary of State March 15, 1990]

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

SECTION 1. Section 1108 of the Elections Code is amended to read:

1108. The county elections official shall preserve the canceled affidavits of registration as required in Section 14500.

SEC. 2. Section 10223 of the Elections Code is amended to read:

10223. Each group of names of candidates for a particular office shall be separated from the succeeding group by a three-point rule. Each series of groups shall be headed by the caption "President of the United States," "President and Vice President," "State," "United States Senator," "United States Representative," "State Senator," "Member of the State Assembly," "County," or "City" or other proper general classification, as the case may be, printed in boldfaced gothic capital type, not smaller than 12-point. Each caption shall be separated from the names of the candidates beneath by a two-point line.

SEC. 3. Section 17007 of the Elections Code is amended to read:

17007. (a) The count shall be conducted by at least four members of the precinct board. All ballots shall be unfolded and examined for irregularities. Any ballot which is not marked as provided by law or is marked or signed by the voter so that it can be identified by others shall be rejected.

(b) The following do not render a ballot invalid:

(1) Soiled or defaced.

(2) Two or more impressions of the voting stamp in one voting square.

(c) If a voter indicates either by a combination of both stamping and writing in, a choice of more names than there are candidates to be elected or nominated for any office, or if for any reason the choice of the voter is impossible to determine, the vote for that office shall not be counted, but the remainder of the ballot, if properly marked, shall be counted.

(d) The rejected ballots shall be placed in the package marked for voted ballots or in a separate container as directed by the clerk. All rejected ballots shall have written thereon the cause for rejection and be signed by a majority of the precinct board members.

SEC. 4. Section 23521.5 of the Elections Code is amended to read:

23521.5. Notwithstanding any other provision of law, in any district or agency election, if a declaration of candidacy for an incumbent elective officer of a district is not filed by 5 p.m. on the

88th day before the general district election, any person other than the person who was the incumbent on the 88th day shall have until 5 p.m. on the 83rd day before the election to file a declaration of candidacy for the elective office.

This section is not applicable where there is no incumbent to be elected.

SEC. 5. Section 27031 of the Elections Code is amended to read:

27031. Before any signature may be affixed to a recall petition, each page of each section must bear all of the following in no less than 6-point type:

(a) A request that an election be called to elect a successor to the officer. However, if the officer is a justice of the Supreme Court or of a court of appeal as specified in subdivision (a) of Section 16 of Article VI of the California Constitution the request shall be that the Governor appoint a successor to the officer. In the case of a city recall, a request that an election be called to determine whether the officer shall be removed from office and whether the vacancy, if any, shall be filled by appointment or special election.

(b) A copy of the notice of intention, including the statement of grounds for recall. The provisions of Section 27023 do not need to be included as part of the language of the notice of intention.

(c) The answer of the officer sought to be recalled, if any. If the officer sought to be recalled has not answered, the petition shall so state.

All petition sections shall be printed in uniform size and darkness with uniform spacing.

CHAPTER 28

An act to amend Section 11380.5 of the Health and Safety Code, relating to crimes.

[Approved by Governor March 19, 1990. Filed with Secretary of State March 20, 1990]

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

SECTION 1. Section 11380.5 of the Health and Safety Code is amended to read:

11380.5. (a) Every person 18 years of age or over who violates any provision of this chapter involving phencyclidine or any of its analogs which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or paragraph (3) of subdivision (e) of Section 11055, or its precursors as specified in subparagraphs (A) and (B) of paragraph (2) of subdivision (f) of Section 11055 by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving any of those controlled substances

or who unlawfully furnishes, offers to furnish, or attempts to furnish any of those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of this section and is at least four years older than the minor, shall receive an additional punishment of one, two, or three years at the court's discretion. The additional punishment provided in this subdivision shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The additional punishment provided in this subdivision shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law. Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this subdivision 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.

(c) Nothing contained in this section applies to a registered pharmacist furnishing controlled substances pursuant to a prescription.

CHAPTER 29

An act to amend Section 72425 of the Education Code and to amend Sections 21151, 21333, 21334, 21335, 21339.1, 21365.6, and 75075 of, and to add Sections 9322, 21222.5, and 21336 to, the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 19, 1990 Filed with Secretary of State March 20, 1990.]

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

SECTION 1. Section 72425 of the Education Code is amended to read:

72425. (a) (1) In any community college district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held by the board, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(2) In any community college district in which the average daily attendance for the prior school year was 60,000 or less, but more than 25,000, each member of the governing board of the district who actually attends all meetings held by the board, may receive as

compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(3) In any community college district in which the average daily attendance for the prior school year was 25,000 or less, but more than 10,000, each member of the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(4) In any community college district in which the average daily attendance for the prior school year was 10,000 or less, but more than 1,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(5) In any community college district in which the average daily attendance for the prior school year was 1,000 or less, but more than 150, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

(b) The compensation of members of the governing board of a community college district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the community colleges of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the community college district. The compensation shall be a charge against the funds of the district.

(d) A member may be paid in any calendar year for the first two meetings from which he or she is absent if the board by resolution duly adopted and included in its minutes finds that, at the time of the meeting from which the member is absent, he or she is ill. A member may not receive compensation for any meeting from which he or she is absent in excess of the first two meetings missed, except as specified in subdivision (c).

SEC. 1.5. Section 9322 is added to the Government Code, to read:

9322. (a) Notwithstanding Sections 22816.7 and 22816.8, Part 6 (commencing with Section 22950) of Division 5, or any other law, the Legislature shall provide dental care plan coverage, pursuant to this section, for a person who is (1) a former Member of the Assembly

or Senate or former legislative employee and is a state employee, as defined by paragraph (3) of subdivision (a) of Section 22816.7 or (2) a former Member of the Assembly or Senate and meets the conditions imposed by Section 22816.8.

(b) The Senate Committee on Rules shall administer the dental care plan for former Senators and former Senate employees. The Assembly Committee on Rules shall administer the dental care plan for former Assembly Members and former Assembly employees. Each rules committee shall be paid by those persons the contributions specified by subdivision (c) of Section 22816.7 and Section 22816.8, including the additional 2 percent of the contribution payments required to be paid to cover the cost of administration. If the Senate Committee on Rules or the Assembly Committee on Rules does not receive the required contribution and the additional 2 percent of the contribution payment on the first day of a month or within 20 days thereafter, continued coverage shall be terminated effective the first day of that month and may not be reinstated by subsequent receipt of the contribution and payment.

(c) When a person described in subdivision (a) retires, he or she shall be enrolled in the dental care plan provided for retirees in the retirement plan in which he or she is a member.

(d) There is no duty to locate or notify any person who may be eligible to enroll pursuant to this section.

SEC. 2. Section 21151 of the Government Code is amended to read:

21151. A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system, as follows:

(a) As a member of any board, commission, or advisory committee, upon appointment by the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, director of a state department, or the governing board of the contracting agency. However, the appointment shall not be deemed employment within the meaning of Division 4 (commencing with Section 3200) and Division 4.5 (commencing with Section 6100) of the Labor Code, and shall not provide a basis for the payment of workers' compensation to a retired state employee or to his or her dependents.

(b) As a school crossing guard.

(c) As a juror or election officer.

(d) As an elective officer on and after September 15, 1961. However, all rights and immunities which may have accrued under Section 21158 as it read prior to that section's repeal during the 1969 Regular Session of the Legislature are hereby preserved.

(e) As an appointive member of the governing body of a contracting agency. However, the compensation for that office shall not exceed one hundred dollars ($100) per month.

(f) Upon appointment by the Legislature, or either house, or a legislative committee to a position deemed by the appointing power to be temporary in nature.

(g) Upon appointment by the governing body of a contracting agency to a position deemed by the governing body to be of a limited duration and requiring specialized skills. The appointment shall be only to fill a temporary vacancy until a permanent appointment can be made by the governing body.

SEC. 3. Section 21222.5 is added to the Government Code, to read:

21222.5. In addition to the increase of allowance authorized by and granted pursuant to Section 21222 and notwithstanding the limitation in subdivision (b) of Section 21224, any monthly allowance computed under or limited by any section other than Section 21252.01, as amended by Chapter 96 of the Statutes of 1971, and paid with respect to a local safety member whose retirement for service or nonindustrial death before retirement occurred, or who was granted an industrial or nonindustrial disability retirement, prior to the date the contracting agency elected to be subject to Section 21252.01 as so amended, shall be increased by 15 percent. The percentage shall be applied to the allowance payable on the date this section becomes applicable to the contracting agency and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of application. The base allowance shall be increased by the same percentage for annual adjustments beginning with the adjustment effective for time commencing with that annual adjustment.

For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the system.

The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the public agency's contract.

This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required, or, in the case of contracts made after January 1, 1991, by express provision in the contract making the contracting agency subject to this section.

SEC. 4. Section 21333 of the Government Code is amended to read:

21333. Optional settlement 2 consists of the right to have a retirement allowance paid a member until his or her death and thereafter to his or her beneficiary for life.

If the beneficiary predeceases the member and the member elected this section to be effective on or after January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary, to reflect the benefit which would have been paid had the member not selected an optional settlement.

If the beneficiary spouse predeceases the member on or after January 1, 1990, and the member elected this section to be effective prior to January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary spouse to reflect a new allowance as calculated below.

A percentage factor shall be applied to the difference between the member's unmodified allowance and optional settlement 2 allowance, both of which shall include applicable cost-of-living increases. The product of this equation shall then be added to the member's optional settlement 2 allowance and the total amount shall become the member's base allowance. The percentage factor applicable to each member shall be determined by the time between the member's retirement effective date and the date of death of the beneficiary spouse according to the following table:

Period between the member's retirement effective date and the death of the beneficiary spouse	Percentage
Less than 12 months	95%
12 months through 23 months	85%
24 months through 35 months	75%
36 months through 47 months	65%
48 months through 59 months	55%
60 months through 71 months	45%
72 months through 83 months	35%
84 months through 95 months	25%
96 months through 107 months	15%
108 months through 119 months	5%
120 months or more	0%

SEC. 5. Section 21334 of the Government Code is amended to read:

21334. Optional settlement 3 consists of the right to have a retirement allowance paid a member until his or her death, and thereafter to have one-half of his or her retirement allowance paid to his or her beneficiary for life.

If the beneficiary predeceases the member and the member elected this section to be effective on or after January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary, to reflect the benefit which would have been paid had the member not selected an optional settlement.

If the beneficiary spouse predeceases the member on or after January 1, 1990, and the member elected this section to be effective prior to January 1, 1990, the member's allowance shall be adjusted effective the first of the month following the death of the beneficiary spouse to reflect a new allowance as calculated below.

A percentage factor shall be applied to the difference between the member's unmodified allowance and optional settlement 3 allowance, both of which shall include applicable cost-of-living increases. The product of this equation shall then be added to the member's optional settlement 3 allowance and the total amount shall become the member's base allowance. The percentage factor applicable to each member shall be determined by the time between the member's retirement effective date and the date of death of the beneficiary spouse according to the following table:

Period between the member's retirement effective date and the death of the beneficiary spouse	Percentage
Less than 12 months	95%
12 months through 23 months	85%
24 months through 35 months	75%
36 months through 47 months	65%
48 months through 59 months	55%
60 months through 71 months	45%
72 months through 83 months	35%
84 months through 95 months	25%
96 months through 107 months	15%
108 months through 119 months	5%
120 months or more	0%

SEC. 6. Section 21335 of the Government Code is amended to read:

21335. Optional settlement 4 consists of such other benefits as are the actuarial equivalent of a member's retirement allowance, that he or she may select subject to the approval of the board. However, the actuarial equivalent of benefits under this optional settlement payable to the member's beneficiary shall not exceed the actuarial equivalent of the benefits which would be payable to that beneficiary if the member had elected optional settlement 2 and Section 21336.

SEC. 7. Section 21336 is added to the Government Code, to read:

21336. A member who elects to receive optional settlement 2 or 3 may concurrently and irrevocably elect to waive the provision for an increase to his or her allowance due to the death of his or her beneficiary and shall, instead, have his or her allowance based upon the waiver of this benefit.

SEC. 8. Section 21339.1 of the Government Code is amended to read:

21339.1. A member who elected to receive optional settlement 2

or 3 and whose beneficiary predeceases him or her, shall be entitled to receive the increased allowance pursuant to Section 21333 or Section 21334, as applicable, unless the member elected to waive the provision for an increase to his or her allowance pursuant to Section 21336.

SEC. 9. Section 21365.6 of the Government Code is amended to read:

21365.6. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21365.5, shall instead receive an allowance which is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21336. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive a special death benefit in lieu of an allowance under Section 21365.5, may elect to instead receive an allowance which is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21336.

The allowance shall be payable as long as the surviving spouse lives or until remarriage. Upon the death or remarriage of the surviving spouse, the benefit shall be continued to minor children, as defined in Section 25 of the Civil Code, or a lump sum shall be paid as provided under circumstances specified in Section 21365.5 or in Sections 21364 and 21366, as the case may be.

The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving spouse qualifying for the allowance may elect before the first payment on account of it to receive such basic death benefit in lieu of the allowance.

This section shall apply with respect to state members whose death occurs on and after July 1, 1976.

All references in this code to Section 21365.5 shall be deemed to include this section in the alternative.

This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required, or, in the case of contracts made after January 1, 1985, by express provision in the contract making the contracting agency subject to this section.

SEC. 10. Section 75075 of the Government Code is amended to read:

75075. Any judge hereafter retiring pursuant to the provisions of Section 75025 or 75060 may elect to receive the benefits accorded by this article (a) if he or she retires for service or disability on the day

of attainment of the age of 70 years, or prior thereto, or (b) regardless of age at retirement, if he or she is a judge on September 18, 1959, or his or her commission was issued on or before that date and (1) retires within five years after that date or (2) if not eligible to retire within that five-year period, he or she retires within two years after he or she attains eligibility or (c) if he or she retires for disability after the attainment of age 70.

Every judge who qualifies under this section shall be deemed to elect to receive the benefits accorded by this article, unless he or she makes an election to the contrary by filing written notice thereof with the Judges' Retirement System at or prior to retirement.

Any judge whose service would qualify him or her for any benefits under this article if the total of the service included an additional 60 days, shall be deemed to have credited to him or her, sufficient service to qualify for the benefit.

SEC. 10.5. Sections 1, 2, 4, 5, 6, 7, 8, and 9 of this act shall be deemed to be operative commencing on January 1, 1990. It is the intent of the Legislature that Sections 21333 and 21334 of the Government Code be administered in such a manner that the allowances of those who retired from this system prior to January 1, 1990, be increased by a factor proportional to the length of time they have been retired, so that no person receives an unintended enrichment because of this act. It is also the intent of the Legislature that this act not increase employer contribution rates, which would be the effect if long-retired members were to receive benefits equal to those who first retire on or after January 1, 1990.

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.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that inadvertent and unintended effects and related administrative problems arising from statutes relating to the Public Employees' Retirement System which were enacted in 1989 may be eliminated or remedied at the earliest possible time and that essential administrative continuity may be maintained, it is necessary that this act take effect immediately.

CHAPTER 30

An act to amend Section 17053.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 26, 1990. Filed with Secretary of State March 26, 1990.]

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

SECTION 1. Section 17053.1 of the Revenue and Taxation Code is amended to read:

17053.1. (a) For taxable years beginning on or after January 1, 1989, and before January 1, 1996, 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).

(b) An employee in a non-employer-sponsored vanpool program shall be allowed a credit in an amount equal to 40 percent of all vanpool subscription costs, for which receipts are available. In the case of a husband and wife, each shall be allowed a credit equal to 40 percent of their individual vanpool subscription costs. The credit allowed by this subdivision shall not exceed four hundred eighty dollars ($480), applied separately to a husband and wife.

(c) For purposes of this section:

(1) "Employer" means any individual for whom or entity for which services are performed by employees.

(2) "Employee" means an individual who performs service for an employer for at least 10 hours per week for remuneration, and who vanpools to and from work at least three days a week or 15 days per month for at least six months of the year.

(3) "Non-employer-sponsored vanpool program" means a program under which vehicles and related equipment and services are made available for use by employers and employees for purposes of commuting to and from work and which is administered and operated by an individual or organization, including a governmental agency, for the commuting purposes of other employers and employees who are not employees of that individual or organization.

(4) "Vanpool" means a vehicle with a seating arrangement designed to carry 7 to 15 adults, including the driver, and in which an average of seven or more persons commute on a daily basis to and from work.

(5) "Vanpool subscription costs" includes, but is not limited to, vehicle lease payments, repairs, maintenance, fuel, and insurance.

(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been used.

(e) In the case of a husband and wife who file separate returns where both qualify for the credit, each shall claim his or her

allowable credit, or, if only one is qualified, the credit may be taken by either or equally divided between them.

(f) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, this act shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1989.

CHAPTER 31

An act to amend Section 1799.100 of the Civil Code, to amend Section 65915 of, and to repeal Section 65913.4 of, the Government Code, to amend Sections 33333.4, 33334.2, 33334.12, 33385, and 33413 of, and to add Section 33334.13 to, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 26, 1990 Filed with Secretary of State March 26, 1990.]

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

SECTION 1. Section 1799.100 of the Civil Code is amended to read:

1799.100. (a) It is unlawful for any person to take a security interest in any household goods, as defined in subdivision (g), in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes unless (1) the person takes possession of the household goods or (2) the purchase price of the household goods was financed through the consumer credit contract or credit obligation.

(b) An agreement or other document creating a nonpossessory security interest in personal property as defined in subdivision (d) in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes shall contain a statement of description reviewed and signed by the consumer indicating each specific item of the personal property in which the security interest is taken. A consumer credit contract or other credit obligation subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2) that complies with the provisions of subdivision (a) of Section 1803.3, or of subdivision (f) of Section 1810.1, shall be deemed to comply with this subdivision.

(c) Notwithstanding any other provision of law, a person who has a nonpossessory security interest in personal property, described in subdivision (d), taken in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes shall only enforce the security interest by

judicial action unless the property is abandoned or freely and voluntarily surrendered by the consumer.

(d) The provisions of subdivisions (b) and (c) apply only to the following types of personal property:

(1) Any goods, as defined in subdivision (h) of Section 9105 of the Commercial Code, except for vessels, vehicles, and aircraft, that are used or bought for use primarily for personal, family, or household purposes and that has a fair market value of less than one thousand dollars ($1,000) per individual item at the time the security interest is created.

(2) The property described in Section 704.050 and subdivision (a) of Section 704.060 of the Code of Civil Procedure, except for vessels, vehicles, and aircraft.

(e) Any security interest taken in violation of either subdivision (a) or (b) is void and unenforceable.

(f) Any person injured by a violation of this section may bring a civil action for the recovery of damages, equitable relief, and attorney's fees and costs.

(g) For the purpose of this section:

(1) "Household goods" means and includes clothing, furniture, appliances, one radio, one television, linens, china, crockery, kitchenware, personal effects, and wedding rings. "Household goods" does not include works of art, electronic entertainment equipment (except one radio and one television), items acquired as antiques, and jewelry (except wedding rings).

(2) "Antique" means any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

SEC. 2. Section 65913.4 of the Government Code is repealed.

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 subdivision (h) unless the city,

county, or city and county makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code or 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 or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code 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 additional 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 20 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) For purposes of this chapter, concession or incentive means any of the following:

(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.

(i) 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 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 33333.4 of the Health and Safety Code is amended to read:

33333.4. (a) Every legislative body which adopted a final redevelopment plan prior to October 1, 1976, that contains the provisions set forth in Section 33670 but which does not contain all of the limitations required by Section 33333.2, shall adopt an ordinance on or before December 31, 1986, which contains all of the following:

(1) A limitation on the number of dollars of taxes which may be

divided and allocated to the redevelopment agency pursuant to the plan. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond that limitation.

(2) A time limit on the establishing of loans, advances, and indebtedness to finance in whole, or in part, the redevelopment project. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond the time limitation.

(3) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area.

(b) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(c) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (g) of Section 33334.6 in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficit. In the event of a conflict between these limitations and the obligations under Section 33334.6, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6 and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (b).

(d) This section shall not be construed to allow the impairment of any obligation or indebtedness incurred by the legislative body or the agency pursuant to this part.

(e) In any litigation to challenge or attack any ordinance adopted pursuant to this section, the court shall sustain the actions of the legislative body and the agency unless the court finds those actions were arbitrary or capricious. The Legislature finds and declares that this is necessary because redevelopment agencies with project areas established prior to October 1, 1976, have incurred existing obligations and indebtedness and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of taxes authorized by Section 33670 and that it is necessary to protect against the possible impairment of existing obligations and indebtedness and to allow the completion of adopted projects and programs.

(f) The ordinance adopted by the legislative body in compliance

with this section does not relieve any agency of its obligations under Section 33334.2, 33334.3, Article 9 (commencing with Section 33410), or any other requirement contained in this part.

SEC. 5. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) That no need exists in the community to improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in

Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire land or building sites.

(2) Improve land or building sites with onsite or offsite improvements, but only if the improvements directly and specifically improve or increase the community's supply of low- or moderate-income housing.

(3) Donate land to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency

and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

SEC. 6. Section 33334.12 of the Health and Safety Code is amended to read:

33334.12. (a) Upon failure of the agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within five years from the date the moneys become excess surplus, within the meaning defined in Section 33334.10, the agency shall disburse that excess surplus to the county housing authority or other housing authority operating within the agency's jurisdiction or another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b). The housing authority shall utilize the moneys for the purposes and subject to the same restrictions as applicable to the redevelopment agency under this part, and for that purpose may exercise all of the powers of a housing authority under Part 2 (commencing with Section 34200) to the extent not inconsistent with these limitations.

Notwithstanding Section 34209 or any other provision of law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county may exercise its powers within the territorial jurisdiction of a city redevelopment agency in the county.

(b) The amount of excess surplus which shall be transferred to the housing authority because of failure of the agency to expend or encumber excess surplus within five years shall be the amount of the excess surplus that is not so expended or encumbered.

(c) Nothing in this section shall be construed to limit any authority a redevelopment agency may have under other provisions of this part to contract with a housing authority for increasing or

improving the community's supply of low- and moderate-income housing.

(d) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an agency's Low and Moderate Income Housing Fund that exceeds the greater of five hundred thousand dollars ($500,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during the agency's preceding five fiscal years.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

(3) For purposes of determining whether an excess surplus exists, it is the intent of the Legislature to give credit to agencies which convey land for less than fair market value, on which low- and moderate-income housing is built or is to be built if at least one-half of the units developed on the land are available at affordable housing cost to lower income households for at least the time specified in subdivision (e) of Section 33334.3, and otherwise comply with all of the provisions of this division applicable to expenditures of moneys from a low- and moderate-income housing fund established pursuant to Section 33334.3. Therefore, for the sole purpose of determining the amount, if any, of an excess surplus, an agency may make the following calculation: if an agency sells, leases, or grants land acquired with moneys from the Low and Moderate Income Housing Fund, established pursuant to Section 33334.3, for an amount which is below fair market value, and if at least one-half of the units constructed or rehabilitated on the land are affordable to lower income households, as defined in Section 50079.5, the difference between the fair market value of the land and the amount the agency receives may be subtracted from the amount of moneys in an agency's Low and Moderate Income Housing Fund.

Nothing in this subdivision shall be construed to restrict the authority of an agency provided in any other provision of this part to expend funds from the Low and Moderate Income Housing Fund.

SEC. 7. Section 33334.13 is added to the Health and Safety Code, to read:

33334.13. (a) Notwithstanding Sections 50079.5, 50093, and 50105, for purposes of providing assistance to mortgagors participating in a homeownership residential mortgage revenue bond program pursuant to Section 33750, or a home financing program pursuant to Section 52020, or a California Housing Finance Agency home financing program, "area median income" means the highest of the following:

(1) Statewide median household income.

(2) Countywide median household income.

(3) Median family income for the area, as determined by the United States Department of Housing and Urban Development with respect to either a standard metropolitan statistical area or an area

outside of a standard metropolitan statistical area.

Nothing in Section 50093 shall prevent the agency from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for the programs of the agency.

(b) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093, the agency shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5, of which at least 50 percent shall be very low income households, as defined in Section 50105.

(c) In addition to the requirements of subdivision (c) of Section 33413, the agency shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at affordable housing cost to lower and very low income households for at least 30 years, except as to dwelling units developed with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(d) The agency shall include within the report required by Section 33080 information with respect to compliance by the agency with the requirements of this subdivision.

SEC. 8. Section 33385 of the Health and Safety Code is amended to read:

33385. (a) The legislative body of a city or county shall call upon the residents and existing community organizations in a redevelopment project area, within which a substantial number of low- and moderate-income families are to be displaced by the redevelopment project, to form a project area committee.

(b) The legislative body shall, by resolution, adopt a procedure pursuant to this section for the formation of the project area committee. The procedure shall include, but not be limited to, all of the following:

(1) Publicizing the opportunity to serve on the project area committee.

(2) Conduct by the agency of a minimum of one public meeting to explain the establishment of, functions of, and opportunity to serve on, the project area committee. At the public meeting, the agency shall distribute copies of the procedure adopted pursuant to this subdivision, the redevelopment plan or the pertinent portions thereof, and any other materials the agency determines would be useful.

(3) Providing published notice of all meetings, hearings, or plebiscites conducted by, or on behalf of, the agency or legislative body relative to the formation and selection of the project area

committee in the same manner as specified in subdivision (a) of Section 65090 of the Government Code.

(4) Providing written notice to all residents and businesses in the project area of all meetings, hearings, or plebiscites conducted by, or on behalf of, the agency or legislative body relative to the formation and selection of the project area committee. This mailed notice requirement shall only apply when mailing addresses to all individuals and businesses, or to all occupants, are obtainable by the agency at a reasonable cost. The notice shall be mailed by first-class mail, but may be addressed to "occupant." In lieu of providing separate notice for each meeting, hearing, or plebiscite, the agency may provide a single notice pursuant to this paragraph stating all dates, times, and locations of any meetings, hearings, and plebiscites relative to the formation and selection of the project area committee.

If the agency has acted in good faith to comply with the notice requirements of this paragraph, the failure of the agency to provide the required notice to residents or businesses unknown to the agency or whose addresses cannot be obtained at a reasonable cost, shall not, in and of itself, invalidate the formation or actions of the project area committee.

(5) Any other forms of assistance which the legislative body requires in connection with the formation of the project area committee.

(c) The project area committee shall include, when applicable, residential owner occupants, residential tenants, business owners, and representatives of existing organizations within the project area. The members of the committee shall serve without compensation.

(d) The legislative body shall approve a representative project area committee in each project area within 90 days after the project area is selected.

(e) For project areas selected prior to March 7, 1973, the legislative body may, but shall not be required to, call upon the residents and existing community organizations to form a project area committee.

(f) If the project will not displace a substantial number of low- and moderate-income families the agency shall either call upon the residents and existing community organizations to form a project area committee or the agency shall consult with, and obtain the advice of, residents and community organizations as provided for project area committees in Section 33386 and provide such persons and organizations with the redevelopment plan prior to submitting it to the legislative body.

(g) Nothing contained in this section shall prevent an agency, or the legislative body of any city or county, from creating any other committee for a project area. However, these committees shall not be merged into the project area committee subsequent to the formation thereof and the members of these other committees shall not be entitled to vote in meetings of the project area committee, unless they are also a member of the project area committee.

(h) The agency may charge fees to persons purchasing or leasing property from the agency in the project area and to persons participating in redevelopment of the project area under an owner participation agreement to defray any cost to the agency or legislative body in implementing this section.

SEC. 9. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units which have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) At least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a) and in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, or constructed pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low

income, moderate income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except to the extent a longer period of time may be required by other provisions of law. If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in the previous sentence. These requirements shall be made enforceable in the same manner as provided in subdivision (e) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to two replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 10. Nothing contained in Section 1799.100 of the Civil Code, as currently or heretofore in effect, is intended to, nor does it, affect in any way the rights, remedies, or obligations of a person taking or

enforcing a security interest on or after January 1, 1990, in personal property other than household goods or personal property described in subdivision (d) of Section 1799.100 of the Civil Code.

SEC. 11. In amending paragraph (2) of subdivision (e) of Section 33334.2 of the Health and Safety Code in Chapter 1564 of the Statutes of 1988, the Legislature did not express an intent that the amendment was either declaratory of, or constituted a change in, existing law.

SEC. 12. 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; reimbursements 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), 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. 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:

There is an urgent need to clarify many of the amendments made during the 1987–88 Regular Session of the Legislature to the Community Redevelopment Law.

In addition, to promote the development of housing which is affordable to lower income persons, the need to provide incentives to developers is necessary.

Moreover, the term "personal property," as used in Chapter 525 of the Statutes of 1989, is undefined. Because of this ambiguity, the provisions of Chapter 525 have been interpreted to apply to all personal property, including mobilehomes and manufactured housing. This unintended result has created confusion in the mobilehome and manufactured housing financing markets. In order to clarify the term "personal property," ensure the availability of credit for financing the acquisition of mobilehomes and manufactured housing, and to restore stability to financing markets for personal property, it is necessary that this act take effect immediately.

CHAPTER 32

An act to amend Section 97.35 of, and to repeal Section 97.37 of, the Revenue and Taxation Code, and to amend Section 21 of Chapter 944 of the Statutes of 1988, relating to local government financing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 26, 1990 Filed with Secretary of State March 26, 1990.]

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

SECTION 1. Section 97.35 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

(5) For purposes of the calculations made pursuant to Section 97, in the 1990–91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to qualifying cities pursuant to this

subdivision shall be deemed to be the "amount of property tax revenue allocated in the prior fiscal year."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The auditor shall subtract the amount determined in paragraph (2) from the amount of property tax revenue determined in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.07, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.07, the city is not a qualifying city.

(e) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(f) Notwithstanding subdivision (b), in any fiscal year in which a qualifying city is to receive a distribution pursuant to this section, the auditor shall reduce the actual amount distributed to the qualifying city by the sum of the following:

(1) The amount of property tax revenue which was exchanged between the county and the qualifying city as a result of negotiation pursuant to Section 99.6.

(2) The amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax base of any locally imposed general or special tax. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(3) The amount of property tax revenue received pursuant to this chapter in excess of the amount allocated for the 1986–87 fiscal year by all special districts which are governed by the city council of the qualifying city or whose governing body is the same as the city council of the qualifying city with respect to all tax rate areas within the boundaries of the qualifying city.

(g) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (e) and (f), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount which exceeds the city's appropriations limit.

(h) The amount not distributed to the tax rate areas of a qualifying city as a result of this section shall be distributed by the auditor to the county.

(i) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section which is less than the amount the city would have been allocated without the application of the TEA formula.

(j) Notwithstanding any other provision of this section, the auditor shall not distribute any amount determined pursuant to this section to any qualifying city which has in the prior fiscal year used any revenues or issued bonds for the construction, acquisition, or development, of any facility which is defined in Section 103(b)(4), 103(b)(5), or 103(b)(6) of the Internal Revenue Code of 1954 prior to the enactment of the Tax Reform Act of 1986 (P.L. 99-514) and is no longer eligible for tax exempt financing.

(k) A qualifying city, as defined in subdivision (d), shall not receive an allocation pursuant to this section in the 1989–90 fiscal year or in any succeeding fiscal year with respect to which the county in which the qualifying city is located has failed to notify the state pursuant to Sections 77300 and 77301 of the Government Code of the county's intent to opt into the system established by the Brown-Presley Trial Court Funding Act of 1988 for that fiscal year.

(*l*) Each qualifying city shall receive its fiscal year allocation pursuant to this section in the first fiscal year with respect to which the county in which it is located has notified the state of its intent to opt into the system.

SEC. 2. Section 97.37 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 21 of Chapter 944 of the Statutes of 1988 is amended to read:

Sec. 21. 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 in the Counties of Alameda, Riverside, San Mateo, and Ventura. The Legislature finds, therefore, that this special act is necessary. The facts constituting this necessity are:

(a) In the County of Alameda, the poor fiscal condition of the William Knowland Zoo operated by the City of Oakland requires additional funding. Because the zoo serves residents from throughout the East Bay, this act is needed to provide additional regional funding sources.

(b) In the County of Riverside, the financing of fire protection and fire suppression activities requires unusually close cooperation between the county and the cities within the county. This act is necessary because their fiscal relationships require mutually acceptable agreements.

(c) In the County of San Mateo, the City of Foster City is the only city in California which receives substantially all of its municipal services from a single subsidiary special district which already receives property tax revenues to support those services. This subsidiary special district is called the Estero Municipal Improvement District and is governed by a board of directors whose members are the members of the City Council of the City of Foster City. Further, its boundaries are substantially the same as the land area within the city limits of Foster City. This act is needed because of the unique conditions of Foster City.

(d) In the County of Ventura, there is a higher percentage of residents who live within qualifying cities than in any other county which includes urban areas. Distributing relatively large amounts of property tax revenues to those qualifying cities would have created unique fiscal problems for the County of Ventura. Accordingly, this act is needed to create the special formulas for local agencies in the County of Ventura.

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:

Chapter 944 of the Statutes of 1988, which will become operative on July 1, 1989, will require an adjustment in property tax revenue allocations made to the County of Mono and the only qualifying city within that county.

In order that a revision in the distribution of property tax revenue between these two local governmental entities can be enacted before the required distribution of property tax revenues for the 1989–90 fiscal year pursuant to Chapter 944, it is necessary that this act go into immediate effect.

CHAPTER 33

An act to amend Sections 27360, 27362, 27363, and 40000.15 of, and to add Sections 27315.3, 27315.5, and 27365 to, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 26, 1990. Filed with Secretary of State March 26, 1990]

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

SECTION 1. This act shall be known and may be cited as the Omnibus Traffic Safety Act.

SEC. 2. Section 27315.3 is added to the Vehicle Code, to read:

27315.3. (a) As used in this section, "passenger motor vehicle" means any passenger vehicle as defined in Section 465 and any motortruck as defined in Section 410 of less than 6,001 pounds unladen weight, but does not include a motorcycle as defined in Section 400.

(b) Every sheriff's department and city police department and the Department of the California Highway Patrol shall maintain safety belts in good working order for the use of occupants of any vehicle which it operates on a highway for the purpose of patrol. The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(c) Notwithstanding subdivision (a) of Section 42001, any violation of subdivision (b) is an infraction punishable by a fine, including all penalty assessments and court costs imposed on the convicted department, of not more than twenty dollars ($20) for a first offense, and a fine, including all penalty assessments and court costs imposed on the convicted department, of not more than fifty dollars ($50) for each subsequent offense.

(d) (1) For any violation of subdivision (b), in addition to the fines provided for pursuant to subdivision (c) and the penalty assessments provided for pursuant to Section 1464 of the Penal Code, an additional penalty assessment of two dollars ($2) shall be levied for any first offense, and an additional penalty assessment of five dollars ($5) shall be levied for any subsequent offense.

(2) All money collected pursuant to this subdivision shall be utilized in accordance with Section 1464 of the Penal Code.

(e) In any civil action, a violation of subdivision (b) or information of a violation of subdivision (c) shall not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(f) Subdivisions (b) and (c) shall become inoperative immediately upon the date that the Secretary of the United States Department of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) which requires the installation of automatic restraints in new passenger motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions or subdivisions (d) to (h), inclusive, of Section 27315.

SEC. 3. Section 27315.5 is added to the Vehicle Code, to read:

27315.5. All law enforcement agencies shall, not later than January 1, 1991, establish a policy and issue an order, in writing, which states whether or not their officers are required to wear seat belts. When a law enforcement agency is developing a safety belt policy, the agency shall consider the officer's safety, comfort, and convenience.

SEC. 4. Section 27360 of the Vehicle Code is amended to read:

27360. (a) It is unlawful for the parent or legal guardian, when present in a passenger vehicle or motortruck of less than 6,001 pounds unladen weight, to permit his or her child or ward under the age of four years or weighing less than 40 pounds to be transported upon a highway in the motor vehicle without providing and properly using, for each such child or ward, a child passenger seat restraint system meeting applicable federal motor vehicle safety standards.

Notwithstanding Section 42005, a first charge under this subdivision may be dismissed, with the consent of the defendant, only if the person charged produces in court either or both of the following, as designated by the court:

(1) Proof that a child passenger seat restraint system has been obtained for use of the child.

(2) Proof of attendance at a program providing education in the use of child passenger seat restraint systems.

No violation of this subdivision shall be dismissed unless the court notifies the department and includes the reasons for the dismissal in the notification.

A second or subsequent violation shall not be dismissed and is punishable by a fine of one hundred dollars ($100), unless the defendant can prove he or she is economically disadvantaged. Fifty percent of the fines shall be allocated to child passenger seat restraint system loaner programs in the jurisdiction in which the violation occurred, of which 25 percent shall be used for the purchase of new seats and 25 percent for the development of new loaner programs.

(b) It is unlawful for any driver to transport on a highway any child under four years of age or weighing less than 40 pounds in a passenger vehicle or motortruck of less than 6,001 pounds unladen weight without providing and properly securing the child in a passenger seat restraint system meeting applicable federal motor vehicle safety standards. This subdivision does not apply to a driver

if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

SEC. 5. Section 27362 of the Vehicle Code is amended to read:

27362. (a) No manufacturer, wholesaler, or retailer shall sell, offer for sale, or install in any motor vehicle any child passenger seat restraint system not conforming to all applicable federal motor vehicle safety standards on the date of sale or installation. Responsibility for compliance with this section shall rest with the individual selling, offering for sale, or installing the system. Every person who violates this section is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction, by a fine not exceeding four hundred dollars ($400) or by imprisonment in the county jail for a period of not more than 90 days, or both.

(2) If the person has been previously convicted once of a violation of this section, by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for a period of not more than 180 days, or both.

(b) Of the fines, 50 percent shall be allocated to child passenger seat restraint system loaner programs in the jurisdiction in which the violation occurred, 25 percent for the purchase of new seats, and 25 percent for the development of new loaner programs.

SEC. 6. Section 27363 of the Vehicle Code is amended to read:

27363. (a) The court may exempt from the requirements of this article any class of child by age, weight, or size if it is determined that the use of a child passenger seat restraint system would be impractical by reason of physical unfitness, medical condition, or size. The court may require adequate proof of the child's physical unfitness, medical condition, or size.

(b) In case of an emergency, or when a child is being transported in an authorized emergency vehicle, if there is no child passenger seat restraint system available, a child may be transported without the use of such a system, but the child shall be secured by a seat belt.

SEC. 7. Section 27365 is added to the Vehicle Code, to read:

27365. (a) Every car rental agency in California shall inform each of its customers of the provisions of Section 27360 by posting, in a place conspicuous to the public in each established place of business of the agency, a notice not smaller than 15 inches by 20 inches which states the following:

"CALIFORNIA LAW REQUIRES ALL CHILDREN UNDER THE AGE OF 4 OR WEIGHING LESS THAN 40 POUNDS TO BE TRANSPORTED IN A CHILD RESTRAINT SYSTEM. THIS AGENCY IS REQUIRED TO PROVIDE FOR RENTAL A CHILD RESTRAINT SYSTEM IF YOU DO NOT HAVE SUCH A SYSTEM YOURSELF."

(b) Every such agency shall have available for, and shall, upon request, provide for rental to, adults traveling with children under the age of four or weighing less than 40 pounds, child passenger seat

restraint systems meeting applicable federal motor vehicle safety standards on the date of the rental transaction, in good and safe condition, with no missing original parts, and not older than five years.

(c) A violation of this section is an infraction punishable by a fine of one hundred dollars ($100).

SEC. 8. Section 40000.15, as amended by Chapter 1005 of Statutes of 1983, of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Sections 23103 and 23104, relating to reckless driving.

Section 23109, relating to speed contests or exhibitions.

Section 23110, subdivision (a), relating to throwing at vehicles.

Section 23152, relating to driving under the influence.

Subdivision (b) of Section 23222, relating to possession of marijuana.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.

Section 27150.1, relating to sale of exhaust systems.

Section 27362, relating to child passenger seat restraints.

Section 28050, relating to true mileage driven.

Section 28050.5, relating to nonfunctional odometers.

Section 28051, relating to resetting odometer.

Section 28051.5, relating to device to reset odometer.

SEC. 9. 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.

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, at the earliest possible time, encourage law enforcement agencies to adopt a seat belt policy for increasing the safety of its peace officers and ensure the safety of other occupants

of vehicles, including children, it is necessary that this act take effect immediately.

CHAPTER 34

An act to add Chapter 7 (commencing with Section 22980) to Part 5 of Division 11 of the Water Code, relating to irrigation districts.

[Approved by Governor March 27, 1990 Filed with Secretary of State March 27, 1990.]

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

SECTION 1. Chapter 7 (commencing with Section 22980) is added to Part 5 of Division 11 of the Water Code, to read:

CHAPTER 7. PROVISIONS PERTAINING ONLY TO THE MERCED IRRIGATION DISTRICT

22980. Notwithstanding any other provision of this division, the Merced Irrigation District, or an improvement district formed within the Merced Irrigation District pursuant to this division, may do any of the following:

(a) Construct, operate, and maintain facilities for the collection, transmission, treatment, and disposal of sewage water, including all works, structures, plants, equipment, and lines necessary and convenient for the collection, transmission, treatment, and disposal of sewage waters within the district.

(b) Construct, operate, and maintain works and facilities for the use, storage, control, regulation, and distribution of any drainage water within the district.

(c) Authorize, issue, and sell 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) for any purpose specified in this division.

(d) Authorize, issue, and sell general obligation bonds pursuant to Article 10 (commencing with Section 25211.1) of Chapter 2.2 of Part 2 of Division 2 of Title 3 of the Government Code for any purpose specified in this division.

(e) (1) 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), and the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) for the construction of any facilities authorized to be constructed under this division.

(2) In the application of the acts specified in this subdivision to

proceedings under this subdivision, the terms used in those acts have the following meanings:

(A) "City council" and "council" means the board of directors of the district.

(B) "City" and "municipality" means the district.

(C) "Clerk" and "city clerk" means the secretary.

(D) "Superintendent of streets" and "street superintendent" and "city engineer" means the general manager of the district or any other person appointed to perform those duties.

(E) "Tax collector" means the county assessor.

(F) "Treasurer" and "city treasurer" means the person or officer who has charge of and makes payment of the funds of the district.

(G) "Right-of-way" means any parcel of land through which a right-of-way has been granted to the district for the purpose of constructing or maintaining any work or improvements which the district is authorized to do.

(3) The powers and duties conferred by those acts upon boards, officers, and agents of cities shall be exercised by the board, officers, and agents of the district, respectively.

22981. This section provides an alternative procedure for forming an improvement district within the Merced Irrigation District as follows:

(a) The Merced Irrigation District may exercise all of the powers contained in Articles 2 (commencing with Section 25210.10), 2.5 (commencing with Section 25210.21), 3 (commencing with Section 25210.30), 8 (commencing with Section 25210.90), and 9 (commencing with Section 25210.90) of Chapter 2.2 of Part 2 of Division 2 of Title 3 of the Government Code for forming improvement districts within the Merced Irrigation District for any of the purposes allowed the Merced Irrigation District, except that the reference in Section 25210.31 of the Government Code to Section 25210.14 means services that the Merced Irrigation District or an improvement district therein may perform.

(b) The application of, and the terms used in, those provisions have the following meanings:

(1) "Board of supervisors" means the board of directors of the district.

(2) "County service area" means an improvement district.

(3) "County services" means Merced Irrigation District services.

(4) "County Services Area No. _____" means "Improvement District No. _____."

(5) "Chapter" means section.

(6) "Section 25210.4" means "services permitted the Merced Irrigation District."

(7) "County taxes" means Merced Irrigation District assessments.

(8) "County treasurer" means the Merced Irrigation District treasurer.

SEC. 2. This act is necessary to provide for the regulation of the affairs of the Merced Irrigation District with respect to which a

general law cannot be made applicable. The facts requiring the adoption of this special act are as follows:

The Merced Irrigation District for many years past has made investigations and water studies of the needs of lands within the district, and the district has been responsive to the changing characteristics of these needs. To avoid the duplication and confusion resulting from an overlapping of a multiplicity of special districts, the powers of the Merced Irrigation District need to be broadened to authorize activity in all the different phases of water management, including drainage and sewage. The Merced Irrigation District, a presently organized and operating political subdivision of the state, is the only operating entity in its service area presently able to cope with the unique problems resulting from the rapid growth and development in Merced County. Because of the unique problems presented by this area, the adoption of a special act is necessary.

CHAPTER 35

An act to repeal Sections 66758, 66759, 66798, 66798.1, 66798.2, 66798.4, 66798.5, 66798.7, 66798.9, 66799.3, and 66799.49 of, to repeal the heading of Article 9 (commencing with Section 66798) of Chapter 3 of, and to repeal Chapter 5 (commencing with Section 66799.60) and Chapter 6 (commencing with Section 66799.100) of, Title 7.3 of, the Government Code, to amend Sections 46201, 46203, 46400, and 46401 of, to amend and renumber the heading of Chapter 14 (commencing with Section 42950) of Part 3 of, to amend and renumber the heading of the second Article 2 (commencing with Section 46100) of Chapter 1 of Part 6 of, to amend and renumber the heading of Chapter 13 (commencing with Section 47000) of Part 7 of, Division 30 of, to amend, renumber, and add Sections 47100 and 47101 of, to add Sections 40060, 40061, 40135, 47004, 47107, 47108, and 47109 to, to add an article heading immediately before Section 46103 of, to add an article heading immediately before Section 48000 of, to add Chapter 14 (commencing with Section 42700), Chapter 15 (commencing with Section 42750), Chapter 16 (commencing with Section 42800), and Chapter 17 (commencing with Section 42860) to Part 3 of, to add a chapter heading immediately before the second Article 2 (commencing with Section 46100) of Chapter 1 of Part 6 of, to add Article 5 (commencing with Section 47550) to Chapter 1 of, and to add Article 1 (commencing with Section 47900) to Chapter 2 of, Part 7 of, Division 30 of, to repeal Sections 41341, 41360, 42885, 47102 and 47103 of, and to repeal Division 12.5 (commencing with Section 16000) and Division 12.6 (commencing with Section 17000) of, to repeal and add Sections 46801, 46802, 46803, 47000, 47001, 47002, 47003, 47050, 47051, 47052, 47104, 47105, 47106, 47500, 47501, 47502, 47503, 47504, 47505, and 47506 of, and to repeal and add Article 2 (commencing with Section 46020) of Chapter 1 of Part 6 of, the

Public Resources Code, and to repeal Section 13363.2 of the Water Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 29, 1990 Filed with Secretary of State March 30, 1990]

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

SECTION 1. Section 66758 of the Government Code, as amended by Chapter 736 of the Statutes of 1989, is repealed.

SEC. 2. Section 66759 of the Government Code, as amended by Chapter 541 of 1989, is repealed.

SEC. 3. The heading of Article 9 (commencing with Section 66798 of Chapter 3 of Title 7.3 of the Government Code), as amended by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 4. Section 66798 of the Government Code, as amended by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 5. Section 66798.1 of the Government Code, as amended by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 6. Section 66798.2 of the Government Code, as added by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 7. Section 66798.4 of the Government Code, as amended by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 8. Section 66798.5 of the Government Code, as amended by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 9. Section 66798.7 of the Government Code, as amended by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 10. Section 66798.9 of the Government Code, as added by Chapter 809 of the Statutes of 1989, is repealed.

SEC. 11. Section 66799.3 of the Government Code, as amended by Chapter 72 of the Statutes of 1989, is repealed.

SEC. 12. Section 66799.49 of the Government Code, as amended by Chapter 654 of the Statutes of 1989, is repealed.

SEC. 13. Chapter 5 (commencing with Section 66799.60) of Title 7.3 of the Government Code, as added by Chapter 974 of the Statutes of 1989, is repealed.

SEC. 14. Chapter 6 (commencing with Section 66799.100) of Title 7.3 of the Government Code, as added by Chapter 974 of the Statutes of 1989, is repealed.

SEC. 15. Division 12.5 (commencing with Section 16000) of the Public Resources Code, as added by Chapter 1093 of the Statutes of 1989, is repealed.

SEC. 16. Division 12.6 (commencing with Section 17000) of the Public Resources Code, as added by Chapter 1092 of the Statutes of 1989, is repealed.

SEC. 17. Section 40060 is added to the Public Resources Code, to read:

40060. (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 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. 18. Section 40061 is added to the Public Resources Code, to read:

40061. (a) Notwithstanding Section 40059, every local agency which does not directly charge residential households a fee for the collection, transportation, and disposal of solid waste and every local agency which directly charges residential customers a fee which represents less than 90 percent of the average cost of collecting, transporting, and disposing of residential solid waste shall, at least once every three months, arrange to inform all residential households of all of the following:

(1) The average monthly volume of solid waste produced by each residential household.

(2) The total estimated monthly cost to the local agency to collect, transport, and dispose of all solid waste produced by residential households.

(3) The average monthly cost to the local agency to collect, transport, and dispose of solid waste produced by each residential household.

(b) For the purposes of this section, "residential household" means those single and multifamily residential units which are not charged a periodic fee for the collection, transportation, and disposal of solid waste or which are assessed a periodic fee which represents less than 90 percent of the local agency's total cost of providing these services.

(c) Where possible, the notification provided under subdivision (a) shall be distributed by each local agency to residential households in a manner that results in no distribution costs to the local agency in excess of distribution costs otherwise incurred for other purposes.

SEC. 19. Section 40135 is added to the Public Resources Code, to read:

40135. "Fund" means the Solid Waste Management Fund, created pursuant to Section 47900.

SEC. 20. Section 41341 of the Public Resources Code, as added by Chapter 908 of the Statutes of 1989, is repealed.

SEC. 21. Section 41360 of the Public Resources Code, as added by Chapter 908 of the Statutes 1989, is repealed.

SEC. 22. Chapter 14 (commencing with Section 42700) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 14. PAVING MATERIALS

42700. The Director of Transportation, upon consultation with the board, 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 of Transportation 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.

42701. 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 of General Services or with 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 of Transportation for recycled paving materials and for recycled base, subbase, and pervious backfill materials.

SEC. 23. Chapter 15 (commencing with Section 42750) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 15. NEWSPRINT

Article 1. Definitions

42750. "Consumer of newsprint" means a person who uses newsprint in a commercial printing operation or in a commercial publishing operation.

42752. "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.

42753. "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.

42754. "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.

42755. "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.

42756. "Recycled-content newsprint" means newsprint in which not less than 40 percent of its fiber consists of post consumer waste paper.

Article 2. Recycled-content Newsprint Program

42760. 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 board pursuant to Section 42775, and if the recycled-content newsprint is available within a reasonable period of time.

42761. 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.

42762. This division does not apply to any newsprint purchased prior to January 1, 1990.

Article 3. Certification of Use

42770. Each consumer of newsprint within the State of California shall, on or before March 1 of each year, certify to the board 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.

42771. Every consumer of newsprint who submits recycled-content newsprint usage certification pursuant to Section 42770 may be subject to an audit to ensure that the recycled-content newsprint was used.

42772. 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.

42773. 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 42775, or was not available within a reasonable period of time, the consumer of newsprint shall so certify to the board and shall provide the board 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 board.

42774. For the purposes of implementing and enforcing this chapter, the board shall develop and maintain a list which identifies every consumer of newsprint, as defined in Section 42751, and every person who supplies a consumer of newsprint with newsprint, in the state. The board may use information from local business permits, trade publications, or any other relevant information to develop the list.

42775. (a) For the purposes of implementing and enforcing this chapter, the board shall set newsprint comparable quality standards for each of the grades of newsprint specified in Section 42753 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 board shall set standards which deviate from this average by not more than 5 percent.

(b) The board 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 board shall set new standards according to the criteria in subdivision (a).

42776. After January 1, 1994, the board 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 board shall report the findings of its survey to the Legislature on or before July 1, 1994.

Article 4. False Certification

42780. 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 42772, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

42781. If any consumer of newsprint provides the board with a false or misleading certificate concerning the percentage of recycled-content newsprint used pursuant to Section 42770, the board within 30 days of making this determination, shall refer the

false or misleading certificate to the Attorney General for prosecution for fraud.

42782. If any consumer of newsprint provides the board 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 42773, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

42783. Specific information on newsprint prices included as part of a certificate submitted to the board by newsprint consumers or suppliers of newsprint is propriety information and shall not be made available to the general public.

Article 5. Penalties

42790. Any person who violates Chapter 3 (commencing with Section 42770) is guilty of an infraction punishable by a fine of not more than one thousand dollars ($1,000).

42791. In addition to Section 42790, any person who violates this division may be assessed a civil penalty by the board 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 Solid Waste Management Fund and, upon appropriation, shall be used by the board for the administration of this division.

SEC. 24. Chapter 16 (commencing with Section 42800) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 16. WASTE TIRES

Article 1. Definitions

42800. The following definitions govern the construction of this chapter.

42801. "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.

42802. "Fund" means the California Tire Recycling Management Fund created by subdivision (a) of Section 42885.

42803. "Local agency" means a county, city, special district, or other local governmental agency which provides or regulates solid waste handling services.

42804. "Operator" means the person responsible for the overall operation of a waste tire facility.

42805. "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.

42806. "Tire" means a pneumatic tire or solid tire manufactured for use on any type of motor vehicle.

42807. "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.

42808. "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

42810. (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.

42811. 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.

42812. 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 42811.

42813. (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.

42814. 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.

42815. 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.

42816. The board may delegate specific powers and authority in this chapter to enforcement agencies, as defined in Section 40130, including any of the following:

(a) Review of operation plans submitted pursuant to regulations adopted under subdivision (a) of Section 44821.

(b) Inspection of permitted facilities under Section 66799.94.

(c) Enforcement of waste tire facility permits.

44817. 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

42820. (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 pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

42821. 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 determined to be 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.

42822. The board shall issue major waste tire facility permits pursuant to the regulations upon application therefor.

42823. 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 42822.

42824. 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.

42825. 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

42830. (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 pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

42831. 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 not 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.

42832. 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.

42833. The board shall issue minor waste tire facility permits pursuant to the regulations upon application therefor.

42834. 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.

42835. 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

42840. 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.

42841. 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.

42842. The board may deny, suspend, or revoke a waste tire

facility permit in accordance with the procedures in this article 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.

42843. Except as provided in Section 42844, 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, the provisions of the Government Code shall prevail.

42844. (a) 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.

(b) 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.

(c) 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.

(d) 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.

42845. (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.

(b) 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.

42846. (a) The board may expend available moneys to perform any cleanup, abatement, or remedial work required under the circumstances set forth in Section 42845 which in its judgment is required by the magnitude of endeavor or the need for prompt action 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.

(b) 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 are exempt from approval by the Department of General Services pursuant to Section 14780 of the Government Code.

42847. 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.

42848. 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.

42849. "Threaten" or "threat," for purposes of this article, 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

42850. (a) Except as provided in Section 42813, 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, is 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 42813 may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

42851. (a) The board may issue a complaint to any person on whom civil liability may be imposed pursuant to this article. 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.

(b) 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.

42852. (a) 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.

(b) 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, if any.

42853. 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.

42854. (a) 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.

(b) 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.

(c) 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.

(d) This section does not prohibit the court from granting any appropriate relief within its jurisdiction.

42855. All penalties collected under Section 42850 shall be deposited in the California Tire Recycling Management Fund created pursuant to Section 42885.

Article 7. Waste Tires to Energy

42859. (a) 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.

(b) The report shall include an assessment of air quality impacts, the identification 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. 25. Chapter 17 (commencing with Section 42860) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 17. CALIFORNIA TIRE RECYCLING ACT

Article 1. Findings

42860. This chapter shall be known and may be cited as the California Tire Recycling Act.

42861. 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

42865. (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.

42866. 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.

42867. 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 42870).

Article 3. Tire Recycling

42870. 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.

42871. (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.

42872. The tire recycling program may include, but is not limited to, the following:

(a) 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.

(b) 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.

(c) The awarding of grants or loans for the evaluation, planning, design, improvement, and implementation of alternative used tire recycling programs in this state.

(d) The awarding of grants or loans to businesses which shred used tires for purposes of recycling.

(e) 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.

(f) 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.

42873. Activities eligible for funding under this article, 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 42859.

42874. The board shall evaluate applications for loans or grants under this article based upon, but not limited to, the following factors in the proposal:

(a) The quantity of used tires that will be diverted from landfills.

(b) The estimated cost per tire in the recycling, processing, or conversion process.

(c) The availability of markets for the recycled tire product.

(d) The degree to which the processing program mitigates or avoids adverse environmental effects.

42875. The board may also consider the following factors in awarding grant or loan applications:

(a) The ability of the proposed processing program to integrate with existing or proposed solid waste management activities.

(b) Financial support for implementation and operation of the proposed processing program from sources other than loans and grants from the board.

(c) The degree to which the technical approach of the proposal makes the loan and grant program financially self-sufficient.

(d) The degree to which the program can be measured or evaluated for success.

(e) The probability that the processing program can be implemented and operated with the funds applied for and the amount of funds sought.

(f) 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.

(g) The business plan for operation of the facility.

Article 4. Administration

42880. The board shall administer this chapter. For organizational purposes, the board may create a new division, bureau, office, or unit to administer this chapter.

42881. (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.

42882. 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.

42883. The recipient of a grant, subsidy, or loan pursuant to Article 3 (commencing with Section 42870) 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, which is necessary to measure the success of the recipient's program in reducing the number of tires disposed of in landfills or stockpiled.

42884. 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

42885. (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 42882, 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 California Tire Recycling Management 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.

42886. (a) The fees remitted pursuant to Section 42885 are due and payable quarterly on or before the 15th 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.

42887. 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.

42888. (a) 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.

42889. 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 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 42885.

(c) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(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

42890. "Recycled tire product" means a product with not less than 50 percent of its total content derived from recycled used tires.

42891. (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.

42892. 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.

42893. (a) The combined amount of preference granted pursuant to this section shall not exceed one hundred thousand dollars ($100,000) each year.

(b) Notwithstanding Section 42892, 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.

42894. 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.

42895. The department may adopt rules and regulations to carry out this article.

SEC. 26. The heading of Chapter 14 (commencing with Section 42950) of Part 3 of Division 30 of the Public Resources Code, as added by Chapter 1096 of the Statutes of 1989, is amended and renumbered to read:

CHAPTER 20. REPORT TO THE LEGISLATURE

SEC. 27. Article 2 (commencing with Section 46020) of Chapter 1 of Part 6 of Division 30 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 28. Article 2 (commencing with Section 46020) is added to Chapter 1 of Part 6 of Division 30 of the Public Resources Code, to read:

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 Maintenance 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.

SEC. 29. A chapter heading is added immediately before the second Article 2 (commencing with Section 46100) of Chapter 1 of Part 6 of Division 30 of the Public Resources Code, to read:

CHAPTER 2. THE SOLID WASTE CLEANUP AND MAINTENANCE ADVISORY COMMITTEE

SEC. 30. The article heading of the second Article 2 (commencing with Section 46100) of Chapter 1 of Part 6 of Division 30 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended and renumbered to read:

Article 1. The Solid Waste Cleanup and Maintenance Advisory Committee

SEC. 31. An article heading is added immediately before Section

46103 of the Public Resources Code, to read:

Article 2. Duties and Functions of the Advisory Committee

SEC. 32. Section 46201 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended to read:

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 pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

SEC. 33. Section 46203 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended to read:

46203. The board may provide grants, pursuant to Chapter 5 (commencing with Section 46400), to counties, cities, 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.

SEC. 34. Section 46400 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended to read:

46400. 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, 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.

SEC. 35. Section 46401 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended to read:

46401. If a city, county, or local agency with responsibility for waste management 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, 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 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.

SEC. 36. Section 46801 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 37. Section 46801 is added to the Public Resources Code, to read:

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) 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).

SEC. 38. Section 46802 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 39. Section 46802 is added to the Public Resources Code, to read:

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.

SEC. 40. Section 46803 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 41. Section 46803 is added to the Public Resources Code, to read:

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.

SEC. 42. The heading of Chapter 13 (commencing with Section 47000) of Part 7 of Division 30 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended and renumbered to read:

CHAPTER 1. HOUSEHOLD HAZARDOUS WASTE INFORMATION AND COLLECTION

SEC. 43. Section 47000 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 44. Section 47000 is added to the Public Resources Code, to read:

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.

SEC. 45. Section 47001 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 46. Section 47001 is added to the Public Resources Code, to read:

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.

SEC. 47. Section 47002 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 48. Section 47002 is added to the Public Resources Code, to read:

47002. 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.

SEC. 49. Section 47003 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 50. Section 47003 is added to the Public Resources Code, to read:

47003. 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.

SEC. 51. Section 47004 is added to the Public Resources Code, to read:

47004. For purposes of this chapter, "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. 52. Section 47050 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 53. Section 47050 is added to the Public Resources Code, to read:

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.

SEC. 54. Section 47051 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 55. Section 47051 is added to the Public Resources Code, to read:

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 counties required to provide household hazardous waste collection, recycling, and disposal programs pursuant to Sections 47100 and 47101, and local agencies authorized to provide these programs.

SEC. 56. Section 47052 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 57. Section 47052 is added to the Public Resources Code, to read:

47052. 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. 58. Section 47100 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended and renumbered to read:

47102. 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.

SEC. 59. Section 47100 is added to the Public Resources Code, to read:

47100. After a county solid waste management plan has been revised pursuant to 41770, and the revision has been approved pursuant to Sections 41760 and 41800, 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.

SEC. 60. Section 47101 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended and renumbered to read:

47103. The board shall provide technical assistance to local governments and other agencies which establish household hazardous waste management programs.

SEC. 61. Section 47101 is added to the Public Resources Code, to read:

47101. Section 47100 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. 62. Section 47102 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 63. Section 47103 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 64. Section 47104 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 65. Section 47104 is added to the Public Resources Code, to read:

47104. The board shall prepare, in consultation with the department and the advisory committee established pursuant to Section 47500, 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.

SEC. 66. Section 47105 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 67. Section 47105 is added to the Public Resources Code, to read:

47105. 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, recycling, and disposal programs required to be identified pursuant to this article. The model operation plan shall include a description of proper procedures for hazardous waste handling, storage, transportation, and personnel training.

(b) 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.

SEC. 68. Section 47106 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 69. Section 47106 is added to the Public Resources Code, to read:

47106. 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.

SEC. 70. Section 47107 is added to the Public Resources Code, to read:

47107. 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 Article 1 (commencing with Section 47051).

SEC. 71. Section 47108 is added to the Public Resources Code, to read:

47108. In developing the guidelines required by this article, 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. 72. Section 47109 is added to the Public Resources Code, to read:

47109. 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. 73. Section 47500 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 74. Section 47500 is added to the Public Resources Code, to read:

47500. 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 chapter and Part 2 (commencing with Section 40900), to review and comment on the guidelines and state policy prepared by the board pursuant to Article 3 (commencing with Section 47104), to review and comment on the informational materials developed pursuant to Article 2 (commencing with Section 47050), to review and comment on the report required by Section 42950 prior to its submittal to the Legislature, and to perform other functions related to household hazardous waste management, as requested by the board.

SEC. 75. Section 47501 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 76. Section 47501 is added to the Public Resources Code, to read:

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 department.

(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.

(j) A representative of used oil recyclers, to be selected by the board.

SEC. 77. Section 47502 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 78. Section 47502 is added to the Public Resources Code, to read:

47502. The organizations selecting advisory committee members shall select individuals with experience in, or knowledge of, household hazardous waste management programs.

SEC. 79. Section 47503 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 80. Section 47503 is added to the Public Resources Code, to read:

47503. The board shall serve as staff to the advisory committee established pursuant to Section 47500.

SEC. 81. Section 47504 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 82. Section 47504 is added to the Public Resources Code, to read:

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.

SEC. 83. Section 47505 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 84. Section 47505 is added to the Public Resources Code, to read:

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.

SEC. 85. Section 47506 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 86. Section 47506 is added to the Public Resources Code, to read:

47506. Advisory committee members shall serve without compensation, but shall be reimbursed for expenses incurred in attending advisory committee meetings.

SEC. 87. Article 5 (commencing with Section 47550) is added to Chapter 1 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 5. Liability

47550. 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. 88. Article 1 (commencing with Section 47900) is added to Chapter 2 of Part 7 of the Public Resources Code, to read:

Article 1. The Solid Waste Management Fund

47900. There is hereby created in the State Treasury the Solid Waste Management Fund.

SEC. 89. An article heading is added immediately before Section 48000 of the Public Resources Code, to read:

Article 2. Management of the Fund

SEC. 90. Section 13263.2 of the Water Code is repealed.

SEC. 91. Any section of any act enacted by the Legislature during the 1990 calendar year, which takes effect on or before January 1, 1991, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, amended, renumbered, and added, 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.

SEC. 92. 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:

Chapter 1095 of the Statutes of 1989 recodified substantially all of the statutes relating to solid waste into the Public Resources Code and established a new California Integrated Waste Management Board to administer the new law. That statute contained a clause subordinating its repeal of provisions of Title 7.2 (commencing with Section 66700) of the Government Code to any other act which became effective on or before January 1, 1990. Because of the conflicts and potential confusion caused by many other enactments which supersede the recodification, it is necessary that this act, which reconciles some of the provisions of other statutes with the recodification act, take effect immediately.

CHAPTER 36

An act to amend Section 11320.3 of, and to add and repeal Article 8 (commencing with Section 11500) of Chapter 2 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 30, 1990 Filed with Secretary of State March 30, 1990]

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

SECTION 1. Article 8 (commencing with Section 11500) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 8. Transitional Child Care Program

11500. (a) The Legislature finds and declares that transitional child care is crucial for working families who are undergoing the difficult transition from aid to families with dependent children to independence. The cost of child care is known to be one of the most formidable barriers to permanent independence for low-income families with young children. Without adequate child care, many low-income families will be unable to remain independent even after finding employment. Therefore, it is in the state's financial best interest to increase the probability that all families entitled to this

benefit receive it and that disruptions of child care aid be minimized.

(b) The Legislature emphasizes the importance of meeting the federal requirements of informing all applicants and recipients of aid to families with dependent children as to the availablility of the transitional child care program at the time of application and redetermination, as well as informing all potentially eligible families at the time of discontinuance of aid. The Legislature intends that the information be given at any other time that will effectively assist families in planning their child care needs in advance of terminaton of aid.

(c) The Legislature finds and declares all of the following:

(1) The coordination of GAIN child care services and transitional child care is of paramount importance.

(2) For GAIN participants who become immediately eligible for transitional child care services upon employment, coordination of the child care services is necessary to ensure continuity of care throughout the transition period.

(3) Continuity of care is important both to enable the parents to maintain their employment and to contribute to a stable environment for their children.

(4) It is more efficient to use existing GAIN systems and procedures, where allowed under federal law, to administer the transitional child care program.

(5) Requiring counties to build on their GAIN child care programs in administering the transitional child care program will minimize the need for families and service providers to learn new rules and procedures that often interfere with making services truly accessible to families and smoothly delivering those services.

(d) (1) The Legislature emphasizes the importance of minimizing the paperwork in the transitional child care program.

(2) To the extent the family requests program benefits in the same county where the family received AFDC benefits, the county should not require new verifications of eligibility when the county has a valid verification for that eligibility available in the AFDC case record.

(e) The Legislature emphasizes the importance of ensuring the program is easily accessible to families by encouraging a mail-in process for requesting benefits whenever the county has sufficient information and current verifications to determine program eligibility without an in-person interview.

11501. (a) Families who were formerly recipients of aid under this chapter for three of the previous six months, and who meet all federal requirements for transitional child care shall be eligible for 12 months of transitional child care under this article. Transitional child care services shall include the same services as those child care supportive services provided under subdivision (g) and paragraphs (1), (2), and (5) of subdivision (h) of Section 11320.3, except for those portions which are specifically prohibited by federal law or regulations.

(b) To the extent permissible under federal law and regulations, transitional child care supportive services provided pursuant to subdivision (g) and paragraphs (1), (2), and (5) of subdivision (h) of Section 11320.3 shall be provided by the county in the same manner as they are provided to families in the county GAIN program. The county may contract out with public and private child care programs to provide any or all of the services.

(c) No funding shall be provided for nonfederal cases or for costs which are not eligible for federal matching funds unless specifically provided under this chapter.

11502. (a) (1) The department, in consultation with county welfare departments and the California Child Care Resources and Referral Network, shall develop written informational materials on child care and the transitional child care program, and shall contract for their development.

(2) The informational material developed pursuant to paragraph (1) shall be written in the language that the eligible population can read, and shall include information about all of the following:

(A) Child care services under the transitional child care program.

(B) Services provided by resource and referral agencies.

(C) The availability of subsidized child care programs and how to apply for child care through those programs.

(D) Choosing child care providers and programs.

(b) County welfare departments shall provide to potentially eligible families the informational materials developed by the department and the telephone number of the resource and referral agency upon request and at the time of termination of aid.

11503. (a) Families shall submit a written request for transitional child care benefits and attest to the eligibility requirements under penalty of perjury. Each family shall provide any information which is necessary for the county to determine eligibility and the family fee, which is not available in the aid to families with dependent children case records of that county. Except as provided in this section, the county shall determine eligibility for benefits within 30 calendar days of receipt of the written request. If a family has submitted a request for payment at the same time as a request for transitional child care benefits, the same 30-day period shall apply to both.

(b) (1) A family may orally request benefits under this article.

(2) The county shall determine eligibility based on the oral request made pursuant to paragraph (1) within 30 calendar days of receipt of the oral request when the family meets all of the following conditions:

(A) The family received benefits under the Aid to Families with Dependent Children program in the same county in which the family has made the oral request.

(B) The family made the oral request no later than seven calendar days after the beginning of the transitional child care eligibility period.

(C) The family has submitted a written request for aid under this

chapter before payment is issued pursuant to this article.

(c) Each county shall establish a method of confirming in writing the receipt of oral requests and of providing a request form to the applicant pursuant to this section.

11504. Payments for transitional child care shall be advanced to a qualifying family when an advance is required in order for the family to secure or retain child care and the caregiver will not accept the child unless an advance payment is provided. The county shall determine eligibility and issue an initial advance payment within seven calendar days of the request for benefits. When retrospective payments are made for transitional child care, counties shall reimburse families for child care costs within 20 calendar days after receipt of all materials necessary to document those expenses.

11505. (a) Each family shall submit a written request for benefits no later than the last month of the eligibility period and shall submit all verification of eligibility and proof of child care expenses no later than the end of the month immediately following the eligibility period.

(b) A family may submit a written or oral request for benefits under this article prior to discontinuance of benefits under the Aid to Families with Dependent Children program.

11506. (a) Each family shall pay a portion of the cost of the child care based on the family fee schedule utilized by the State Department of Education pursuant to Section 8263 of the Education Code.

(b) The department may modify the family fee schedule to simplify procedures or to conform with federal requirements, provided the modifications do not result in higher family fees, unless required by federal law or regulation.

(c) (1) If a family does not meet its share of cost requirements in accordance with subdivision (a) and the county becomes aware that the family is delinquent with respect to its share of cost, the county shall provide the family the opportunity to enter into an agreement with the provider to rectify the delinquency in order to remain eligible for benefits under this article. Payment of at least 20 percent of the delinquent amount per month shall be presumed to be a satisfactory arrangement.

(2) If a family fails to enter into an agreement or to meet the terms of the agreement entered into pursuant to paragraph (1), the family shall be ineligible for the remainder of the eligibility period.

11507. The department may determine what household income shall be counted in a manner that achieves all of the following:

(a) Receipt of full federal matching funds.

(b) Achievement of consistency with income used in determining eligibility under the Aid to Families with Dependent Children program, transitional Medi-Cal benefits, or other subsidized child care programs.

(c) Minimization of the family fee share of cost requirements.

11508. (a) Child care payments under this article shall be made

at actual cost, less family fee or the reimbursement maximum based on the regional market rate, as defined under federal rules, whichever is less. The regional market rate may be established at a level above the maximum under federal rules up to the amount specified in subdivision (f) of Section 11320.3, to the extent funds are appropriated in the annual Budget Act for that purpose.

(b) The State Department of Social Services shall contract for an annual survey to provide statistically valid regional market rates. The contract shall be funded by the State Department of Education through an interagency agreement utilizing funds in Section 22 of the Budget Act or its successor. The State Department of Social Services, in consultation with the State Department of Education, county welfare departments, and the California Child Care Resources and Referral Network, shall determine which areas of the state constitute a region. The contract shall include a provision allowing the State Department of Education and the State Department of Social Services access to the data base and the ability to obtain special data displays.

11509. (a) The department may obtain periodic reports of child care expenses and a family's income in order to determine the appropriate benefit amount and to recompute the family fee. The department shall ensure consistency, to the extent possible, with the reporting requirements of the transitional Medi-Cal program.

(b) To the extent permissible under federal law, the family shall not be required to submit a monthly report of income.

11510. Reimbursement for county costs incurred in the administration of the transitional child care program, including reimbursement for child care payments, shall be limited to those allowable costs as specified in federal and state regulations and determined through cost allocation procedures established by the department. The state match shall equal 100 percent of nonfederal costs, subject to Sections 11511 and 11512.

11511. (a) Counties shall administer the transitional child care program in conformance with federal and state laws and regulations.

(b) If the department determines that a county is out of compliance with state or federal laws and regulations the department shall recover, through procedures promulgated by the department and developed in consultation with the County Welfare Directors Association, the federal and state funds transferred to the county for reimbursement of costs incurred in the transitional child care program, unless that noncompliance was caused by the state. The department shall also recover federal and state funds transferred for expenditures subsequently determined to be unallowable for reimbursement. The state may also withhold further reimbursement of federal and state funds from an affected county where those noncompliance or unallowable cost issues have been determined, until the issues have been resolved. This subdivision shall become operative six months after the date the statute adding this section becomes effective or on October 1, 1990, whichever is the

later.

11512. The department, in consultation with the County Welfare Directors Association, shall establish a procedure whereby the administrative costs of the county-administered transitional child care program will be effectively controlled within the amount annually appropriated for that administration. Allocations for administrative costs shall be made to each county and shall be determined based upon an allocation process developed by the department, in consultation with the County Welfare Directors Association.

11513. (a) (1) The Legislature finds that data on earning and hours of employment of former AFDC recipients is valuable for understanding what happens to recipients once they find jobs and for assessing the impact of GAIN services.

(2) The department shall consult with the Joint Committee on GAIN Implementation and the policy committees of the Senate and Assembly to ensure the data collected can be used to track AFDC recipients whose aid is terminated due to the employment of the recipient.

(b) The department shall collect statistics from the counties as necessary to meet federal and state requirements and to provide program management information pursuant to Section 11512.

11514. (a) The Legislative Analyst's Office shall review the transitional child care program to assess its implementation, to determine its effectiveness in enabling welfare recipients to successfully remain off of aid to families with dependent children, and to recommend policy and program changes regarding the program. The office shall report its findings to the Legislature no later than January 1, 1993.

(b) (1) The department shall provide the Legislative Analyst, by September 1, 1992, with longitudinal aid history data on recipients of aid under the Aid to Families with Dependent Children program that will provide a valid basis to compare aid histories before and after the implementation of transitional child care.

(2) In addition, the department shall provide information on the characteristics of recipients of transitional child care benefits, to include the aid status of the case at the time of discontinuance, the age, gender, and citizenship status of each person within the transitional child care family, and the total number of persons within the family, by number of adults and children. The transitional child care sample shall be drawn no later than January 1, 1991. The information provided shall include all of the following:

(A) The average amount of transitional child care benefits per case.

(B) The average amount of family fee per transitional child care case.

(C) The average income of the typical transitional child care family.

(D) The average length of time a family receives transitional

child care benefits.

(E) Longitudinal aid history up to August 1, 1992.

(F) Any available wage data which the department can obtain by matching records against the Employment Development Department's wage records, any data available through matching the records against the Integrated Eligibility Verification System and its component and subsidiary data sources.

(3) All identifying information shall be purged from the data provided to the Legislative Analyst, pursuant to paragraph (1) but each case shall be assigned a unique identifying number by the department.

(4) The department shall provide the data in any standard electronic format specified by the Legislative Analyst.

11515. (a) To the extent that child care and development services administered by the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code, are used to serve families eligible for transitional child care, the State Department of Education, in consultation with the department and the county welfare departments, shall establish a method for documenting its use, and the State Department of Social Services shall seek federal financial participation available under the Family Support Act of 1988 (Public Law 100-485).

(b) Federal funds received pursuant to subdivision (a) shall be transferred to the State Department of Education, Child Development Division. The State Department of Education shall repay any deferral or disallowance of federal funds associated with an audit or review of the program.

(c) The savings in state funds resulting from the federal financial participation for child care and development services administered by the Child Development Division of the State Department of Education as provided in subdivision (a) shall be used by the State Department of Education, Child Development Division, to continue and expand child care and development services in the counties which generated the savings. In no case shall these funds be used to supplant existing funds.

(d) Notwithstanding any other provision of law, eligibility for transitional child care services under this article shall not affect a family's eligibility for child care and development services under Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code.

11516. This article shall become inoperative on June 30, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 11320.3 of the Welfare and Institutions Code, as amended by Section 4 of Chapter 1310 of the Statutes of 1989, is amended to read:

11320.3. (a) Each plan submitted pursuant to Section 11320.2

shall contain a methodology for the provision of job services, training and education, and supportive services to program participants. This methodology shall specify how county welfare departments will cooperate with, and maximize the use of, education, child care, resource and referral agencies, job service, and other appropriate local service providers. To the extent existing programs are available to county residents, each plan submitted pursuant to Section 11320.2 shall specify the manner in which these programs shall be utilized to provide services specified in this section. The county may provide services directly to program participants or enter into interagency agreements or contracts with private or public agencies for the provision of these services.

(b) Each county shall specify in its plan its target groups and the choices that shall be made available to each target group, pursuant to Section 11320.4. The county shall make available all of its programs to each target group, but may give priorities for certain programs to groups for whom these programs are reasonably expected to be the most effective.

(c) As provided in the contract entered into pursuant to Section 11320.5, job services shall include, but not be limited to, all of the following:

(1) Job club, which shall consist of both of the following:

(A) Job search workshops. These job search workshops shall be group training sessions where participants learn various job finding skills, including training in basic job seeking skills, job development skills, job interviewing skills, understanding employer requirements and expectations, and how to enhance self-esteem, self-image, and confidence.

(B) Supervised job search, which shall include, but not be limited to, access to phone banks in a clean and well-lighted place, job orders, direct referrals to employers, or other organized methods of seeking work which are overseen, reviewed, and criticized by a trained employment professional. The amount and type of activity required during this supervised job search period shall be determined by the county and the participant, based on the participant's employment history and need for supportive services, and shall be consistent with regulations developed by the department.

(2) Unsupervised job search. The individual shall seek work in his or her own way, and make periodic progress reports no less frequently than every two weeks to the county welfare department or the agency contracting with that department.

(3) Job placement, which shall include, but not be limited to, referrals to jobs listed by employers with the State Job Service.

(4) Job development, which shall be active assistance in seeking employment provided to a participant by a trained employment professional on a one-to-one basis.

(5) Employment counseling, which shall be counseling aimed at helping a person reach an informed decision on an appropriate employment goal.

(6) Notwithstanding any other provision of this article, participation in job search activities shall be limited to eight weeks in any 12 consecutive month period, except that an additional eight weeks of job search activities shall be allowed if it is required in conjunction with other education, training, or employment activity. This paragraph is intended to implement the limitations contained in the Family Support Act of 1988 (P.L. 100-485), and shall not be construed to permit job search activities that are not specifically provided for elsewhere in this article.

(d) As provided in the contract entered into pursuant to Section 11320.5, training and education services include, but are not limited to, all of the following:

(1) Job training, which shall include, but is not limited to, training in employer-specific job skills in a classroom or onsite setting, including training provided by local private industry council programs and community colleges.

(2) Preemployment preparation shall be work for a public or nonprofit agency that provides the participant with either of the following:

(A) Basic preemployment preparation, which shall provide work behavior skills and a reference for future unsubsidized employment.

(B) Advanced preemployment preparation, which shall provide on-the-job enhancement of existing participant skills in a position related to a participant's experience, training, or education acquired as a result of the services funded pursuant to a contract entered into pursuant to Section 11320.5.

A short-term preemployment preparation assignment shall be for not longer than three months, and may be provided as a preparation for other education and training services as a part of the contract amendments pursuant to subdivisions (d) and (e) of Section 11320.5. A long-term preemployment preparation assignment shall not exceed one year.

(C) Except for persons subject to subparagraph (D), the number of hours a person participates in a preemployment preparation program shall be determined by dividing his or her aid grant under this chapter, less any child support paid to the county, by the average hourly wage for all job orders placed with the Employment Development Department. The average hourly wage shall be updated annually every July 1. No preemployment preparation assignment shall exceed 32 hours per week.

(D) If a person participates in a preemployment preparation assignment for nine months, the number of hours that person is required to participate shall be recomputed by the county welfare department. Beginning in the 10th month, the number of hours of preemployment preparation shall be determined by dividing a person's aid grant under this chapter, less any child support paid to the county, by the prevailing rate of pay for the same or similar job at the site to which the person is assigned. In no case shall the prevailing rate of pay fall below the average hourly wage for job

orders placed with the Employment Development Department, as provided in subparagraph (C). No preemployment preparation assignment shall exceed 32 hours per week.

(3) Adult basic education, which shall be preemployment basic education, including reading, writing, and arithmetic necessary for employment or job training, including high school proficiency.

(4) College and community college education, when that education provides sufficient employment skills training that can reasonably be expected to lead to employment.

(5) Vocational English-as-a-second-language which shall be intensive instruction in English for non-English speaking participants, coordinated with specific job training.

(6) Grant diversion.

(7) Supported work.

(8) Transitional employment.

For purposes of paragraph (6), "grant diversion" means public or private sector employment or on-the-job training at comparable wage rates, in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to the employer as a wage subsidy subsequent to the payment of wages to the participant.

For purposes of paragraphs (7) and (8), "supported work or transitional employment" means a form of grant diversion in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to an intermediary service provider subsequent to the payment of wages to the participant.

Grant diversion, supported work, and transitional employment projects shall be administered so that the recipient shall not receive less disposable income than if he or she had not participated in the project. "Disposable income" means the income available to the recipient by adding the aid payment acquired pursuant to this chapter and earnings from the grant diversion project and subtracting the allowable employment related expenses.

The grant, a portion of the grant, or the estimated savings due to the earnings from a grant diversion project may be diverted into a special fund created by the county welfare department for this purpose. An employer may be reimbursed from the special fund pursuant to a contract developed by the county welfare department or the service delivery area with the employer.

The county shall obtain agreements with employers that participants will be employed upon successful completion of the grant diversion, supported work, or transitional employment period in any related job openings, and that employers will not discriminate against participants on the basis of race, sex, national origin, age, or disability. Except as provided in subdivision (b) of Section 11320.6, there shall be no interruption in receipt of income, whether wages from the employer or aid payments by the department, caused by an employer's conduct. No grant diversion, supported work, or transitional employment program shall be implemented under this

article until a plan for such a program is approved by the department. No plan for grant diversion, supported work, or transitional employment programs shall be approved if the plan would jeopardize federal financial participation. Standards established by the department for purposes of these programs shall not preclude a significant portion of recipients from participation.

A plan submitted under this subparagraph shall include provisions for immediate reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, which has been lost due to fraud, malfeasance, or theft on the part of the employer or intermediary. This plan shall also include provisions for reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, when the recipient is determined to have had good cause for declining to participate pursuant to Section 11320.7. In the event that funds are lost due to fraud, malfeasance, or theft by an employer, the county shall initiate an action to recover from the employer or intermediary any of those funds.

(e) As provided in the contract pursuant to Section 11320.5, supportive services shall include, but are not limited to, all of the following:

(1) Child care. Paid child care shall be available to every participant with a child under 12 years of age who needs it in order to participate in the program component to which he or she is assigned.

(2) Transportation costs shall be paid for every participant to and from his or her job or training assignment.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing, fees, and other necessary costs of a work or training assignment.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the employment plan entered into pursuant to Section 11320.5 shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(f) Payments for supportive services, as described in subdivision (e), shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for these services.

The cost of support services, including reimbursement to licensed day care providers, shall be governed by regional market rates. Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service. Participants shall be allowed to choose legal child care and the cost of that child care shall be reimbursed by counties if the cost is within the regional market rate. The regional market rate means care costing no more than 1.5 market standard deviations above the mean cost of care for that region. Reimbursement shall be made at a rate lower than that charged to private clients for the same service if the child care program agrees to charge a lower fee. Reimbursement shall be made

on a per month, per week, per day, or per hour basis depending upon the basis used to charge private clients for the same service. For purposes of this section, regional market rates shall be determined in accordance with resource and referral programs provided for under Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and the Alternative Payment Program provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code. Participant plans shall include immediate referrals to local resource and referral agencies. The department shall use the State Department of Education sliding scale fee schedule for participants receiving child care. Day care by family members shall be encouraged, but the choice between licensed or exempt day care arrangements shall be made by the recipient.

(g) Each county welfare department shall be encouraged to contract with existing service providers for any or all child care services arrangements. If the county welfare department elects to contract with any child care provider which is also under contract with the State Department of Education, these contracts shall be consistent with, and shall not supersede, all of the following:

(1) Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code.

(2) Applicable provisions of Title 5 and Title 22 of the California Code of Regulations.

(3) Applicable State Department of Education contract provisions.

(h) In order to provide maximum choice to parents, and to ensure the availability of child care, each county shall do all of the following:

(1) Assist participants to locate child care during and after participation under this article.

(2) Allow and promote parent choice by providing flexibility in child care arrangements and establishing payment arrangements, as necessary, to meet the cost of licensed or exempt child care settings.

(3) Assist in the development of new child care capacity, where needed.

(4) Provide services to meet the child care needs of all children in the participant's family up to the age of 12 years.

(5) Provide child care to participants whose program demands flexible hours of care including evening, weekends, and split shifts.

(6) To the extent possible provide for transportation of children from school to care, if reasonable and necessary.

The county may contract with the public and private child care programs to provide any or all of the services specified in this subdivision.

(i) Resource and referral programs shall assist the county welfare departments to determine the child care needs of Greater Avenues for Independence participants, provide them with a listing of available child care services in the service area, and facilitate the efforts of county welfare departments, school districts, local child

care providers and parent groups for the expansion of child care services.

(j) If the county welfare department or a contractor pays for child care services which are exempt from licensure, all of the following information about the care giver shall be on file with the county welfare department or the contractor and shall be made available to the participant:

(1) The name and address of the care provider.

(2) The address where care is to be provided.

(3) The hours care is to be provided and the charge for this care.

(4) The names, addresses, and telephone numbers of two character references.

(5) A copy of a valid California driver's license or other identification to establish that the caregiver is at least 18 years old.

(6) A statement from the caregiver as to his or her health education, experience or other qualification, criminal record, and names and ages of other persons in the home or providing care.

(k) The department, under the direction of the Health and Welfare Agency, the Chancellor's office of the California Community Colleges, and the State Department of Education shall each develop and implement regulations whereby any payment for services from funds appropriated for the purposes of this article and delivered pursuant to subdivision (d) by an entity contracting with a county shall be made in accordance with a competitively selected fixed unit price performance-based contract. Under these contracts, full payment shall not be considered earned until either of the following has occurred:

(1) The participant has successfully completed the education program.

(2) The participant has successfully completed the job training program and has been retained in unsubsidized employment for at least 180 days.

Up to 70 percent of the fixed unit price for job training may be paid upon placement. At least 30 percent of the fixed unit price for job training shall be withheld for the followup during the 180-day retention period. Progress payments shall be made from this portion upon evidence of job retention at 30, 90, and 180 days. A pro rata share of the 70 percent payment shall be paid to the training provider if the participant fails to complete the training.

(*l*) Whenever a plan entered into pursuant to Section 11320.5 provides for the use of education services provided for in subdivision (d), utilization of each education program component shall not exceed two academic years.

(m) 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 11320.3 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 1310 of the Statutes of 1989, is amended to read:

11320.3. (a) Each plan submitted pursuant to Section 11320.2 shall contain a methodology for the provision of job services, training and education, and supportive services to program participants. This methodology shall specify how county welfare departments will cooperate with, and maximize the use of, education, child care, resource and referral agencies, job service, and other appropriate local service providers. To the extent existing programs are available to county residents, each plan submitted pursuant to Section 11320.2 shall specify the manner in which these programs shall be utilized to provide services specified in this section. The county may provide services directly to program participants or enter into interagency agreements or contracts with private or public agencies for the provision of these services.

(b) Each county shall specify in its plan its target groups and the choices that shall be made available to each target group, pursuant to Section 11320.4. The county shall make available all of its programs to each target group, but may give priorities for certain programs to groups for whom these programs are reasonably expected to be the most effective.

(c) As provided in the contract entered into pursuant to Section 11320.5, job services shall include, but not be limited to, all of the following:

(1) Job club, which shall consist of both of the following:

(A) Job search workshops. These job search workshops shall be group training sessions where participants learn various job finding skills, including training in basic job seeking skills, job development skills, job interviewing skills, understanding employer requirements and expectations, and how to enhance self-esteem, self-image, and confidence.

(B) Supervised job search, which shall include, but not be limited to, access to phone banks in a clean and well-lighted place, job orders, direct referrals to employers, or other organized methods of seeking work which are overseen, reviewed, and criticized by a trained employment professional. The amount and type of activity required during this supervised job search period shall be determined by the county and the participant, based on the participant's employment history and need for supportive services, and shall be consistent with regulations developed by the department.

(2) Unsupervised job search. The individual shall seek work in his or her own way, and make periodic progress reports no less frequently than every two weeks to the county welfare department or the agency contracting with that department.

(3) Job placement, which shall include, but not be limited to, referrals to jobs listed by employers with the State Job Service.

(4) Job development, which shall be active assistance in seeking employment provided to a participant by a trained employment professional on a one-to-one basis.

(5) Employment counseling, which shall be counseling aimed at helping a person reach an informed decision on an appropriate

employment goal.

(d) As provided in the contract entered into pursuant to Section 11320.5, training and education services include, but are not limited to, all of the following:

(1) Job training, which shall include, but is not limited to, training in employer-specific job skills in a classroom or onsite setting, including training provided by local private industry council programs and community colleges.

(2) Preemployment preparation shall be work for a public or nonprofit agency that provides the participant with either of the following:

(A) Basic preemployment preparation, which shall provide work behavior skills and a reference for future unsubsidized employment.

(B) Advanced preemployment preparation, which shall provide on-the-job enhancement of existing participant skills in a position related to a participant's experience, training, or education acquired as a result of the services funded pursuant to a contract entered into pursuant to Section 11320.5.

A short-term preemployment preparation assignment shall be for not longer than three months, and may be provided as a preparation for other education and training services as a part of the contract amendments pursuant to subdivisions (d) and (e) of Section 11320.5. A long-term preemployment preparation assignment shall not exceed one year. The number of hours a person participates in a preemployment preparation program shall be determined by adding his or her aid grant under this chapter, less any child support paid to the county, and his or her food stamp allotment and dividing by the average hourly wage for all job orders placed with the Employment Development Department. The average hourly wage shall be updated annually every July 1. No preemployment preparation assignment shall exceed 32 hours per week.

(3) Adult basic education, which shall be preemployment basic education, including reading, writing, and arithmetic necessary for employment or job training, including high school proficiency.

(4) College and community college education, when that education provides sufficient employment skills training that can reasonably be expected to lead to employment.

(5) Vocational English-as-a-second-language which shall be intensive instruction in English for non-English speaking participants, coordinated with specific job training.

(6) Grant diversion.

(7) Supported work.

(8) Transitional employment.

For purposes of paragraph (6), "grant diversion" means public or private sector employment or on-the-job training at comparable wage rates, in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to the employer as a wage subsidy subsequent to the payment of wages to the participant.

For purposes of paragraphs (7) and (8), "supported work or transitional employment" means a form of grant diversion in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to an intermediary service provider subsequent to the payment of wages to the participant.

Grant diversion, supported work, and transitional employment projects shall be administered so that the recipient shall not receive less disposable income than if he or she had not participated in the project. "Disposable income" means the income available to the recipient by adding the aid payment acquired pursuant to this chapter and earnings from the grant diversion project and subtracting the allowable employment related expenses.

The grant, a portion of the grant, or the estimated savings due to the earnings from a grant diversion project may be diverted into a special fund created by the county welfare department for this purpose. An employer may be reimbursed from the special fund pursuant to a contract developed by the county welfare department or the service delivery area with the employer.

The county shall obtain agreements with employers that participants will be employed upon successful completion of the grant diversion, supported work, or transitional employment period in any related job openings, and that employers will not discriminate against participants on the basis of race, sex, national origin, age, or disability. Except as provided in subdivision (b) of Section 11320.6, there shall be no interruption in receipt of income, whether wages from the employer or aid payments by the department, caused by an employer's conduct. No grant diversion, supported work, or transitional employment program shall be implemented under this article until a plan for such a program is approved by the department. No plan for grant diversion, supported work, or transitional employment programs shall be approved if the plan would jeopardize federal financial participation. Standards established by the department for purposes of these programs shall not preclude a significant portion of recipients from participation.

A plan submitted under this subparagraph shall include provisions for immediate reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, which has been lost due to fraud, malfeasance, or theft on the part of the employer or intermediary. This plan shall also include provisions for reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, when the recipient is determined to have had good cause for declining to participate pursuant to Section 11320.7. In the event that funds are lost due to fraud, malfeasance, or theft by an employer, the county shall initiate an action to recover from the employer or intermediary any of those funds.

(e) As provided in the contract pursuant to Section 11320.5, supportive services shall include, but are not limited to, all of the following:

(1) Child care. Paid child care shall be available to every

participant with a child under 12 years of age who needs it in order to participate in the program component to which he or she is assigned.

(2) Transportation costs shall be paid for every participant to and from his or her job or training assignment.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing, fees, and other necessary costs of a work or training assignment.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the employment plan entered into pursuant to Section 11320.5 shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(f) Payments for supportive services, as described in subdivision (e), shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for these services.

The cost of support services, including reimbursement to licensed day care providers, shall be governed by regional market rates. Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service. Participants shall be allowed to choose legal child care and the cost of that child care shall be reimbursed by counties if the cost is within the regional market rate. The regional market rate means care costing no more than 1.5 market standard deviations above the mean cost of care for that region. Reimbursement shall be made at a rate lower than that charged to private clients for the same service if the child care program agrees to charge a lower fee. Reimbursement shall be made on a per month, per week, per day, or per hour basis depending upon the basis used to charge private clients for the same service. For purposes of this section, regional market rates shall be determined in accordance with resource and referral programs provided for under Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and the Alternative Payment Program provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code. Participant plans shall include immediate referrals to local resource and referral agencies. The department shall use the State Department of Education sliding scale fee schedule for participants receiving child care. Day care by family members shall be encouraged, but the choice between licensed or exempt day care arrangements shall be made by the recipient.

(g) Each county welfare department shall be encouraged to contract with existing service providers for any or all child care services arrangements. If the county welfare department elects to contract with any child care provider which is also under contract with the State Department of Education, these contracts shall be consistent with, and shall not supersede, all of the following:

(1) Chapter 2 (commencing with Section 8200) of Part 6 of the

Education Code.

(2) Applicable provisions of Title 5 and Title 22 of the California Code of Regulations.

(3) Applicable State Department of Education contract provisions.

(h) In order to provide maximum choice to parents, and to ensure the availability of child care, each county shall do all of the following:

(1) Assist participants to locate child care during and after participation under this article.

(2) Allow and promote parent choice by providing flexibility in child care arrangements and establishing payment arrangements, as necessary, to meet the cost of licensed or exempt child care settings.

(3) Assist in the development of new child care capacity, where needed.

(4) Provide services to meet the child care needs of all children in the participant's family up to the age of 12 years.

(5) Provide child care to participants whose program demands flexible hours of care including evening, weekends, and split shifts.

(6) To the extent possible provide for transportation of children from school to care, if reasonable and necessary.

The county may contract with the public and private child care programs to provide any or all of the services specified in this subdivision.

(i) Resource and referral programs shall assist the county welfare departments to determine the child care needs of Greater Avenues for Independence participants, provide them with a listing of available child care services in the service area, and facilitate the efforts of county welfare departments, school districts, local child care providers and parent groups for the expansion of child care services.

(j) If the county welfare department or a contractor pays for child care services which are exempt from licensure, all of the following information about the caregiver shall be on file with the county welfare department or the contractor and shall be made available to the participant:

(1) The name and address of the care provider.

(2) The address where care is to be provided.

(3) The hours care is to be provided and the charge for this care.

(4) The names, addresses, and telephone numbers of two character references.

(5) A copy of a valid California driver's license or other identification to establish that the care giver is at least 18 years old.

(6) A statement from the caregiver as to his or her health education, experience or other qualification, criminal record, and names and ages of other persons in the home or providing care.

(k) The department, under the direction of the Health and Welfare Agency, the Chancellor's office of the California Community Colleges, and the State Department of Education shall each develop and implement regulations whereby any payment for

services from funds appropriated for the purposes of this article and delivered pursuant to subdivision (d) by an entity contracting with a county shall be made in accordance with a competitively selected fixed unit price performance-based contract. Under these contracts, full payment shall not be considered earned until either of the following has occurred:

(1) The participant has successfully completed the education program.

(2) The participant has successfully completed the job training program and has been retained in unsubsidized employment for at least 180 days.

Up to 70 percent of the fixed unit price for job training may be paid upon placement. At least 30 percent of the fixed unit price for job training shall be withheld for the followup during the 180-day retention period. Progress payments shall be made from this portion upon evidence of job retention at 30, 90, and 180 days. A pro rata share of the 70 percent payment shall be paid to the training provider if the participant fails to complete the training.

(*l*) Whenever a plan entered into pursuant to Section 11320.5 provides for the use of education services provided for in subdivision (d), utilization of each education program component shall not exceed two academic years.

(m) This section shall become operative on January 1, 1991.

SEC. 4. The Director of Social Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement this act. The adoption of those regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Goverment Code, emergency regulations adopted by the department in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law until 120 days after the regulations take effect. These regulations shall become effective April 1, 1990, or immediately upon filing with the Secretary of State, whichever is later, but shall not remain in effect for more than 120 days unless the department complies with the other provisions of Chapter 3.5.

SEC. 5. For the purpose of implementing this act in the 1989–90 fiscal year, there is hereby appropriated the sum of five million two thousand dollars ($5,002,000) in accordance with the following schedule:

(a) In augmentation of Item 5180-101-001 of the Budget Act of 1989, from the General Fund to the State Department of Social Services	$2,443,000
(b) In augmentation of Item 5180-101-890 of the Budget Act of 1989, from the Federal Trust Fund to the State Department of Social Services	$2,442,000
(c) In augmentation of Item 5180-141-001 of the Budget Act of 1989, from the General Fund to the State Department of Social Services	$ 59,000
(d) In augmentation of Item 5180-141-890 of the Budget Act of 1989, from the Federal Trust Fund to the State Department of Social Services	$ 58,000

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order that low-income families in need of transitional child care services may have access to those services at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 37

An act to amend Section 5326 of, and to add Section 5030.5 to, the Education Code, relating to school districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 3, 1990 Filed with Secretary of State April 3, 1990]

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

SECTION 1. Section 5030.5 is added to the Education Code, to

read:

5030.5. Notwithstanding any other provision of law, the members of the governing board in the Sweetwater Union High School District may be elected under a method, as approved pursuant to Section 5019, that would require all of the following:

(a) That each membership position on the governing board be identified, by number or otherwise.

(b) That each person seeking election to the governing board be required to declare his or her candidacy for only one of those identified membership positions.

(c) That each of those identified membership positions on the governing board be filled by the election of registered voters of the entire district.

SEC. 2. Section 5326 of the Education Code is amended to read:

5326. If, by 5:00 p.m. on the 83rd day prior to the day fixed for the governing board member election, only one person has been nominated for any elective office to be filled at that election, or no one has been nominated for the office, or in the case of members to be elected from the district at large, the number of candidates for governing board member at large does not exceed the number of offices to be filled at that election, or in the case of members to be nominated by trustee area and elected at large, the number of candidates do not exceed the number required to be elected governing board member at large nominated by that trustee area, or in the case of members to be elected at large in accordance with Section 5030.5, no more than one person has been nominated for each membership position, and a petition signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or trustee area, if elected by trustee area, requesting that a school district election be held for the offices has not been presented to the officer conducting the election, appointment will be made as prescribed by Section 5328.

The provisions of this section and Section 5328 shall also apply to elections for membership on a county board of education.

SEC. 3. (a) The Legislature hereby finds and declares that the method authorized by Section 5030.5 of the Education Code, as added by Section 1 of this act, under which each membership position on the governing board of the Sweetwater Union High School District is to be identified, by number or otherwise, and each candidate for the governing board will be required to declare candidacy for only one identified membership position, will make the election process in that district more equitable by enabling more community members, including those with limited financial resources, to run for each membership position.

(b) Due to the unique circumstances specified in subdivision (a) concerning the Sweetwater Union High School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 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 conduct the election in November of 1990 of the Sweetwater Union High School District governing board under the method set forth in this bill, it is necessary for this act to take effect immediately.

CHAPTER 38

An act to add and repeal Section 20150.15 of the Public Contract Code, to amend Section 4 of Chapter 1241 of the Statutes of 1989, and to amend and renumber Item 3680-101-730 of, and to amend Items 3760-302-786, 3760-301-565, and 3810-301-722 of, Section 2.00 of the Budget Act of 1989, relating to state funds, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 3, 1990. Filed with Secretary of State April 3, 1990]

I am deleting Provision 3 of Section 6 contained in Senate Bill No. 331.

Section 6 would appropriate $3,457,000 from the 1984 Park Bond Act to the Santa Monica Mountains Conservancy for the acquisition of certain lands. Provision 3 would require the appropriation to come from the Parklands portion of the 1984 Park Bond Act.

Since the 1984 Park Bond Act specifically contained $10 million for land acquisition by the Conservancy, which has been fully allocated, it would be inappropriate to expressly divert additional 1984 Parklands funds for Santa Monica Mountains Conservancy acquisitions.

Rather, it is more appropriate that the Department of Parks and Recreation and the Santa Monica Mountains Conservancy review their available funding sources and reach a mutual agreement on a funding package Such a process has already begun and resulted in the agreement to fund the acquisition of one of the three projects contained in this bill I am confident that such cooperation will continue and result in further agreements.

With this deletion, I approve Senate Bill No. 331.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 20150.15 is added to the Public Contract Code, to read:

20150.15. The provisions of this article do not apply to any contract which is entered into between a county and a nonprofit agency to construct recreational facilities on county property with funds granted by the Department of Parks and Recreation from the State, Beach, Park, Recreational and Historical Facilities Fund of 1974.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed unless a later enacted statute which is enacted before January 1, 1991, deletes or extends that date.

SEC. 2. Section 4 of Chapter 1241 of the Statutes of 1989 is amended to read:

Sec. 4. The sum of twenty-seven million seven hundred ninety thousand dollars ($27,790,000) is hereby appropriated in accordance with the following schedule:

(a) $2,208,000 from the General Fund, to be allocated as follows:

(1) $300,000 to the Department of Transportation for the planning, design, or construction of soundwalls along Interstate 405 between Victory Boulevard and Sherman Way in Los Angeles County.

(2) $300,000 to the Department of Boating and Waterways for local assistance to the Carlsbad Boulevard Shoreline Protection Project.

(3) $1,350,000 to the Department of Parks and Recreation, for local assistance, to be allocated as grants as follows:

(A) $250,000 to the City of Calexico for a swimming pool.

(B) $250,000 to the City of Los Angeles for restoration of Eagle Rock Library.

(C) $200,000 to the City of Hawthorne, for acquisition of the Glascow Strip property.

(D) $300,000 to the Board of Trustees of the California Museum of Latino History, Art and Culture for preliminary plans and administrative costs of the Latino History Museum.

(E) $250,000 to the County of Sacramento for the Multicultural Park.

(F) $100,000 to the City of Long Beach for the Long Beach Nature Center.

(4) $258,000 to the State Water Resources Control Board for the San Francisco Regional Board to continue underground tank cleanup in the Santa Clara Valley.

(b) $3,765,000 from the Environmental License Plate Fund, to be allocated as follows:

(1) $1,144,000 to the Department of Fish and Game, for allocation as follows:

(A) $100,000 to provide additional staffing for timber harvesting plan reviews.

(B) $60,000 for the Shell Marsh Interpretive Center.

(C) $750,000 for the Mono Lake Creek Studies.

(D) $234,000 for the Lake Merritt Observation Deck.

(2) $950,000 to the Wildlife Conservation Board for the acquisition of rare habitat areas in accordance with the following schedule:

(A) $450,000 for the Santa Lucia Mountains.

(B) $500,000 for the San Joaquin Valley.

(3) $350,000 to the State Coastal Conservancy for capital outlay and local assistance to the Mission Bay Park, South Shores Development.

(4) $921,000 to the Department of Parks and Recreation, for allocation as follows:

(A) $370,000 to the City of Redding, Museum Complex,

preliminary plans, working drawings, and site development.

(B) $51,000 to the City of Monrovia for the Ben Overturff Trail rehabilitation project.

(C) $500,000 for the Millerton Lake State Recreation Area and Lost Lake Recreation Area trail development project and for environmental studies and planning for the San Joaquin River Parkway project.

(5) $150,000 to the State Water Resources Control Board for allocation as follows:

(A) $75,000 for a grant to the City of San Francisco to address water quality and water level problems at Lake Merced.

(B) $75,000 for a grant to the San Diego Bay Interagency Panel to address water quality problems in San Diego Bay.

(6) $250,000 to the Department of Education for the Environmental Education Project.

(c) $17,364,000 from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund, for allocation as follows:

(1) $690,000 to the Department of Fish and Game for allocation as follows:

(A) $290,000 for purposes of Chapter 633 of the Statutes of 1987 to enhance and protect wildlife habitat.

(B) $200,000 for the Urban Fishing Enhancement Program.

(C) $200,000 for support of the activities of the "1601 Task Force."

(2) $750,000 to the State Coastal Conservancy for capital outlay and local assistance for allocation as follows:

(A) $100,000 for the Petaluma River Enhancement Project.

(B) $650,000 for the Mission Bay Park South Shore Development Project.

(3) $15,724,000 to the Department of Parks and Recreation, for allocation as follows:

(A) $230,000 as a grant to the City of Bellflower, for the Bellflower Park Project.

(B) $125,000 as a grant to the City of Desert Hot Springs for Wardman Park rehabilitation.

(C) $125,000 as a grant to the City of Perris for Bob Long Park rehabilitation.

(D) $300,000 as a grant to the City of Half Moon Bay for Coastside Park planning and specifications.

(E) $309,000 as a grant to the City of Pittsburg, for relocation and restoration costs of Cornwall Station.

(F) $1,000,000 as a grant to the City of Norwalk for the Norwalk Sports Complex.

(G) $300,000 as a grant to the East Bay Regional Park District for acquisition of the Elwood Property.

(H) $250,000 as a grant to the County of Santa Barbara for the Goleta Youth Center.

(I) $475,000 as a grant to the City of Los Angeles for restoration work on the Hansen Dam Project.

(J) $250,000 as a grant to the City of Lakewood for the Mayfair

Park Preservation and Revitalization Project.

(K) $370,000 as a grant to the City of San Jose for Phase I of the Los Alamitos/Calero Creek Trail Project.

(L) $125,000 as a grant to the City of Pasadena for the Villa-Parke Community Center project.

(M) $250,000 as a grant to the El Dorado Hills Community Services District for Phase I of the proposed park complex.

(N) $200,000 as a grant to the Northern California Center for Afro-American History and Life for the Afro-American Museum.

(O) $900,000 as a grant to the Mission Trails Regional Park Association, a nonprofit corporation, for plans and construction of a ranger station and visitor center in the Mission Trails Regional Park.

(P) $100,000 for the San Diego Railroad Museum Association, a nonprofit corporation, for renovation of the museum.

(Q) $250,000 as a grant to the City of Victorville for construction of the Hook Community/Sports Center.

(R) $250,000 as a grant to the City of Rancho Cucamonga for design and construction of the North Etiwanda Community Park.

(S) $140,000 as a grant to the City of Redding for construction of the Sacramento River Pedestrian Trail Bridge.

(T) $20,000 as a grant to the City of San Marino for Lacy Park restoration.

(U) $35,000 as a grant to the City of Arcadia for renovation of Eisenhower Park.

(V) $23,000 as a grant to the City of Temple City for lighting and security improvements to Temple City Park.

(W) $250,000 as a grant to the City of Rocklin for athletic field development.

(X) $150,000 as a grant to the City of San Jose for the Guadalupe River Parkway Project.

(Y) $1,500,000 as a grant to the City of San Diego for the Otay River Valley Park project.

(Z) $100,000 as a grant to the County of San Bernardino for the Santa Ana River Trail Project.

(AA) $100,000 as a grant to the County of San Bernardino for the Prado Dam Park Project.

(BB) $75,000 as a grant to the City of Pomona for the Philadelphia Park Project.

(CC) $90,000 as a grant to the City of Chino for the McCloud Park Project.

(DD) $70,000 as a grant to the City of San Bernardino for the Nunez Park Project.

(EE) $65,000 as a grant to the City of Fontana for the Oakridge Park Project.

(FF) $500,000 as a grant to the Association of Bay Area Governments for the San Francisco Bay Trail Project.

(GG) $297,000 as a grant to the City of Modesto for the Aqueduct Park Project.

(HH) $200,000 as a grant to the City of Milpitas for playground

renovation.

(II) $500,000 as a grant to the County of Nevada for the Donner Summit Bridge Project.

(JJ) $65,000 as a grant to the County of Yuba for the Ponderosa Community Center Project.

(KK) $100,000 as a grant to the County of Sonoma for the Santa Rosa Creek Planning and Restoration Project.

(LL) $350,000 as a grant to the Orangevale Parks and Recreation District for the Community Center Project.

(MM) $500,000 as a grant to the City of Glendale for the San Rafael Mountains Open Space Acquisition Project.

(NN) $255,000 as a grant to the City of Garden Grove for the Pioneer Park Project.

(OO) $500,000 as a grant to the City of Santa Ana for the Centennial Park Soccer Field Project.

(PP) $200,00 as a grant to the City of Westminister for acquisition of the Edison Right-of-Way.

(QQ) $500,000 as a grant to the City of La Mirada for the Neff Park Project.

(RR) $20,000 as a grant to the City of Grover City for Children/Senior Center renovations and the Ramona Gardens restoration projects.

(SS) $500,000 as a grant to the County of Sacramento to initiate and coordinate an interagency cooperative program for the planning, restoration, development, and expansion of a wildlife refuge in the wetlands area of south Sacramento County.

(TT) $2,500,000 for the acquisition of the Redfern property adjacent to Henry Coe State Park.

(UU) $300,000 for the acquisition of Gray Whale Ranch in Santa Cruz County.

(VV) $10,000 to update the Napa-Solano Skyline Park.

(4) $200,000 to the Department of Water Resources for assistance to the Grasslands Water District for emergency wetlands maintenance.

(d) $350,000 from the Off Highway Vehicle Fund to the Department of Parks and Recreation for the Hungry Valley State Vehicle Recreation Area Quail Canyon project.

(e) $78,000 from the State Parks and Recreation Fund for allocation to the Department of Parks and Recreation for the following purposes:

(1) $10,000 for the Donner Party Trail study.

(2) $20,000 for the Town of Locke acquisition feasibility study.

(3) $48,000 for additional staffing at the Mitchell Caverns State Preserve.

(f) $25,000 from the Harbors and Watercraft Revolving Fund to the Department of Boating and Waterways for a grant to the County of Stanislaus for additional law enforcement at Turlock Lake.

(g) Notwithstanding any other provision of law, if SCA 1 is approved by the voters on June 5, 1990, the Controller shall transfer

$4,000,000 from the Highway Users Tax Account, Transportation Tax Fund, to the State Parks and Recreation Fund, and that amount is hereby appropriated to the Department of Parks and Recreation for maintenance and repair of highways in units of the state park system.

SEC. 3. Item 3680-101-730 of Section 2.00 of the Budget Act of 1989 is amended and renumbered to read:

STATE COASTAL CONSERVANCY FUND OF 1984

3760-302-730—For capital outlay and local assistance, State Coastal Conservancy, payable from the State Coastal Conservancy Fund of 1984 300,000
Schedule:
(1) San Francisco Fisherman's Wharf, Hyde Street Marina Project 300,000

SEC. 4. Item 3760-302-786 of Section 2.00 of the Budget Act of 1989 is amended to read:

CALIFORNIA WILDLIFE, COASTAL AND PARK LAND CONSERVATION PROGRAM

3760-302-786—For capital outlay and local assistance, State Coastal Conservancy, payable from the California Wildlife, Coastal and Park Land Conservation (Bond) Fund of 1988 1,500,000
Schedule:
(1) City of Huntington Beach Pier restoration 1,500,000

SEC. 5. Item 3760-301-565 of Section 2.00 of the Budget Act of 1989 is amended to read:

STATE COASTAL CONSERVANCY PROGRAM

3760-301-565—For capital outlay and local assistance, State Coastal Conservancy, payable from the State Coastal Fund of 1976 2,045,000
Schedule:
(1) Cascade Ranch: Irrigation water impoundments 245,000
(2) Manhattan Beach Pier reconstruction 500,000
(3) Point Cabrillo 300,000
(4) Ventura Beach Pier restoration 1,000,000

SEC. 6. Item 3810-301-722 of Section 2.00 of the Budget Act of 1989 is amended to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM OF 1984

3810-301-722—For capital outlay, Santa Monica Mountains Conservancy, payable from the Parklands Fund of 1984 3,457,000

Schedule:

(1) Santa Susana Mountains/Simi Hills Acquisition Projects 1,254,000

(2) Santa Clarita Woodlands acquisition 500,000

(3) Malibu Creek SP Phase II acquisition 1,703,000

Provisions:

1. Funds appropriated in category (1) of this item are available only upon (a) enactment of legislation to revise the recreational trail corridor boundary for the Rim of the Valley Trail Corridor to include the Santa Clarita Woodlands portion of the Santa Susana Mountains, and (b) completion of a formal feasibility study by the Department of Parks and Recreation regarding the possible creation of a state park in the Santa Clarita Woodlands area.
2. Notwithstanding any other provision of law, the funds in category (1) and (2) of this item are available for (a) capital outlay and local assistance projects in the Santa Susana Mountains and Simi Hills within the Rim of the Valley Corridor pursuant to the Conservancy's Work Program for this area and (b) related project planning and design.
3. The Controller shall provide the funds appropriated in this item to the Santa Monica Mountains Conservancy from the allocation for the Department of Parks and Recreation in the Parklands Fund of 1984.

SEC. 7. Notwithstanding any other provision of law, the funds appropriated by Section 4 of Chapter 1241 of the Statutes of 1989, as amended by Section 2 of this act, by Item 3760-302-730 of Section 2.00 of the Budget Act of 1989 as amended and renumbered by Section 3 of this act, and by Items 3760-302-786 and 3760-301-565 of Section 2 of the Budget Act of 1989 as amended by Sections 4 and 5 of this

act shall be available for expenditure for state operations, capital outlay, or local assistance.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure adequate funding for the projects outlined in this bill, it is necessary that this act take effect immediately.

CHAPTER 39

An act to amend Section 34218 of the Health and Safety Code, relating to housing projects.

[Approved by Governor April 5, 1990 Filed with Secretary of State April 5, 1990]

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

SECTION 1. Section 34218 of the Health and Safety Code is amended to read:

34218. Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code applies to any housing project constructed under this chapter. Notwithstanding the provisions of this section, a housing authority may require a 20 percent cash escrow or a 25 percent irrevocable letter of credit or the payment bond required by this section if the contract is for work undertaken pursuant to the Comprehensive Improvement Assistance Program established by Section 14 of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437*l*), or the Public Housing Modernization Act established by Section 5(c) (3) (C) of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437*l*).

CHAPTER 40

An act to amend Sections 25103 and 25608 of the Corporations Code, relating to securities.

[Approved by Governor April 5, 1990. Filed with Secretary of State April 5, 1990.]

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

SECTION 1. Section 25103 of the Corporations Code is amended to read:

25103. The following transactions are exempted from the

provisions of Section 25110 and Section 25120:

(a) Any negotiations or agreements prior to general solicitation of shareholders' approval, and subject to such approval, of a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or a merger, consolidation, or sale of corporate assets in consideration of the issuance of securities.

(b) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities, unless the holders of at least 25 percent of the outstanding shares or units of any class of securities which will be directly or indirectly affected substantially and adversely by such change have addresses in this state according to the records of the issuer.

(c) Any exchange incident to a merger, consolidation, or sale of corporate assets in consideration of the issuance of securities of another corporation, unless at least 25 percent of the outstanding shares of any class, any holders of which are to receive securities in the exchange, are held by persons who have addresses in this state, according to the records of the corporation of which they are shareholders.

(d) For the purposes of subdivision (b) and subdivision (c) of this section, (1) any securities held to the knowledge of the issuer in the names of broker-dealers or nominees of broker-dealers and (2) any securities controlled by any one person who controls directly or indirectly 50 percent or more of the outstanding securities of that class shall not be considered outstanding. The determination of whether 25 percent of the outstanding securities are held by persons having addresses in this state, for the purposes of subdivision (b) and subdivision (c) of this section, shall be made as of the record date for the determination of the security holders entitled to vote on or consent to the action, if approval of those holders is required, or if not as of the date of directors' approval of that action.

(e) Any change (other than a stock split or reverse stock split) in the rights, preferences, privileges, or restrictions of or on outstanding shares, except the following if they materially and adversely affect any class of shareholders: (1) to add, change, or delete assessment provisions; (2) to change the rights to dividends thereon; (3) to change the redemption provisions; (4) to make them redeemable; (5) to change the amount payable on liquidation; (6) to change, add, or delete conversion rights; (7) to change, add, or delete voting rights; (8) to change, add, or delete preemptive rights; (9) to change, add, or delete sinking fund provisions; (10) to rearrange the relative priorities of outstanding shares; (11) to impose, change, or delete restrictions upon the transfer of shares in the articles of incorporation or bylaws; (12) to change the right of shareholders with respect to the calling of special meetings of shareholders; and (13) to change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation organized primarily to provide services or facilities to its shareholders or members. Changes in the

rights, preferences, privileges, or restrictions of or on outstanding shares do not materially and adversely affect any class of shareholders within the meaning of this subdivision if they arise from (i) the addition to articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the conversion of an existing corporation to a close corporation pursuant to subdivision (b) of Section 158, (ii) the deletion from the articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the voluntary termination of close corporation status pursuant to subdivisions (c) and (e) of Section 158, (iii) the involuntary cessation of close corporation status pursuant to subdivision (e) of Section 158, or (iv) the termination of a shareholders' agreement pursuant to subdivision (b) of Section 300.

(f) Any stock split or reverse stock split, except the following: (1) any stock split or reverse stock split if the corporation has more than one class of shares outstanding and the split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions; (2) any stock split of a stock which is traded in the market and its market price as of the date of directors' approval of the stock split adjusted to give effect to the split was less than two dollars ($2) per shares; and (3) any reverse stock split if the corporation has the option of paying cash for any fractional shares created by such reverse split and as a result of such action the proportionate interests of the shareholders would be substantially altered. Any shares issued upon a stock split or reverse stock split exempted by this subdivision shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(g) Any change in the rights of outstanding debt securities, except the following if they substantially and adversely affect any class of securities: (1) to change the rights to interest thereon; (2) to change their redemption provisions; (3) to make them redeemable; (4) to extend the maturity thereof or to change the amount payable thereon at maturity; (5) to change their voting rights; (6) to change their conversion rights; (7) to change sinking fund provisions; and (8) to make them subordinate to other indebtedness.

(h) Any exchange incident to a merger, consolidation, or sale of corporate assets in consideration of the issuance of securities of another corporation, which exchange meets each of the following conditions:

(1) The acquiring corporation (or the parent corporation if its wholly owned subsidiary is the acquiring corporation) has earned a majority of its revenue from its operations rather than investments during each of the last four fiscal quarters prior to the date of the offer of the acquiring corporation's common stock.

(2) The corporation to be acquired has 20 or fewer equity security holders, including equity security holders not in this state.

(3) All equity security holders of the corporation to be acquired have either (A) preexisting personal or business relationship with

the acquiring corporation or any of its officers, directors, or controlling persons or (B) by reason of their business or financial experience, or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the acquiring corporation or any affiliate or selling agent of the acquiring corporation, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interest in connection with the transaction.

(4) All equity security holders of the corporation to be acquired have consented in writing to the transaction, and each equity security holder of the corporation to be acquired has represented that the acquisition of the common stock in the transaction is for the equity security holder's own account (or a trust account if the equity security holder is a trustee) and not with a view to or for sale in connection with any distribution of the common stock.

(5) The offer and sale of the acquiring corporation's common stock is not accomplished by the publication of any advertisement. The distribution of information necessary to solicit approval of the transaction from the equity security holders of the corporation to be acquired shall not be deemed to be the publication of any advertisement to the extent that the distribution of information is required by the laws of this state or the applicable laws of any other jurisdiction.

(6) All equity security holders of the corporation to be acquired, other than the acquiring corporation, shall receive as a result of the merger, consolidation, or sale of corporate assets (A) only one-class voting common stock of the acquiring corporation (or parent or subsidiary if that common stock is the consideration offered), (B) only cash, or (C) a combination as determined by the equity security holder of common stock as set forth in subparagraph (A) and cash; each choice at the option of the equity security holder of the corporation to be acquired.

For purposes of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one equity security holder of the corporation to be acquired and a partnership, corporation, or other organization which was not specifically formed for the purpose of receiving the security exchanged in reliance upon this exemption, is counted as one equity security holder of the corporation to be acquired.

The commissioner may, by rule, require the acquiring corporation to file a notice of transaction under this section. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An acquiring entity which fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110 or 25120.

SEC. 2. Section 25608 of the Corporations Code is amended to

read:

25608. (a) The commissioner shall charge and collect the fees fixed in this section. All fees charged and collected under this section shall be transmitted to the State 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 a negotiating permit under subdivision (c) of Section 25102 is fifty dollars ($50).

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102, the fee for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, and the fee for filing a notice pursuant to paragraph (6) of subdivision (h) of Section 25103, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
$25,000 or less	$ 25
$25,001 to $100,000	$ 35
$100,001 to $500,000	$ 50
$500,001 to $1,000,000	$150
Over $1,000,000	$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars ($50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is one hundred dollars ($100) plus one-tenth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750).

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 is one hundred dollars ($100) plus one-tenth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of one thousand five hundred fifty dollars ($1,550).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

(2) Interim or voting trust certificates shall have a value equal to

the aggregate value of the securities to be represented by the interim or voting trust certificates.

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount equal to the consideration to be paid for that warrant or right plus an amount equal to the consideration to be paid upon purchase of the additional securities, provided that if the latter amount is not determinable at the time of qualification, that amount shall be the then value of the additional securities as determined by the commissioner.

(4) In the case of a share dividend where the shareholders are given an option to accept either cash or additional shares of common stock, the value of the securities to be sold shall be the maximum amount of cash which would be payable in the event that all shareholders elected to accept cash.

(h) The fee for filing an application for qualification of the sale of securities by permit under Section 25121 is:

(1) One hundred dollars ($100) in connection with any change (including any stock split or reverse stock split or stock dividend, except a stock dividend where the shareholders are given an option to accept either cash or additional shares of common stock) in the rights, preferences, privileges, or restrictions of or on outstanding securities;

(2) One hundred dollars ($100) plus one-tenth of 1 percent of the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration to be received in exchange therefor, up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750), in any exchange of securities by the issuer with its existing security holders exclusively, or in any exchange in connection with any merger or consolidation or purchase of corporate assets in consideration of the issuance of securities.

(i) The fee for filing an application for qualification of the sale of securities by notification under Section 25131 shall be sixty dollars ($60).

(j) The fee for an application for the removal of any condition under Section 25141 is fifty dollars ($50).

(k) The fee for filing any application for a permit to execute or issue any guarantee of any security is fifty dollars ($50).

(*l*) The fee for acting as escrow holder for securities under Section 25149 is fifty dollars ($50). In addition, a fee of two dollars and fifty cents ($2.50) shall be paid for the deposit with the commissioner of each new certificate or other document resulting from a transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities, (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer, or (3) consenting to the transfer of securities subject to a legend stamped

or printed on the certificates evidencing the securities pursuant to subdivision (h) of Section 25102, is ten dollars ($10) for each transferor.

(n) The filing fee for an amendment to an application filed after the effective date of the qualification of the sale of securities is fifty dollars ($50) plus any additional fee which would have been required to be paid with the original application for qualification of the sale of securities under this section if the matters set forth in the amendment had been included in the original application.

(o) (1) The fee for filing an application for a broker-dealer certificate under Section 25211 is three hundred dollars ($300).

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion which the broker-dealer's number of agents and offices in this state bears to the aggregate number of broker-dealer offices and agents in this state as shown by the annual reports to the commissioner. The pro rata share shall not include the costs of any examinations, audit, or investigation provided for in subdivision (r), unless they cannot be collected from the licensee examined, audited, or investigated.

(3) On or before the 30th day of May in each year, the commissioner shall notify each broker-dealer by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(4) In determining the amount assessed, the commissioner shall consider all appropriations from the General Fund for the support of this division and all reimbursements provided for in this division.

(5) If a broker-dealer fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to such broker-dealer. If, after such an order is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a broker-dealer shall not conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(p) The commissioner may by rule fix a fee of not to exceed twenty-five dollars ($25) for the filing of a notice or report required by rule adopted pursuant to subdivision (b) of Section 25210.

(q) The fee for filing an application for an investment adviser under Section 25231 is two hundred fifty dollars ($250), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted, and if that year is an even-numbered year during the following calendar year. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep such certificate in effect for an additional two-year period, pay a renewal fee of two hundred fifty dollars ($250) on or before the 15th day of December preceding the additional period.

(r) The fee for any examination, audit, or investigation is the actual amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

(s) The fee for any hearing held by the commissioner pursuant to Section 25142 shall be the sum determined by the commissioner to cover the actual expense of noticing and holding the hearing.

(t) The commissioner may fix by rule a reasonable charge for any publications issued under his or her authority. The charges shall not apply to reports of the commissioner in the ordinary course of distribution.

(u) The fee for filing an offer under subdivision (b) of Section 25507 shall be the amount of filing fee payable under subdivision (e), (f), (h) or (i) of this section if an application had been filed to qualify the transaction in which the securities upon which the offer is to be made were sold in violation of the qualification provisions of this law.

(v) The fee for filing an application for exemption pursuant to subdivision (*l*) of Section 25100 is two hundred fifty dollars ($250).

(w) The commissioner may by rule require payment of a fee for filing a notice or report required by a rule adopted pursuant to Section 25105. The fee required in connection with a transaction as defined by such rule shall not exceed the fees specified in subdivision (c) based on the value of the securities sold, but the commissioner may permit a single notice for more than one transaction.

CHAPTER 41

An act to amend Section 11370.1 of the Health and Safety Code, and to amend Sections 1170.1, 12022.5, and 12100 of the Penal Code, relating to crimes.

[Approved by Governor April 10, 1990 Filed with Secretary of State April 10, 1990]

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

SECTION 1. Section 11370.1 of the Health and Safety Code is amended 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 hand-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 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 the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.5, 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, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.5, 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. 3. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for 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) (1) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(2) Notwithstanding subdivision (a), 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.

SEC. 4. Section 12100 of the Penal Code is amended to read:

12100. (a) No person or corporation shall sell any pistol, revolver, or other firearm capable of being concealed upon the person to any minor.

(b) No person or corporation shall furnish, give, or otherwise transfer possession of any pistol, revolver, or other firearm capable of being concealed upon the person to any minor without the prior written consent or implied permission of a parent or legal guardian. The written consent shall be presented to the person or corporation at the time of the furnishing, giving, or other transfer of legal possession.

(c) Every person who violates this section is guilty of a misdemeanor. Every person who violates this section or Section 12072 is punishable upon the second and each subsequent conviction by imprisonment in a state prison or in a county jail not exceeding one year. Every person who violates this section or Section 12072 and who has been convicted previously of a violation of Section 8101 of the Welfare and Institutions Code or of a crime set forth in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560 is punishable by imprisonment in a state prison or in a county jail not exceeding one year. A person convicted of a second or subsequent violation of this section or Section 12072 of this code or Section 8101 of the Welfare and Institutions Code may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition. Except as provided in this paragraph, probation shall not be granted, nor shall the execution or imposition of sentence be suspended for persons who have previously been convicted of this section or Section 12072 of this code or Section 8101 of the Welfare and Institutions Code.

SEC. 5. The changes made in Section 11370.1 of the Health and Safety Code by Section 1 of this act are declaratory of existing law.

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 42

An act to amend Section 798.56 of the Civil Code, relating to mobilehome tenancies.

[Approved by Governor April 10, 1990 Filed with Secretary of State April 10, 1990]

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

SECTION 1. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Conviction of the homeowner or resident for prostitution or a felony controlled substance offense if the act resulting in the conviction was committed anywhere on the premises of the mobilehome park, including, but not limited to, within the homeowner's mobilehome.

However the tenancy may not be terminated for the reason specified in this subdivision if the person convicted of the offense has permanently vacated, and does not subsequently reoccupy, the mobilehome.

(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park which is part of the rental agreement or any amendment thereto.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided, that the homeowner shall be given a three-day written

notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. For purposes of this subdivision, the five-day period does not include the date the payment is due. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy.

Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision.

(2) However, if a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required for a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) The homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(5) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(f) Condemnation of the park.

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been

granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section.

CHAPTER 43

An act to amend Section 11368 of the Health and Safety Code, and to amend Section 1203.073 of the Penal Code, relating to controlled substances.

[Approved by Governor April 10, 1990 Filed with Secretary of State April 10, 1990.]

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

SECTION 1. Section 11368 of the Health and Safety Code is amended to read:

11368. Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.

SEC. 2. Section 1203.073 of the Penal Code is amended to read:

1203.073. (a) A person convicted of a felony specified in subdivision (b) may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted in such a case, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Except as provided in subdivision (a), 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, or Section 11352 of the Health and Safety Code by selling, a substance containing 28.5 grams

or more of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or 57 grams or more of a substance containing cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code.

(2) Any person who is convicted of violating Section 11378 of the Health and Safety Code by possessing for sale, or Section 11379 of the Health and Safety Code by selling, 28.5 grams or more of methamphetamine, or a substance containing 28.5 grams or more of methamphetamine, or 57 grams or more of a substance containing methamphetamine.

(3) Any person who is convicted of violating subdivision (a) of Section 11379.6 of the Health and Safety Code, except those who manufacture phencyclidine, or who is convicted of an act which is punishable under subdivision (b) of Section 11379.6 of the Health and Safety Code, except those who offer to perform an act which aids in the manufacture of phencyclidine.

(4) Except as otherwise provided in Section 1203.07, any person who is convicted of violating Section 11353 or 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or methamphetamine.

(5) Any person who is convicted of violating Section 11351.5 of the Health and Safety Code by possessing for sale 14.25 grams or more of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, or a substance containing 14.25 grams or more of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, or 57 grams or more of a substance containing at least five grams of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(6) Any person who is convicted of violating Section 11352 of the Health and Safety Code by transporting for sale, importing for sale, or administering, or by offering to transport for sale, import for sale, or administer, or by attempting to import for sale or transport for sale, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(7) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(c) As used in this section, the term "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.

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 44

An act to add Section 193.7 to the Penal Code, and to amend Sections 13350, 13550, 14601.3, 14610, 23175, and 23190 of the Vehicle Code, relating to driving offenses.

[Approved by Governor April 10, 1990. Filed with Secretary of State April 10, 1990.]

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

SECTION 1. Section 193.7 is added to the Penal Code, to read:

193.7. Any person convicted of a violation of paragraph (3) of subdivision (c) of Section 192 which occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, 23152, or 23153 of the Vehicle Code, or any combination thereof, which resulted in convictions, shall be designated as an habitual traffic offender subject to paragraph (3) of subdivision (e) of Section 14601.3 of the Vehicle Code, for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350 of the Vehicle Code.

SEC. 2. Section 13350 of the Vehicle Code is amended to read:

13350. (a) The department shall immediately revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided for in Sections 13352 and 13357.

(3) Reckless driving causing bodily injury.

(b) If a person is convicted of a violation of Section 23152 punishable under Section 23170 or 23175, or a violation of Section 23153 punishable under Section 23190, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7, the court shall, at the time of surrender of

the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6) or (7) of subdivision (a) of Section 13352 and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted with the license or temporary permit to the department within the prescribed 10 days.

(c) The department shall not renew the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of ability to respond in damages as defined in Section 16430.

SEC. 3. Section 13550 of the Vehicle Code is amended to read:

13550. Whenever any person is convicted of any offense for which this code makes mandatory the revocation or suspension by the department of the privilege of the person to operate a motor vehicle, the privilege of the person to operate a motor vehicle is suspended or revoked until the department takes the action required by this code, and the court in which the conviction is had shall require the surrender to it of the driver's license or temporary permit issued to the person convicted and the court shall within 10 days after the conviction forward the same with the required report of the conviction to the department.

SEC. 4. Section 14601.3 of the Vehicle Code is amended to read:

14601.3. (a) It is unlawful for a person whose driving privilege has been suspended or revoked to accumulate a driving record history which results from driving during the period of suspension or revocation. A person who violates this subdivision is designated an habitual traffic offender.

For purposes of this section, a driving record history means any of the following, if the driving occurred during any period of suspension or revocation which resulted from a conviction of an offense or offenses of driving under the influence of alcohol or drugs, or both, or from negligent driving:

(1) Two or more convictions within a 12-month period of an offense given a violation point count of two pursuant to Section 12810.

(2) Three or more convictions within a 12-month period of an offense given a violation point count of one pursuant to Section 12810.

(3) Three or more accidents within a 12-month period that are subject to the reporting requirements of Section 16000.

(4) Any combination of convictions or accidents, as specified in paragraphs (1) to (3), inclusive, which results during any 12-month period in a violation point count of three or more pursuant to Section 12810.

(b) Knowledge of suspension or revocation of the driving privilege shall be presumed if notice has been given by the department to the person. The presumption established by this

subdivision is a presumption affecting the burden of proof.

(c) The department, within 30 days of receipt of a duly certified abstract of the record of any court or accident report which results in a person being designated an habitual traffic offender, may execute and transmit by mail a notice of that designation to the office of the district attorney having jurisdiction over the location of the person's last known address as contained in the department's records.

(d) (1) The district attorney, within 30 days of receiving the notice required in subdivision (c), shall inform the department of whether or not the person will be prosecuted for being an habitual traffic offender.

(2) Notwithstanding any other provision of this section, any habitual traffic offender designated under subdivision (b) of Section 23170 or subdivision (b) of Section 23175 who is convicted of violating Section 14601.2 shall be sentenced as provided in paragraph (3) of subdivision (e).

(e) Any person convicted under this section of being an habitual traffic offender shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for 30 days and by a fine of one thousand dollars ($1,000).

(2) Upon a second or any subsequent offense within seven years of a prior conviction under this section, by imprisonment in the county jail for 180 days and by a fine of two thousand dollars ($2,000).

(3) Any habitual traffic offender designated under Section 193.7 of the Penal Code or under subdivision (b) of Section 23170, subdivision (b) of Section 23175, or subdivision (b) of Section 23190 who is convicted of a violation of Section 14601.2 shall be punished by imprisonment in the county jail for 180 days and by a fine of two thousand dollars ($2,000). The penalty in this paragraph shall be consecutive to that imposed for the violation of any other law.

SEC. 5. Section 14610 of the Vehicle Code is amended to read:

14610. (a) It is unlawful for any person:

(1) To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, fraudulently altered, or fraudulently obtained driver's license.

(2) To lend his driver's license to any other person or knowingly permit the use thereof by another.

(3) To display or represent any driver's license not issued to him as being his license.

(4) To fail or refuse to surrender to the department upon its lawful demand any driver's license which has been suspended, revoked or canceled.

(5) To permit any unlawful use of a driver's license issued to him.

(6) To do any act forbidden or fail to perform any act required by this division.

(7) To photograph, photostat, duplicate, or in any way reproduce any driver's license or facsimile thereof in such a manner that it could be mistaken for a valid license, or to display or have in his possession

any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.

(8) To alter any driver's license in any manner not authorized by this code.

(b) For purposes of this section, "driver's license" includes a temporary permit to operate a motor vehicle.

SEC. 6. Section 23175 of the Vehicle Code is amended to read:

23175. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103 as specified in Section 23103.5, 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 7. Section 23190 of the Vehicle Code is amended to read:

23190. (a) If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, 23152, or 23153, or any combination of these violations which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(b) Any person convicted of Section 23153 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 8. 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 because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is

recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs.

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

CHAPTER 45

An act to amend Section 13967 of, and to add Section 13967.2 to, the Government Code, and to amend Sections 1202.4, 1203.04, 1203.055, 1203.1g, and 1203.1j of the Penal Code, relating to restitution.

[Approved by Governor April 10, 1990. Filed with Secretary of State April 10, 1990.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The criminal justice system must not exclude victims from meaningful participation in the criminal justice process, because to do so would add to the pain and anguish already suffered by reason of the criminal acts committed against them.

(b) Full and voluntary cooperation by victims of crime with law enforcement and prosecutorial agencies is of extreme importance to state and local law enforcement efforts, and to the general effectiveness and well-being of the criminal justice system.

(c) All victims of crime should be ensured that they will be treated with dignity, respect and sensitivity, and the rights of victims of crime should be honored and protected by law enforcement agencies, prosecutors, and judges in a vigorous manner.

SEC. 2. 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 and to pay restitution to the victim in accordance with subdivision (c). 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. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. A restitution order 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. 3. Section 13967.2 is added to the Government Code, to

read:

13967.2. Upon entry of a restitution order under subdivision (c) of Section 13967 of this code or Section 1203.04 of the Penal Code, the following shall apply:

(a) The court shall enter a separate order for income deduction upon determination of the defendant's ability to pay, regardless of the probation status, in accordance with Section 1203 of the Penal Code.

(b) (1) In any case in which the court enters a separate order for income deduction under this section, the order shall be stayed until the agency in the county responsible for collection of restitution determines that the defendant has failed to meet his or her obligation under the restitution order and the defendant has not provided the agency with good cause for the failure in accordance with paragraph (2).

(2) If the agency responsible for collection of restitution receives information that the defendant has failed to meet his or her obligation under the restitution order, the agency shall request the defendant to provide evidence indicating that timely payments have been made or provide information establishing good cause for the failure. If the defendant fails to provide the agency with the evidence or fails to establish good cause within five days of the request, the agency shall immediately inform the defendant of that fact, and shall inform the clerk of the court in order that an income deduction order shall be served pursuant to subdivision (f) following a 15-day appeal period. The defendant may apply for a hearing to contest the lifting of the stay pursuant to subdivision (f).

(c) The income deduction order shall direct a payer to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

(d) The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

(e) When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state the following:

(1) All fees or interest which shall be imposed.

(2) The total amount of income to be deducted for each pay period.

(3) That the income deduction order applies to current and subsequent payers and periods of employment.

(4) That a copy of the income deduction order will be served on the defendant's payer or payers.

(5) That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.

(6) That the defendant is required to notify the clerk of the court within seven days after changes in the defendant's address, payers,

and the addresses of his or her payers.

(7) That the court order will be stayed in accordance with subdivision (b) and that a hearing is available in accordance with subdivision (f).

(f) (1) Upon receiving the notice described in paragraph (2) of subdivision (b), the clerk of the court or officer of the agency responsible for collection of restitution shall serve an income deduction order and the notice to payer on the defendant's payer unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

(2) (A) Service by or upon any person who is a party to a proceeding under this section shall be made in the manner prescribed for service upon parties in a civil action.

(B) Service upon the defendant's payer or successor payer under this section shall be made by prepaid certified mail, return receipt requested.

(3) The defendant, within 15 days after being informed that the order staying the income deduction order shall be lifted, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed or on the ground that the defendant has established good cause for the nonpayment. The timely request for a hearing shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

(4) The notice to payer shall contain only information necessary for the payer to comply with the income deduction order. The notice shall do all of the following:

(A) Require the payer to deduct from the defendant's income the amount specified in the income deduction order, and to pay that amount to the clerk of the court.

(B) Instruct the payer to implement the income deduction order no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on the payer.

(C) Instruct the payer to forward, within two days after each payment date, to the clerk of the court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

(D) Specify that if a payer fails to deduct the proper amount from the defendant's income, the payer is liable for the amount the payer should have deducted, plus costs, interest, and reasonable attorney's fees.

(E) Provide that the payer may collect up to five dollars ($5) against the defendant's income to reimburse the payer for administrative costs for the first income deduction and up to one dollar ($1) for each deduction thereafter.

(F) State that the income deduction order and the notice to payer

are binding on the payer until further notice by the court or until the payer no longer provides income to the defendant.

(G) Instruct the payer that, when he or she no longer provides income to the defendant, he or she shall notify the clerk of the court and shall also provide the defendant's last known address and the name and address of the defendant's new payer, if known, and that, if the payer violates this provision, the payer is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(H) State that the payer shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payer to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(I) Inform the payer that when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of a court, he or she may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

(J) Inform the payer that if the payer receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

(5) The clerk of the court shall enforce income deduction orders against the defendant's successor payer who is located in this state in the same manner prescribed in this subdivision for the enforcement of an income deduction order against a payer.

(6) A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(7) When a payer no longer provides income to a defendant, he or she shall notify the clerk of the court and shall provide the defendant's last known address and the name and address of the defendant's new payer, if known. A payer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for a subsequent violation.

(g) As used in this section, "good cause" for failure to meet an obligation or "good cause" for nonpayment means, but shall not be limited to, any of the following:

(1) That there has been a substantial change in the defendant's economic circumstances, such as involuntary unemployment, involuntary cost-of-living increases, or costs incurred as the result of medical circumstances or a natural disaster.

(2) That the defendant reasonably believes there has been an

administrative error with regard to his or her obligation for payment.

(3) Any other similar and justifiable reasons.

SEC. 4. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) In any case in which a defendant is convicted of a felony, the court shall order the defendant to pay a restitution fine as provided in subdivision (a) of Section 13967 of the Government Code. Such restitution fine shall be in addition to any other penalty or fine imposed and shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fine. When such a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(b) In any case in which the defendant is ordered to pay restitution as a condition of probation, the order to pay the restitution fine, or portion thereof, may be stayed pending the successful completion of probation, and thereafter the stay shall become permanent.

(c) If the restitution fine has been stayed pending successful completion of probation, upon revocation of probation and imposition of sentence the stay shall be lifted. The amount of restitution fine shall be offset by any restitution payments actually made as a condition of probation. Nothing in this section authorizes the stay of an order of restitution to the victim.

SEC. 5. Section 1203.04 of the Penal Code is amended to read:

1203.04. (a) In every case where a person is convicted of a crime and is granted probation, the court shall require, as a condition of probation, that the person make restitution as follows:

(1) To the victim, if the crime involved a victim. For purposes of this section, "victim" shall include the immediate surviving family of the actual victim in homicide cases. Payments shall be made to the Restitution Fund to the extent the victim has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(2) To the Restitution Fund, if the crime did not involve a victim.

(b) If the court finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons why restitution should not be required as provided in subdivision (a), the court shall require, as a condition of probation, that the person perform specified community service.

(c) The court may avoid imposing the requirement of community service as a condition of probation only if it finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons not to require community service in addition to its finding as to why restitution pursuant to subdivision (a) should not be required.

(d) For purposes of paragraph (1) of subdivision (a), "restitution" means full or partial payment for the value of stolen or damaged property, medical expenses, and wages or profits lost due to injury or to time spent as a witness or in assisting the police or prosecution,

which losses were caused by the defendant as a result of committing the crime for which he or she was convicted. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

Restitution collected pursuant to this section shall be credited to any other judgments obtained by the victim against the defendant arising out of the crime for which the defendant was convicted.

(e) For purposes of paragraph (2) of subdivision (a), the amount of restitution to be paid to the Restitution Fund shall be set at the discretion of the court and commensurate with the seriousness of the offense; but shall not exceed ten thousand dollars ($10,000) if the person is convicted of a felony; and shall not exceed one thousand dollars ($1,000) if the person is convicted of a misdemeanor.

(f) Nothing in this section shall be construed to limit the authority of the court to grant or deny probation or provide conditions of probation.

(g) As used in this section, probation includes a "conditional sentence" as that term is defined in subdivision (a) of Section 1203.

(h) When the court orders the defendant to pay restitution pursuant to this section, the court shall, if applicable, also order an income deduction pursuant to Section 13967.2 of the Government Code.

SEC. 6. Section 1203.055 of the Penal Code is amended to read:

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

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

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

(1) Murder.

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

(3) Robbery, in violation of Section 211.

(4) Kidnapping, in violation of Section 207.

(5) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

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

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

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

Section 220.

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

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

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

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

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

(14) A violation of Section 214.

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

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

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

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

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

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

shall be added to that probation report.

SEC. 7. Section 1203.1g of the Penal Code is amended to read:

1203.1g. In any case in which a defendant is convicted of sexual assault on a minor, and the defendant is eligible for probation, the court as a condition of probation, shall order him or her to make restitution for the costs of medical or psychological treatment incurred by the victim as a result of the assault and that he or she seek and maintain employment and apply that portion of his or her earnings specified by the court toward those costs.

As used in this section, "sexual assault" has the meaning specified in Section 11165. The defendant is entitled to a hearing concerning any modification of the amount of restitution based on the costs of medical and psychological treatment incurred by the victim subsequent to the issuance of the order of probation.

SEC. 8. Section 1203.1j of the Penal Code is amended to read:

1203.1j. In any case in which the defendant is convicted of assault, battery, or assault with a deadly weapon on a victim 65 years of age or older, and the defendant knew or reasonably should have known the elderly status of the victim, the court, as a condition of probation, shall order the defendant to make restitution for the costs of medical or psychological treatment incurred by the victim as a result of the crime, and that the defendant seek and maintain legitimate employment and apply that portion of his or her earnings specified by the court toward those costs.

The defendant shall be entitled to a hearing, concerning any modification of the amount of restitution, based on the costs of medical and psychological treatment incurred by the victim subsequent to the issuance of the order of probation.

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 46

An act to amend Sections 5407, 11215, 11460, 11462, 11466.2, 11467, and 18350, to add Sections 11468, 11468.1, 11468.2, 11468.3, 11468.4, and 11468.5 to, and to add Article 1.5 (commencing with Section 11225) to Chapter 2 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 10, 1990 Filed with Secretary of State April 10, 1990]

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

SECTION 1. Section 5407 of the Welfare and Institutions Code is amended to read:

5407. (a) It is the intent of the Legislature that essential mental health assessment and treatment services be available to court wards and dependents placed out-of-home or who are at risk of requiring out-of-home care. This can be best achieved at the community level through the active collaboration of county social service, probation, education, mental health agencies, and foster care providers.

(b) Therefore, using the Children's Mental Health Services Act as a guideline, the State Department of Mental Health, in consultation with the California Conference of Local Mental Health Directors, the State Department of Social Services, the County Welfare Directors Association, the Chief Probation Officer's Association, and foster care providers, shall do all of the following:

(1) By July 1, 1990, develop an individualized mental health treatment needs assessment protocol for court wards and dependents.

(2) By October 1, 1990, establish and maintain a special system of payment for supplemental mental health services rendered to court wards and dependents pursuant to this section.

(3) By October 1, 1990, establish, by regulation, all of the following:

(A) Definitions of priority ranking of subsets of the court wards and dependents target population.

(B) Definitions of priority supplemental services to be available to the target population.

(C) A certification procedure, to be employed by the local mental health director, which assures that only mental health services approved by the local mental health director shall be eligible for reimbursement under this section.

(4) Require that the annual County Short-Doyle Plan and Negotiated Net Amount Contract ensure that interagency collaboration and program services are structured in a manner which will facilitate future implementation of the goals of the Children's Mental Health Services Act. Components shall be added to the plans

and contracts which specifically address the procedures to be implemented by the county in meeting the provisions of this section. The components are to be developed in collaboration with the county social services and probation departments. Plans and contracts submitted for department approval shall document that the procedures to be implemented in compliance with this section have been approved by the county social services department and the county probation department pursuant to an interagency agreement.

(c) Only those individuals within the target population as defined in regulation and determined to be eligible for services as a result of a mental health treatment needs assessment may receive services pursuant to this section. Priority services shall be provided by the county mental health program in accordance with the County Plan or Negotiated Net Amount Contract approved by the State Department of Mental Health and to the extent that funds are appropriated for the purposes of this section.

The counties shall be held harmless for failure to provide services to those children identified in need of services for whom there is no funding.

(d) It is the intent of the Legislature to limit supplemental mental health treatment rates for the target population of this section to rates established pursuant to paragraphs (2) and (3) of subdivision (b), effective October 1, 1990. The State Department of Mental Health and the State Department of Social Services, in consultation with appropriate organizations, including provider organizations, shall develop a plan to accomplish this intent that includes an analysis of access to, and availability of, mental health treatment for the target population. This plan shall be submitted to the Legislature by July 1, 1990.

(e) The department shall annually report to the Legislature on the service populations provided mental health treatment services pursuant to this section, the types and costs of services provided, and the number of children identified in need of treatment services who did not receive the services.

SEC. 1.5. Section 11215 of the Welfare and Institutions Code is amended to read:

11215. (a) The department, with the advice and assistance of the County Welfare Directors Association, the Chief Probation Officers Association, and foster care providers, shall develop performance standards and outcome measures for determining the appropriateness of out-of-home care placements made under the AFDC-Foster Care program and for the effective and efficient administration of the AFDC-Foster Care program. These performance standards shall link county administration of the AFDC-Foster Care program to the state funding of the AFDC-Foster Care program as specified in subdivision (c) of Section 15200.

(1) These performance standards shall be developed by July 1, 1993, and shall use the Child Welfare Services Case Management

System as the data base by which to collect county specific information. The performance standards shall be designed to measure each county's performance in all of the areas over which the county has some degree of influence and other areas of measurable program performance which the department can demonstrate as areas over which county welfare and probation departments have adequate resources and can demonstrate meaningful managerial or administrative influence. These areas may include accuracy of eligibility determination, stability of foster care placement, appropriateness of level of care provided, compliance with statutory timeliness, and compliance with data reporting requirements. The performance standards system shall include, but not be limited to, outcome measures reflective of county placing agencies' use of the Level of Care Assessment Instrument specified in Section 11467.

(2) The department shall complete a report by January 1, 1994, on the performance standards system, the standards/outcome measures developed, and the method by which the system shall be implemented. The report shall also identify the appropriate circumstances when placement decisions should not be in keeping with the level of care indicated with the Level of Care Assessment Instrument.

(A) This report shall be submitted to the Chairs of the Senate Appropriations Committee, the Senate Health and Human Services Committee, the Assembly Human Services Committee, and the Assembly Ways and Means Committee.

(B) Between January 1, 1994, and January 1, 1995, the department shall conduct at least two hearings on the proposed performance standards. One hearing shall be held in the northern part of the state, and one hearing shall be held in the southern part of the state.

(3) The performance standards system shall be implemented in conjunction with the implementation of the Child Welfare Services Case Management System. If the Child Welfare Services Case Management System is not implemented by July 1, 1993, as specified in Section 16501.5, the implementation of the performance standards system, as specified in paragraphs (4) and (5), shall be moved to a date two years after the date of implementation of the Child Welfare Services Case Management System.

(4) Regulations regarding the implementation of the performance standards system shall be adopted no later than July 1, 1994. These regulations shall specify both the performance standards system and the manner by which the percentage of state reimbursement to each county for the AFDC-Foster Care program shall be determined.

(5) Effective July 1, 1995, any county which does not meet the performance standards shall be liable for a decrease in the percentage of state reimbursement for the AFDC-Foster Care program to the amounts specified in paragraph (2) of subdivision (c) of Section 15200. This amount will be determined by the department at the start of each fiscal year, beginning with fiscal year 1995–96,

pursuant to regulations developed as specified in paragraph (4).

(b) No later than January 1, 1995, the department shall report to the Legislature regarding the AFDC-Foster Care ratesetting system as specified in Section 11462. The report shall contain a review of the ratesetting system, and recommendations as to whether the system should be continued or an alternative system should be considered. The department shall use, but not be limited to, the information available from the Child Welfare Services Case Management System and the Level of Care Assessment Instrument as data sources for this report. The report shall also include the results of a cost study, conducted by the department, which specifies costs of group home providers for the 1993–94 fiscal year, and an analysis of the extent to which the schedule of rates reflects the costs of providing care and supervision for foster children.

SEC. 2. Article 1.5 (commencing with Section 11225) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 1.5. Definitions

11225. Unless the context requires otherwise, the definitions contained in this article shall govern the construction of this chapter.

11226. "Appeal proceeding" means an administrative hearing conducted by a hearing officer of the department.

11227. "Audit" means a review of the claims, accounts, and documents of an auditee.

11228. "Date of mailing" means the date postmarked on the envelope if postage was prepaid and the envelope was properly addressed.

11229. "Department" means the State Department of Social Services.

11230. "Director" means the Director of Social Services.

11231. "Duplicate" means a facsimile copy of the original produced by photocopying or other technique of accurate reproduction.

11232. "Hearing officer" means an administrative law judge designated by the director.

11233. "Informal conference" means a proceeding conducted in person or by telephone for the purpose of clarifying or resolving issues.

11234. "Party" means the group home provider, foster family agency, or the department.

11235. "Protest" means a written request for a review. The request shall contain the basis for the provider's objections to the audit findings or set rate.

11236. (a) "Set rate" means the per child per month rate set by the department for an AFDC-FC group home program or foster family agency.

(b) "Set rate" includes the rate set using projected data supplied

by the provider for a proposed program, the rate set using data reported by the provider for an existing program, or the rate set using the results of a rate review, rate appeal, or audit done by, or on behalf of, the department.

SEC. 2.5. Section 11460 of the Welfare and Institutions Code is amended to read:

11460. (a) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments.

(b) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

(1) For a child placed in a group home, care and supervision shall also include reasonable administration and operational activities necessary to provide the items listed in this subdivision.

(2) For a child placed in a group home, care and supervision may also include reasonable activities performed by social workers employed by the group home provider which are not otherwise considered daily supervision or administration activities.

(c) It is the intent of the Legislature to establish a standardized schedule of rates for group homes, effective July 1, 1990.

(d) Group home rates effective between July 1, 1989, and June 30, 1990, shall be set using current regulations and policies of the department.

(e) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

SEC. 3. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of

Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each rate classification level (RCL) has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, the single rate established for each RCL, and the rate floor for each RCL.

(e) The standardized schedule of rates shall be phased in commencing July 1, 1990.

(1) In order to phase in the standardized schedule of rates, a "rate floor" has been established for each RCL.

(2) The rate floor for fiscal year 1990–91 shall be 85 percent of the standard rate for each RCL. The rate floor shall be increased to 92.5 percent of the standard rate for fiscal year 1991–92 for each RCL, and shall be equal to the standard rate for each RCL for fiscal year 1992–93 and beyond.

(f) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) For a group home program for which the department established a rate effective prior to June 30, 1990, that took into account the program's historical costs, the department shall establish the rate for fiscal year 1990–91 by determining the RCL on a retrospective basis, according to the level of care and services actually provided between July 1 and December 31, 1989, or between July 1, 1989, and March 31, 1990.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(g) (1) The standardized schedule of rates for fiscal year 1990–91 is:

Rate Classification Level	Point Ranges	FY 1990–91 Standard Rate	FY 1990–91 Rate Floor (85%)
1	Under 60	$1,183	$1,006
2	60– 89	1,478	1,256
3	90–119	1,773	1,507
4	120–149	2,067	1,757
5	150–179	2,360	2,006
6	180–209	2,656	2,258
7	210–239	2,950	2,508
8	240–269	3,245	2,758
9	270–299	3,539	3,008
10	300–329	3,834	3,259
11	330–359	4,127	3,508
12	360–389	4,423	3,760
13	390–419	4,720	4,012
14	420 & Up	5,013	4,261

(2) Group home programs which generate the requisite number of points for RCL 13 or 14, which only accept children with special treatment needs as determined through the assessment process in subdivision (b) of Section 11467 and which have as part of their program measurable performance standards developed by the county of placement, shall be classified at RCL 13 or 14.

(h) (1) For fiscal year 1990–91, the standardized schedule of rates shall be implemented as follows:

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the fiscal year 1990–91 RCL shall receive their 1989–90 rate plus an amount equal to the California Necessities Index (CNI). The rate for fiscal year 1990–91 at which the state will participate shall not exceed the standard rate for the RCL.

(B) If the CNI increase to the group home program's fiscal year 1989–90 rate does not raise the group home program to the rate floor for the RCL, the group home program shall receive a rate equal to the rate floor for the RCL.

(C) A group home program which received an AFDC-FC rate for fiscal year 1989–90 at or above the standard rate for the RCL for fiscal year 1990–91 shall continue to receive that fiscal year 1989–90 rate.

(2) For fiscal year 1991–92 and fiscal year 1992–93, the standardized rate for each RCL shall be adjusted by an amount equal to CNI computed pursuant to the methodology described in Section 11453.

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the adjusted standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(B) A group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive that rate adjusted by an amount equal to the CNI. The rate for the current fiscal year shall not exceed the standard rate for the RCL and shall not be less than the rate floor for the RCL.

(3) Beginning with the 1993–94 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds.

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the adjusted standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(B) Any group home program which received an AFDC-FC rate in the prior fiscal year below the adjusted standard rate for the RCL in the current fiscal year shall receive the adjusted RCL rate.

(i) (1) The rate for a new group home program of a new or existing provider shall be established at the rate floor for the new program's projected RCL.

(2) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(3) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(4) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Sections 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section.

(*l*) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes,

and of any unusual, industrywide increase in costs associated with the provision of group care which may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

(m) Following the initial implementation of the group home ratesetting system described in this section, the department, with the advice and assistance of the counties and representatives of providers of group home care, may submit to the Legislature recommendations to modify the program classification point system, number of rate classification levels, amounts that make up the standardized schedule of rates, or other components of the system. These recommendations shall be based on the department's review and evaluation of the program classification system, group home cost data collected pursuant to Section 11466.3, and information from the Group Home Program Statements and Level of Care Assessments specified in Section 11467.

SEC. 4. Section 11466.2 of the Welfare and Institutions Code is amended to read:

11466.2. (a) The department shall perform or have performed group home program and fiscal audits as needed. Group home programs shall maintain all child-specific, programmatic, personnel, fiscal, and other information affecting group home ratesetting and AFDC-FC payments for a period not less than five years.

(b) The department shall develop regulations to correct a group home program's RCL, and to adjust the rate and to recover any overpayments resulting from an overstatement of the projected level of care and services.

(c) (1) In any audit conducted by the department, the department, or other public or private audit agency with which the department contracts, shall coordinate with the department's licensing and ratesetting entities so that a consistent set of standards, rules, and auditing protocols are maintained. The department, or other public or private audit agency with which the department contracts, shall make available to all group home providers, in writing, any standards, rules, and auditing protocols to be used in those audits.

(2) The department shall provide exit interviews with providers whenever deficiencies found are explained and the opportunity exists for providers to respond. The department shall develop regulations specifying the procedure for the appeal of audit findings.

SEC. 5. Section 11467 of the Welfare and Institutions Code is amended to read:

11467. (a) By July 1, 1990, the State Department of Social Services, in consultation with the counties and foster care providers, shall develop a standard format for group home program statements for ratesetting, community care licensing, and county placement purposes.

(b) By July 1, 1990, the State Department of Social Services, in consultation with the State Department of Mental Health and the counties, shall develop a Level of Care Assessment Instrument which shall match the assessed needs of the dependent child and his or her family with the services provided at each Rate Classification Level established pursuant to Section 11462.

(c) By July 1, 1990, the State Department of Social Services, in consultation with the State Department of Mental Health, the Department of the Youth Authority, county probation departments, foster care providers, and the counties, shall develop a Level of Care Assessment Instrument which shall match the assessed needs of the ward and his or her family with the services provided by placement facilities at each Rate Classification Level established pursuant to Section 11462.

(d) The Level of Care Assessment Instrument developed pursuant to subdivisions (b) and (c) shall include specified indicators of a child's need for a mental health treatment needs assessment which is available to a child pursuant to Section 5407. The State Department of Social Services, in consultation with the State Department of Mental Health, the Department of the Youth Authority, county probation departments, foster care providers, and the counties, shall specify the criteria for determining when a mental health treatment needs assessment shall be conducted pursuant to Section 5407.

(e) No later than January 1, 1991, the department shall report to the Legislature on the requirements specified in subdivisions (a) to (d), inclusive.

SEC. 6. Section 11468 is added to the Welfare and Institutions Code, to read:

11468. The director shall establish administrative review procedures to review audit findings or to review the rate set by the department.

SEC. 7. Section 11468.1 is added to the Welfare and Institutions Code, to read:

11468.1. The administrative review procedure established pursuant to Section 11468 shall include a protest within the department and a hearing conducted by a hearing officer appointed by the director.

SEC. 8. Section 11468.2 is added to the Welfare and Institutions Code, to read:

11468.2. (a) A group home provider or foster family agency who disagrees with a rate set by the department and who desires a different rate shall file a protest with the department within 60 days from the date of the mailing of the notification of the set rate. The protest shall include all information including documentation for the department to determine the provider's basis for requesting a different set rate or challenge of the audit findings. The department may request additional documentation or information from the group home provider after reviewing the protest.

(b) Within 90 days of receipt of the final documentation or information, the department shall issue a decision letter indicating the department's decision on the protest which shall include the department's basis for the action taken. This time period may be extended by the department for good cause.

(c) If the group home provider or foster family agency does not concur with the decision letter, a written appeal may be filed with the department within 60 days of receipt of the decision letter. The appeal shall be accompanied with full supporting documentation. The department may request additional information.

SEC. 9. Section 11468.3 is added to the Welfare and Institutions Code, to read:

11468.3. (a) The appeal filed with the department pursuant to Section 11468.2 shall specify whether the provider does or does not wish that an informal conference among the parties be held, together with the reasons therefor. Either party may request, or the hearing officer may order, that a telephone conference call be initiated among the parties for discussion of the advisability of conducting an informal conference. The hearing officer shall decide whether an informal conference would be appropriate and notify the parties of this decision in writing.

(b) If the hearing officer determines that an informal conference is appropriate, it shall be ordered and scheduled as soon as reasonably possible. The hearing officer shall preside at this informal conference.

(c) The department shall mail written notice of the time and place of the informal conference to each party at least 10 calendar days before the date of the informal conference. This period may be shortened with the consent of the parties. Any party may waive notice.

(d) Efforts shall be made to resolve the facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law.

SEC. 10. Section 11468.4 is added to the Welfare and Institutions Code, to read:

11468.4. (a) The hearing shall be conducted no later than 180 days after the filing of a timely and specific statement of disputed issues by the provider.

(b) The hearing officer shall take the matter under submission at the conclusion of the hearing. A proposed decision, in a form that may be adopted as the decision of the director, shall be submitted to the director within 180 days after the closure of the record.

(c) Within 120 days after submission of the hearing officer's proposed decision, the director shall:

(1) Adopt the proposed decision with or without reading or hearing the record.

(2) Reject the proposed decision and adopt an alternative decision based upon the documentary and electronically recorded record, with or without taking additional evidence.

(3) Refer the matter to the same or a different hearing officer to take additional evidence. If the case is so assigned, the hearing officer shall, within 90 days, prepare a proposed decision, based upon the additional evidence and the documentary and electronically recorded record of the prior hearing. The director may then take one of the actions described in subdivision (c) in regard to the new proposed decision. The director may return a proposed decision only twice on the same appeal.

(d) (1) The decision shall be final when the decision is mailed to the parties. However, the director retains jurisdiction to correct clerical errors.

(2) Copies of the final decision of the director and the hearing officer's proposed decision if it was not adopted by the director, shall be mailed by certified mail to the parties.

SEC. 11. Section 11468.5 is added to the Welfare and Institutions Code, to read:

11468.5. The provider or foster family agency may request review of the final decision of the department in accordance with Section 1094.5 of the Code of Civil Procedure, within six months of the issuance of the director's final decision.

SEC. 12. Section 18350 of the Welfare and Institutions Code is amended to read:

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act.

(c) Payments for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467, inclusive.

(d) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

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 that necessary adjustments to the new standardized schedules of rates can take effect before the planned implementation date of July 1, 1990, and so facilitates the orderly implementation of this program, it is necessary that this act take effect immediately.

CHAPTER 47

An act to amend Section 25320 of, and to repeal Section 25355 of, the Public Resources Code, relating to energy conservation and development.

[Approved by Governor April 11, 1990. Filed with Secretary of State April 12, 1990.]

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

SECTION 1. Section 25320 of the Public Resources Code is amended to read:

25320. (a) By April 1, 1975, and every three months thereafter, each electric utility, gas utility, major natural gas producer, and major marketer of natural gas doing business within this state shall submit the information described in this section to the commission for analysis. The information shall be based on actual records or projections and shall include data from the prior quarter and estimates for the period ending one year from the reporting date. The information shall be used by the commission in order, among other things, that it may properly assess the nature and extent of any energy shortage, the economic and environmental impacts of any energy shortage, and obtain information in a manner which will enable the state to take actions to meet or mitigate any energy shortage.

Any such information which is also required to be reported to other governmental agencies may be submitted to the commission in fulfillment of the requirements of this section. The commission may require additional information if necessary to carry out the provisions of this section.

(b) Each natural gas producer shall submit information to the commission specifying, by month, the amount of gas produced, stored or withdrawn from storage, the available supply, and the amounts of gas supplied to classes of major uses, as designated by the commission.

(c) Each gas utility shall submit information to the commission specifying, by month, the utility's sources and amounts of supply, the amounts of demand and amounts supplied to all major uses, both firm and interruptible, as designated by the commission, and amounts of gas stored or withdrawn from storage, and exchanges, imports into the state, and exports from the state of gas supplies.

(d) Each electric utility shall submit information to the commission specifying, by month, the utility's amount of electricity generated and generating capacity by type of generation, amounts of exchanges and transfers of electricity, amounts of oil and gas required to generate electricity, indicating the source of supply, including inventory on hand, and the amounts of electricity supplied for all major uses, as designated by the commission.

SEC. 2. Section 25355 of the Public Resources Code is repealed.

CHAPTER 48

An act to amend Section 25123.3 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor April 11, 1990 Filed with Secretary of State April 12, 1990.]

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

SECTION 1. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held in containers or tanks for greater than 90 days at an onsite facility.

(2) The hazardous waste is held at an onsite facility in tanks for any period of time and the quantity of the hazardous waste in any individual tank exceeds 5,000 gallons or 45,000 pounds, whichever is greater, or the aggregate amount of hazardous waste stored in tanks at the facility exceeds 50,000 gallons. For purposes of this paragraph, these quantities do not include hazardous waste stored in a portable tank used for a period of not more than 60 calendar days at an onsite facility or hazardous waste accumulated onsite which has been generated from onsite maintenance operations which occur less frequently than annually.

(3) The hazardous waste is held in containers or tanks for any period of time at an offsite facility which is not a transfer facility.

(4) The hazardous waste is held in containers or tanks at a transfer facility for periods greater than 144 hours.

(5) The hazardous waste is held at an onsite facility in any individual container of less than 5,000 gallons for any period of time, and the aggregate amount of hazardous waste stored in those containers, exclusive of tanks, at the facility exceeds 50,000 gallons. For purposes of this paragraph, this quantity does not include hazardous waste being accumulated at an initial accumulation point pursuant to subdivision (d).

(b) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (a), begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(c) For purposes of this section, "transfer facility" means any offsite facility which is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(d) Notwithstanding paragraph (1) of subdivision (a), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite for more than one year from the initial date of accumulation, or 90 days from the date the quantity limitation specified in paragraph (1) of this subdivision is reached, whichever occurs first.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with the regulations adopted by the department establishing requirements for personnel training, preparedness and prevention, and contingency plans and emergency procedures applicable to storage facilities.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(7) The generator does not otherwise meet the definition of a storage facility.

SEC. 2. 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 49

An act to amend Sections 7073, 11752, 15379.1, 15379.4, and 15379.9 of, to add Section 15379.45 to, and to repeal Chapter 3.6 (commencing with Section 15379.20) of Part 6.7 of Division 3 of Title 2 of, the Government Code, and to repeal Sections 17277, 23634, and 24390 of the Revenue and Taxation Code relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 12, 1990. Filed with Secretary of State April 13, 1990]

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 enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080), or any new enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080) designated on or after the effective

date of the act adding this paragraph, a city or county may propose that the enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080) within the incorporated area be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080). The department may approve that expansion for enterprise zones based upon the criterion specified in subdivision (e), and for expansion of areas established pursuant to Chapter 12.9 (commencing with Section 7080), the criterion specified in Section 7082.

(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 11752 of the Government Code is amended to read:

11752. There is in the Business, Transportation and Housing Agency the Stephen P. Teale Data Center. The Stephen P. Teale Data Center shall be under the supervision of a data center director who shall be appointed by the Governor, subject to confirmation by the Senate and serve at the pleasure of the Governor. The director shall receive a salary approved by the Department of Personnel Administration. The director shall be responsible for the efficient and effective management and operation of the data center. The director shall continue to communicate regularly with the Office of Information Technology regarding future needs of the center and the likely impact of emerging technologies.

SEC. 3. Section 15379.1 of the Government Code is amended to read:

15379.1. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Collaborative research" means technological or scientific research that accelerates existing research towards the commercialization of products, processes, and services, and is conducted jointly or funded jointly by some or all of the following:

(1) The private sector, including intra-industry groups, California-based private foundations, industry associations, and nonprofit cooperative associations.

(2) The federal government.

(3) The state.

(4) Public or private universities, colleges, and laboratories.

(b) "Department" means the Department of Commerce.

(c) "Director" means the Director of Commerce.

(d) "Program" means the California Competitive Technology Program.

(e) "Technology transfer" means the movement of the results of basic or applied technological or scientific research to the design, development, and production of new or improved products, services,

or processes.

(f) "Consortia" means jointly funded or jointly operated nonprofit independent research and development organizations. "Consortia development" means the establishment of consortia to manage and fund a variety of technology transfer projects within a specific technology or industry priority.

(g) "Industry association" is a nonprofit organization with a substantial presence in California whose membership consists in whole or in part of California-based companies, and whose funding is derived in whole or in part from California-based companies.

(h) "Nonprofit cooperative association" means an association, organized and operating pursuant to either Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code or Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code.

(i) "California-based foundation" means an organization defined in the Internal Revenue Code as a private foundation, which is incorporated in, and primarily conducts its activities within, the state and receives funding in whole or in substantial part from California-based companies.

SEC. 4. Chapter 3.6 (commencing with Section 15379.20) of Part 6.7 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 5. Section 15379.4 of the Government Code is amended to read:

15379.4. An eligible project shall, at least, do all of the following:

(a) Include a significant amount of matching contributions from either of the following:

(1) A private sector company or companies.

(2) A California-based foundation or foundations, an industry association or associations, or a nonprofit cooperative association or associations.

As used in this subdivision, "matching contributions" include cash and in-kind contributions.

(b) Identify the sources of funding for the entire project.

(c) Not supplant other funding.

(d) Include either of the following:

(1) A private sector company or companies which have significant operations in the state.

(2) A California-based foundation or foundations, an industry association or associations, or a nonprofit cooperative association or associations.

(e) Be performed in the state.

SEC. 6. Section 15379.45 is added to the Government Code, to read:

15379.45. The grantee shall not incur expenses to be paid with grant funds without evidence of a workable agreement between the parties participating in the project that at least includes both of the following:

(a) A resolution of the intellectual property rights relative to the

project.

(b) A direct and ongoing involvement of the public and private sectors, when applicable in the project.

SEC. 7. Section 15379.9 of the Government Code is amended to read:

15379.9. The department shall adopt regulations to implement this chapter. The department shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in (e) of Section 11346.1.

SEC. 8. Section 17277 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 23634 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 24390 of the Revenue and Taxation Code is repealed.

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 that the state's data processing and competitive technology function at the most efficient level possible, it is necessary that this act take effect immediately.

CHAPTER 50

An act to amend Sections 1189.105, 1189.109, 1216, 24162, 24164, 24165.3, 24165.5, and 24166 of, and to add Section 26164.5 to, the Health and Safety Code, to amend Sections 16709, 16910, 16915, 16916, 16917, 16920, 16922, 16923, 16930, 16946, 16950, 16950.1, 16952, 16954, 16956, 16970, 16980, 16990, 16991, 16994, 16996, 16996.1, and 16996.2 of, to repeal Sections 16907 and 16945 of, to add Section 16961 to, to add Article 2 (commencing with Section 16943) to Chapter 5 of Part 4.7 of, to amend and renumber the heading of Chapter 8 (commencing with Section 16997.1) of Part 4.7 of, to add the heading of Part 4.7 (commencing with Section 16900) to, Division 9 of, the Welfare and Institutions Code, to amend Sections 1 and 10 of Chapter 1331 of the Statutes of 1989, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 17, 1990. Filed with Secretary of State April 18, 1990.]

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

SECTION 1. Section 1189.105 of the Health and Safety Code is amended to read:

1189.105. Contracts for services reimbursed under this part shall be for a one-year period beginning July 1 and ending June 30 of the following year, except that contracts may be entered into after the effective date of legislation enacted during 1990 which amends this section and prior to July 1, 1990, which shall end on June 30, 1990.

SEC. 2. Section 1189.109 of the Health and Safety Code is amended to read:

1189.109. As a condition of receiving funds under this article, a clinic shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

From funds appropriated for the 1989–90 fiscal year, not more than ten million dollars ($10,000,000) may be utilized by the department for grants to clinics for modernization of clinic facilities and for expansion of primary care capacity in order to provide adequate access to clinic services.

SEC. 3. Section 1216 of the Health and Safety Code, as amended by Section 3 of Chapter 1331 of the Statutes of 1989, is amended to read:

1216. (a) Every clinic holding a license shall, on or before the 15th day of February each year, file with the Office of Statewide Health Planning and Development upon forms to be furnished by the office, a verified report showing the following information relating to the previous calendar year:

(1) Number of patients served and the number of visits.

(2) Total clinic operating expenses.

(3) Total gross patient care-related revenue.

(4) Total deductions from revenue, including bad debts, charity care, and Medicare and Medi-Cal contractual allowances.

(5) County Medical Services Program (CMSP) charges.

(6) Medically Indigent Services Program (MISP) charges.

(7) County-sponsored patient charges.

(8) State Legalization Impact Assistance Grant charges (SLIAG).

(9) Additional information as may be required by the office or the department.

(b) In the event a clinic fails to file a timely report, the

department may suspend the license of the clinic until the report is completed and filed with the office.

(c) This section shall remain operative only until July 1, 1991, and 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 1216 of the Health and Safety Code, as added by Section 3.1 of Chapter 1331 of the Statutes of 1989, is amended to read:

1216. (a) Every clinic holding a license shall, on or before the 15th day of February each year, file with the licensing and certification division of the state department and the Office of Statewide Health Planning and Development upon forms to be furnished by the state department, a verified report showing the following:

(1) Number of patients during the preceding year.

(2) Total number of administrative or other charges or fees collected from patients.

(3) Total amount from other sources necessary to make up the total operating cost of the clinic for the previous year.

(4) Total operating cost for the clinic for the previous year.

(5) Additional information as may be required by regulation of the state department.

(b) In the event a clinic fails to file a timely report, the state department may suspend the license of the clinic until such time as the report is completed and filed with the state department.

(c) This section shall become operative July 1, 1991.

SEC. 5. Section 24162 of the Health and Safety Code is amended to read:

24162. (a) There is hereby created the Tobacco Education Oversight Committee in state government which shall advise the State Department of Health Services and the State Department of Education with respect to policy development, integration, and evaluation of tobacco education programs funded under this chapter, and for development of a master plan for the future implementation of tobacco education programs.

(b) The Tobacco Education Oversight Committee shall be composed of 11 members to be appointed as follows:

(1) Two members representing volunteer health organizations dedicated to the reduction of tobacco use appointed by the Speaker of the Assembly.

(2) One member representing an organization that represents health care employees appointed by the Senate Rules Committee.

(3) One member of a professional education association, such as an association of teachers, appointed by the Senate Rules Committee.

(4) One member of a university facility with expertise in programs intended to reduce tobacco use appointed by the Governor.

(5) Two representatives of a target population group appointed by the Governor.

(6) One representative of the State Department of Health Services appointed by the Governor.

(7) One representative of the State Department of Education appointed by the Superintendent of Public Instruction.

(8) One member representing the interests of the general public appointed by the Governor.

(9) One representative of local health departments appointed by the Governor.

(c) Members shall serve for a term of two years, renewable at the option of the appointing authority. The initial appointments of members shall be for two or three years, to be drawn by random lot at the first meeting. The committee shall be staffed by the State Department of Health Services' coordinator of the program created pursuant to Section 24164.

(d) The committee shall meet as often as it deems necessary, but shall meet not less than four times per year.

(e) The members of the committee shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of the duties of the committee.

SEC. 6. Section 24164 of the Health and Safety Code is amended to read:

24164. To prevent tobacco-related diseases and diminish tobacco use, the State Department of Health Services shall do all of the following:

(a) Contract for an initial baseline survey and followup surveys of attitudes and behavior regarding tobacco use and a description of information received by the public regarding smoking and tobacco use. The department shall issue a request for proposals for the 1989–90 baseline study, evaluate proposals and select a contractor or contractors within 90 days of the effective date of this act.

(b) The department shall produce or contract for a description of programs recognized as effective in reducing smoking and tobacco use, and the identification of portions of target populations which need information regarding the hazards of tobacco use.

(c) Establish within the state department a program on tobacco use and health to promote the study of effective tobacco use interventions and behavior programs in community and other nonschool settings. By September 1, 1990, the state department shall develop a mechanism to implement a systematic and independent evaluation of the local and state programs established under this chapter. The purpose of the evaluation is to direct the most efficient allocation of resources appropriated under this chapter to accomplish the maximum prevention and reduction of tobacco use. This comprehensive evaluation shall be designed to measure the extent to which programs funded under this chapter promote the goals identified in this chapter and in Proposition 99 of the November 1988 general election. The evaluation design shall do all

of the following:

(1) Be based on sound evaluation principles and include, to the extent feasible, elements of controlled experimental methods.

(2) Monitor the overall statewide effect of health education efforts on smoking and tobacco use, and, to the extent feasible, the resulting effects on health.

(3) Monitor the effect of the programs on individual target populations identified by this chapter or designated by the state department as meriting special attention.

(4) Provide an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications.

(5) Incorporate other aspects into the evaluation which have been identified by the state department in consultation with state and local advisory groups, local lead agencies, and other interested parties.

(d) The state department shall provide a report to the Legislature on January 1, 1992, and each succeeding year on the progress of the evaluation.

(e) The state department and local lead agencies shall use the evaluation in the administration and allocation of funds awarded pursuant to this chapter in order to maximize the effectiveness of this program.

(f) Assist the State Department of Education in identifying and developing instructional materials and curricula in school-based programs, designed to enhance the prevention of and encouraging the cessation of the continuing use of, tobacco products. The materials and curricula shall address the specific needs of persons in kindergarten and grades 1 to 12, inclusive, and in adult education programs.

(g) (1) Contract with one or more qualified agencies for production and implementation of an ongoing public awareness of tobacco-related diseases by developing an information campaign using a variety of media approaches. The department shall issue a request for proposals for the 1989–90 media campaign, evaluate proposals submitted, and select a contractor or contractors within 120 days of the effective date of this section. Any media campaign funded with this part shall stress the importance of both preventing the initiation of tobacco use and quitting smoking and shall be based on professional market research and surveys necessary to determine the most effective method of diminishing tobacco use among specified target populations. Initial media efforts shall be directed to specific target populations. The contractors selected shall be provided with all available survey information resulting from ongoing programs funded under this chapter. Priority shall be given to minor children, ages 6 to 14, inclusive. The medium used shall be determined to be the most effective at reaching this targeted age group. With respect to the broadcast media, the message shall be aired at times expected to reach the priority age group. With respect

to the print media, publications to be used shall be those which appeal to the priority age group.

(2) No media campaign funded pursuant to this chapter shall feature in any manner the image or voice of any elected public official or candidate for elected office, or directly represent the views of any elected public official or candidate for elected office.

(h) Provide training, consultation, support, and continuing education to health professionals, and others interested in developing programs and services directed at preventing tobacco use and promoting smoking cessation, utilizing, when available and determined appropriate by the state department, the expertise of universities in this state and schools of public health. The training, consultation, support, and continuing education shall include advice and support in creating a smoke-free environment.

(i) Conduct an awards program to acknowledge the outstanding achievements of those communities, organizations, and groups that have fostered movement toward a smoke-free society or have reduced the consumption of tobacco.

(j) The department shall issue guidelines for local plans for education against tobacco use. The guidelines shall require local public health departments to provide services directed at preventing tobacco use and promoting smoking cessation to the target populations enumerated in Section 24161.5 and to persons under 19 years of age who no longer attend school and to youth attending school who are not served through State Department of Education funded programs. The guidelines shall require for each target population to be served a description of the services to be provided, an estimate of the number to be served, an estimate of the success rate, and a method to determine to what extent goals have been achieved. Beginning with the 1990–91 fiscal year, guidelines shall require local lead agencies to describe how local funding decisions will take into account evaluations of program effectiveness and efficiency. The guidelines shall require the submission of a budget and information on staffing configurations.

(k) Within 90 days of the effective date of this chapter, the department shall issue guidelines for fiscal year 1989–90 and within nine months of the effective date of this chapter, the department shall issue guidelines to local lead agencies on how to prepare a local plan for a comprehensive community intervention program against tobacco use.

(*l*) Provide technical assistance to local lead agencies for the development of plans required by Section 24165.5 so that the local lead agencies are able to comply with the schedule for the submission of plans specified in Section 24165.5. The technical assistance shall include, but not be limited to, the following:

(1) Developing and disseminating preventive health education program options for local communities.

(2) Providing training, consultation, and technical assistance to local health departments, local advisory committees, and service

providers.

(m) Receive and approve local plans submitted by local lead agencies and provide technical assistance and guidance as necessary to ensure the compliance of the local lead agencies with this chapter. Every effort shall be made to approve or provide a list of necessary amendments to a local plan within 30 days of receipt of the local plan. The state department may authorize a local lead agency to begin implementation of its local plan on a provisional basis, with final approval of the local plan contingent on satisfying conditions specified by the state department.

(n) Work in collaboration with the public and private sectors in implementing the activities required of the state department and provide access upon request to local plans, program statistics, and other readily available information.

(o) Provide staff, assistance, and support needed by the committee.

(p) In consultation with the committee, develop a comprehensive master plan for implementing tobacco education programs throughout the state for the prevention and cessation of tobacco use.

(q) Consult regularly with the University of California regarding trends in the frequency and the cost of treating tobacco-related diseases and the success of research efforts to reduce tobacco use and limit its adverse health effects.

(r) Establish, in consultation with the State Department of Education and county offices of education, a data collection and data management program to study effective tobacco use interventions. Under this program the department may contract for studies and evaluations in school-based and community-based programs. The department shall consult with the State Department of Education regarding the collection and evaluation of program data.

(1) The department shall require, by contract, that local lead agencies use a uniform management data and information system which will permit comparisons of workload, unit costs, and outcome measurements on a statewide basis. The department shall specify data reporting requirements for local lead agencies and their subcontractors.

(2) The department shall approve local lead agency and grantee computer software and hardware in order to ensure systemwide compatibility and capacity to expand. Departmental guidelines for local plans shall require local lead agencies to set forth their hardware and software plans and needs.

(3) The department may contract for the development or operation of a computerized management information system.

(4) The department shall consult the State Department of Education regarding computer software and hardware systems for school-based programs.

SEC. 7. Section 24164.5 is added to the Health and Safety Code, to read:

24164.5. (a) Funds appropriated to the state department for

local lead agencies for purposes of this chapter shall be allocated upon approval of the local plan in accordance with this section:

(b) No local lead agency shall be allocated less than one hundred fifty thousand dollars ($150,000).

(c) Except as provided in subdivision (b), counties not listed in subdivision (d) shall receive an allocation based on each county's proportion of the statewide population.

(d) Except as provided in subdivision (b), the balance of the funds after the allocation contained in subdivision (c) have been made, shall be allocated to the following specified counties in accordance with the following percentages:

COUNTY	ALLOCATION
Alameda	4.7427%
Contra Costa	1.8032%
Fresno	2.6855%
Kern	1.7083%
Lake	0.1826%
Los Angeles	43.8057%
Mendocino	0.2664%
Merced	0.7244%
Monterey	1.2937%
Orange	5.1382%
Placer	0.3697%
Riverside	3.1828%
Sacramento	3.2922%
San Bernardino	3.7972%
San Diego	5.9971%
San Francisco	5.3898%
San Joaquin	1.7413%
San Luis Obispo	0.8096%
San Mateo	1.4582%
Santa Barbara	0.7918%
Santa Clara	5.2450%
Santa Cruz	0.7709%
Stanislaus	1.2793%
Tulare	1.3768%
Ventura	1.5472%
Yolo	0.6004%

(e) Except as provided in subdivision (b), the allocation for those counties in which a city health department which is a local lead agency as defined by subdivision (*l*) of Section 24161 is located shall be apportioned among the local lead agencies in that county based on their jurisdiction's proportionate share of the countywide population.

(f) Reductions in allocations necessary to comply with subdivision (b) shall be distributed among the counties listed in subdivision (d) proportionately based on the table contained in subdivision (d).

(g) The state department shall use population estimates for 1989 for each county and for each city as specified in the Department of Finance E-1 Report.

SEC. 8. Section 24165.3 of the Health and Safety Code is amended to read:

24165.3. The State Department of Health Services shall expand the Child Health Disability Prevention (CHDP) Program contained in Article 3.4 (commencing with Section 320) of Chapter 2 of Division 1 as follows:

(a) Any child between birth and 90 days after entrance into the first grade, and all persons under 21 years of age who are eligible for the California Medical Assistance Program and all persons under 19 years of age whose family income is not more than 200 percent of the federal poverty level shall be eligible for services under the program in the county of which they are a resident. The department shall adopt rules and regulations specifying which age groups shall be given certain types of screening tests and recommendations for referral.

(b) The first source of referral under the program shall be the child's usual source of health care. If referral is required and no regular source of health care can be identified, the facility or provider providing health screening and evaluation services shall provide a list of three qualified sources of care, without prejudice for or against any specific source.

(c) The department shall issue protocols for an antitobacco education component of the CHDP medical examination. The protocols shall include the following: dissuading children from beginning to smoke, encouraging smoking cessation, and providing information on the health effects of tobacco use on the user, children, and nonsmokers. The protocols shall also include a focus on health promotion, disease prevention, and risk reduction, utilizing a "wellness" perspective that encourages self-esteem and positive decisionmaking techniques, and referral to an appropriate community smoking cessation program.

SEC. 9. Section 24165.5 of the Health and Safety Code is amended to read:

24165.5. (a) (1) Except as provided in paragraph (2), each county health department or city health department as provided in Section 16700 of the Welfare and Institutions Code shall be the lead local agency for its county. The local lead agency shall have the overall responsibility for the success of the programs funded pursuant to this chapter in its county.

(2) Counties contracting with the State Department of Health Services for the provision of health care services pursuant to Section 16709 of the Welfare and Institutions Code may elect to enter into an arrangement with the state department for the administration and provision of funds and services subject to this chapter in their counties. In those cases, the state department shall act as the local lead agency for that county.

(b) The local lead agency shall do all of the following:

(1) Provide, or contract for, preventive health education against tobacco services to targeted populations.

(2) Establish a coordinated information, referral, outreach, and intake system for preventive health education against tobacco services for targeted populations.

(3) Administer funds in accordance with this chapter, and department guidelines and regulations.

(4) Submit local plans to implement programs for the prevention and reduction of tobacco use and implement the local plans in accordance with the following schedule:

(A) Within three months of the receipt of guidelines issued pursuant to subdivision (j) of Section 24164 relating to education against tobacco use, develop and submit a plan in accordance with those guidelines.

(B) By January 1, 1991, submit a plan in compliance with the guidelines issued pursuant to subdivision (j) of Section 24164 relating to education against tobacco use targeted at the entire community.

(C) Within 10 days of receiving approval from the state department for a local plan, the local lead agency shall begin to implement that local plan as approved by the state department. In implementing the local plan, the local lead agency may enter into agreements with agencies or organizations which satisfy the requirements of this chapter for the receipt of funds.

(5) Establish a uniform data collection system in compliance with standards and guidelines issued by the state department, and submit audit and fiscal reports as required by the state department.

(6) Coordinate services authorized by this chapter within and between county service providers.

(7) Provide technical assistance to service providers.

(8) Review, and suggest improvements to proposed county school district antitobacco plans. Prepare a letter for the county officer of education setting forth conclusions of the review. Work closely with the county office of education to ensure effective coordination of local school and nonschool antitobacco efforts.

(9) Coordinate activities with other governmental agencies.

(c) The local plans described in paragraph (4) of subdivision (b) shall include all of the following:

(1) A description of the targeted population, including age, race, ethnicity, language, education, income levels, its status as urban or rural, transportation needs, and any other information which the local lead agency determines is relevant.

(2) Local data on smoking and tobacco use among the targeted population.

(3) Goals for how many persons of the targeted population will be reached by health education, how many will participate in a smoking prevention or cessation program, and how many will quit or not start smoking as a result.

(4) A description of the direct services to be provided under the

plan, including the services to be provided to the targeted populations enumerated in Section 24161.5 and schoolage youth who do not receive services through public school programs.

(5) Cost estimates for programs identified in the plan.

SEC. 10. Section 24166 of the Health and Safety Code is amended to read:

24166. Local lead agencies shall obtain the involvement and participation of local community organizations with special experience and expertise in community health education against tobacco usage, including representatives of high-risk populations. Local lead agencies shall include in their plan submitted pursuant to Section 24165.5 a description of how they shall fulfill this requirement. Representatives of these local groups shall assist and advise the local lead agency in all aspects of the local plan implemented pursuant to this chapter.

SEC. 10.3. Section 16709 of the Welfare and Institutions Code is amended to read:

16709. (a) The board of supervisors of a county with a population under 300,000, as determined in accordance with the 1980 decennial census, may enter into a contract with the department and the department may enter into a contract with that county under which the department agrees to administer the program responsibilities for specified health services to county residents certified eligible for those services by the county. Any county may also elect to act jointly on a regional basis with other counties in assuming the program responsibilities and claim state funds on a joint basis.

(b) For the period from January 1, 1983, to June 30, 1983, each county intending to contract with the department pursuant to this section shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than November 15, 1982. For each fiscal year thereafter, a notice adopted by the board of supervisors shall be submitted no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department.

(c) A county contracting with the department pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) The department shall establish the County Medical Services Program Account, hereinafter referred to as the program account, in the County Health Services Fund. The following amounts may be deposited in the account:

(1) Moneys allotted under subdivisions (c) and (d) of Section 16703 to each county electing to contract with the department under this section.

(2) Any interest earned upon money deposited in the account.

(3) Any other additional moneys provided by participating counties or appropriated by the Legislature to the account.

(e) Moneys in the account specified in subdivision (d) shall be used by the department for both of the following purposes:

(1) To pay for health care services provided to the county residents meeting the eligibility criteria established pursuant to subdivision (j).

(2) To defray the department's administrative costs incurred in implementing this section. Costs for administering this section shall be borne by the participating counties out of the account specified in subdivision (d).

For costs of the initial implementation of this section, which are incurred prior to signing contracts with the counties, the department is authorized to transfer up to five hundred thousand dollars ($500,000) from Item 4260-101-001(b) to Item 4260-101-001(c) to fund fiscal intermediary changes and to Item 4260-001-001 to fund additional staff. The funds shall be repaid from the account specified in subdivision (d) to the General Fund by June 30, 1984. Any change order to the Medi-Cal fiscal intermediary contract that is required to carry out this section shall be exempted from the 30-day notice to the Legislature required by the Budget Act of 1982, Section 2, Item 4260-101-001, provision 22. This change order shall be exempt from the Department of General Services review and approval. The funds shall be repaid by funds specified in subdivision (e) to the General Fund by June 30, 1984. Transfer of funds shall be subject to Department of Finance approval and legislative notification.

(f) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code. All this interest shall be available to reimburse program-covered services, or for expenditure to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) The department shall establish a separate County Medical Services Program Reserve Account, hereinafter referred to as the reserve account, in the County Health Services Fund. Six months after the end of the 1982–83 fiscal year and thereafter, six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the total allocation available for health services made pursuant to subdivisions (c) and (d) of Section 16703 for all counties electing to contract with the department under this section for the fiscal year,

the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j).

(h) Moneys in the program account and the reserve account shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) Moneys appropriated pursuant to subdivisions (c) and (d) of Section 16703 for counties electing to contract with the department pursuant to this section shall be deposited monthly as provided in subdivision (b) of Section 16706 in the program account after execution of the contract specified in subdivision (a). The Department of Finance may accelerate the deposit of the funds when necessary to meet cash-flow requirements.

(j) The state shall be at risk for any amount over and above the amounts deposited in the reserve account. As a condition of the state assuming this risk, the department may require uniform eligibility criteria and benefits to be provided which shall be mutually established by participating counties in conjunction with the department. The department in consultation with the counties may revise these eligibility criteria and benefits or alter rates of payment during the fiscal year in order to assure that sufficient funds are available for health services to county residents certified as eligible for the services. The counties and the department shall work collectively to ensure that expenditures do not exceed the funds available in the program account and may adjust eligibility and benefit criteria and payments accordingly.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force and effect unless approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) The department may pursue third-party recoveries pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 for services provided under this section.

(n) Under the program provided for in this section, the department shall reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if both of the following circumstances exist:

(1) The hospital has a contract with the state for these rates of reimbursement.

(2) The California Medical Assistance Commission determines

that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(o) This section shall become operative July 1, 1991.

SEC. 10.5. A heading is added immediately preceding Section 16900 of the Welfare and Institutions Code, to read:

PART 4.7. HEALTH CARE FOR INDIGENTS

SEC. 10.6. Section 16907 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 16910 of the Welfare and Institutions Code is amended to read:

16910. (a) (1) Funds appropriated for the purposes of this chapter shall be used for the development and implementation of county medically indigent care reporting systems which will provide data on all persons served and services provided pursuant to Section 17000.

(2) Funds appropriated for the purposes of this chapter shall be available for implementation of this section for the 1989–90 and 1990–91 fiscal years.

(b) Use of these moneys shall be limited to one-time costs for equipment purchases, system design and development, and necessary system testing and implementation costs.

(c) (1) Counties shall submit an application based upon the format required by the department which shall require, at a minimum, detail design specifications, itemized equipment needs, development timeline, and estimated costs.

(2) A county shall receive funding for the project upon the department's review and approval of its application, and shall have two years in which to expend these funds.

(d) Counties shall complete implementation of the medically indigent care reporting system by July 1, 1991.

SEC. 12. Section 16915 of the Welfare and Institutions Code is amended to read:

16915. (a) Any county receiving an allocation pursuant to this part shall, at a minimum, report to the department indigent health care program demographic, expenditure, and utilization data, in a manner that will provide an unduplicated count of users, as follows:

(1) The following patient demographic data:

(A) Age.

(B) Sex.

(C) Ethnicity.
(D) Family size.
(E) Monthly income.
(F) Source of income, according to the following categories:
(i) Disability income.
(ii) Employment.
(iii) Retirement.
(iv) General assistance.
(v) Other.
(G) Type of employment, according to the following categories:
(i) Agriculture.
(ii) Labor and production.
(iii) Professional and technical.
(iv) Service.
(v) Nonemployed.
(H) Payor source, according to the following categories:
(i) Private insurance.
(ii) Medi-Cal.
(iii) Medicare.
(iv) County program.
(v) Self-pay.
(vi) Other.
(I) ZIP code of residence.
(J) Status as a newly legalized person, including section number and dates of status.

(2) Indigent health care expenditure data, including all of the following:

(A) Inpatient hospital services, according to the following categories:
(i) County hospital.
(ii) Contract hospital.
(iii) University teaching hospital.
(iv) Other, noncontract hospital.
(v) Diagnostic category, as defined by the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

(B) Outpatient services, according to the following categories:
(i) Hospital outpatient.
(ii) Free standing community clinic.
(iii) Primary care physician.
(iv) Nonemergency services rendered in an emergency room environment.
(v) Type of service.

(C) Emergency room services, according to the following categories:
(i) Emergency services.
(ii) Emergency services which result in a hospital admission.
(iii) Emergency services, which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county

or contract hospital.

(3) Health care utilization data.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital days and discharges.

(ii) Contract hospital days and discharges.

(iii) University teaching hospital days and discharges.

(iv) Other, noncontract hospital days and discharges.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient visits.

(ii) Free standing community clinic visits.

(iii) Primary care physician visits.

(iv) Visits to a hospital emergency room for nonemergency services.

(C) Emergency room services, according to the following categories:

(i) Visits for emergency services in a county hospital.

(ii) Visits for emergency services in a contract hospital.

(iii) Visits for emergency services in a noncounty, noncontract hospital.

(iv) Visits for emergency services which result in an admission in a county hospital.

(v) Visits for emergency services which result in an admission to a contract hospital.

(vi) Visits for emergency services which result in an admission to a noncounty, noncontract hospital.

(D) Visits for emergency services which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.

(4) Geographic location of rendered services.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital.

(ii) Contract hospital.

(iii) University teaching hospital.

(iv) Other, noncontract hospital.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient.

(ii) Free standing community clinic.

(iii) Primary care physician.

(iv) Nonemergency services rendered in an emergency room environment.

(C) Emergency room services.

(5) Expenditure and utilization data for persons with acquired immune deficiency syndrome (AIDS) and AIDS-related complex.

(A) Total number of patients.

(B) Number of inpatient users.

(C) Number of discharges.

(D) Total inpatient days.

(E) Total inpatient expenditures.
(F) Number of outpatient users.
(G) Number of outpatient visits.
(H) Total outpatient expenditures.
(I) Number of emergency room users.
(J) Number of emergency room visits.
(K) Total emergency room expenditures.

(b) Counties shall report demographic, cost and utilization data on indigent health care to the department as follows:

(1) An estimated quarterly report no later than 90 days after the last day of the quarter to be reported.

(2) An actual quarterly report no later than 180 days after the last day of the quarter to be reported.

(3) An estimated annual report no later than 90 days after the last day of the year to be reported.

(4) An actual annual report no later than 180 days after the last day of the year to be reported.

(5) Reports shall be submitted on machine readable media, on 5¼ inch or 3½ inch diskette, in the format specified by the department.

SEC. 13. Section 16916 of the Welfare and Institutions Code is amended to read:

16916. The department shall disallow all costs related to the countywide cost allocation plan from expenditure reports submitted pursuant to Section 16706 in any fiscal year in which a county fails to provide the reports and data required by this chapter according to the schedule specified in subdivisions (a) and (b) of Section 16915.

SEC. 13.5. Section 16917 of the Welfare and Institutions Code is amended to read:

16917. (a) Based on data submitted by the counties and other data available to the department, the department shall, by June 30, 1990, initially, and by January 1 of each subsequent year, prepare a report on the demographics of the medically indigent population, and the cost and utilization of health care services delivered to medically indigent persons as provided directly or indirectly by counties. The report shall be written to provide useful information for the hospital administrators, county administrators, boards of supervisors, and the health policy and fiscal committees of the Legislature. The report shall include, but not be limited to, all of the following:

(1) The demography of the medically indigent population.

(2) Utilization rates of services for:

(A) Inpatient services including the total number of patient days, total discharges, and the average length of stay for the following:

(i) Persons with AIDS or AIDS-Related Complex.

(ii) Persons for whom there is not a source of payment and who are unable to pay for care received.

(iii) Persons admitted from the emergency room.

(iv) Persons below 150 percent of the federal poverty level.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total number of outpatient visits, and by the following:

(i) Persons with AIDS and Aids-Related Complex.

(ii) Persons for whom there is no source of payment, and who are unable to pay for care received.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total number of emergency room visits, and any visits which meet the following criteria:

(i) Resulting in a hospital admission.

(ii) Which did not result in a hospital admission.

(iii) For persons with AIDS and Aids-Related Complex.

(iv) For persons for whom there is no source of payment and who are unable to pay for care received.

(3) Cost of services provided for all of the following:

(A) Inpatient services including the total cost of inpatient services, average cost per patient day, and average length of stay for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons for whom there is not a source of payment and who are unable to pay for care received.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Persons admitted from the emergency room.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total costs for outpatient visits, and the average cost per outpatient visit for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons for whom there is no source of payment and who are unable to pay for care received.

(iii) Persons under 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total and average costs for the following:

(i) Emergency room visits resulting in a hospital admission.

(ii) Emergency room visits which did not result in a hospital admission.

(iii) Emergency room visits for persons with AIDS and AIDS-Related Complex.

(iv) Emergency room visits for persons for whom there is no source of payment and who are unable to pay for care received.

(4) The distribution of funds expended on health care for the medically indigent for the following:

(A) Inpatient services and for the most frequently required services, including the average length of stay and average cost per patient day.

(B) Outpatient services and for the most frequently used services.

(C) Per capita net county contribution, and the per capita county contribution as a percent of per capita county income.

(5) County revenue for health care services, by category, for the most recent five years.

(A) State assistance under the following:

(i) AB 8 inpatient and outpatient, under Part 4.5 (commencing with Section 16700).

(ii) Medi-Cal.

(iii) Medically Indigent Services Program.

(iv) California Healthcare for Indigents Program.

(v) County Medical Services Program.

(vi) Other state assistance.

(B) Federal assistance under the following:

(i) Medicare.

(ii) Federal State Legalization Impact Assistance Grants.

(iii) Other federal assistance.

(C) County assistance under the following:

(i) Enterprise funds.

(ii) County contributions.

(b) The format of the report shall include tables and figures with narrative interpretation and analysis of the data presented. The data shall be presented in a manner which provides for meaningful comparisons between counties and facilities, and displays changes in individual county and facility data from period to period.

(c) The department shall, in addition to the annual report, be responsible for the preparation of special indepth reports which evaluate the efficiency, effectiveness, and adequacy of the county health delivery system. In this capacity the department shall, from time to time issue special indepth reports which provide information for health policymakers about county health system problems and trends. At least annually the department shall consult with the Legislature, counties, and other interested groups about the subject matter for future special reports.

SEC. 14. Section 16920 of the Welfare and Institutions Code is amended to read:

16920. (a) It is the intention of the Legislature to appropriate a portion of the 1988–89 fiscal year one-time revenues from the Hospital Services Account for distribution to each county and noncounty hospital which provides uncompensated care to unsponsored patients, with payments based upon the proportion of each hospital's share of the 1988 calendar year statewide total of uncompensated care rendered to unsponsored patients.

(b) It is the intention of the Legislature to partially and proportionately compensate each hospital which provides care to unsponsored patients and to provide an economic incentive for all hospitals to provide, maintain, and enhance access to care.

(c) For purposes of this section, "uncompensated care charges" means the sum of the charges related to patients falling within charity care and 50 percent of bad debts, as reported quarterly to the office pursuant to Section 443.32 of the Health and Safety Code. The office shall use the data as published by the office for each quarter

of 1988.

(d) As used in this section, "uncompensated care costs" means that amount calculated by applying an overall hospital cost-to-charge ratio, calculated by dividing gross operating expenses by gross inpatient and outpatient revenue, as reported quarterly to the office, to uncompensated charges.

SEC. 15. Section 16922 of the Welfare and Institutions Code is amended to read:

16922. (a) In order to determine the allocation for each eligible hospital of the amount appropriated for the purposes of this chapter, the office shall do all of the following:

(1) Compute the total uncompensated care costs for each eligible hospital.

(2) Compute the total uncompensated care costs for all eligible hospitals.

(3) Divide each hospital's uncompensated care costs as computed in paragraph (1) by the total uncompensated care costs as computed in paragraph (2).

(b) The result shall be multiplied by the total funds specified for hospital payments pursuant to Section 16921 to determine each hospital's payment for uncompensated care. That amount shall be allocated in one lump sum to each hospital by the Controller pursuant to subdivision (a).

SEC. 15.5. Section 16923 of the Welfare and Institutions Code is amended to read:

16923. The office shall do all of the following:

(a) Review and process the quarterly financial and utilization data report and calculate the distribution to be made within 30 days after October 2, 1989.

(b) Make the calculations available to the Controller within 40 days after October 2, 1989.

(c) Incorporate the quarterly financial and utilization data reports into the field audit function currently utilized by the office.

(d) Develop procedures to recover funds determined to have been spent in a manner inconsistent with this chapter and Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code.

SEC. 16. Section 16930 of the Welfare and Institutions Code is amended to read:

16930. Funds appropriated for the purpose of this section shall be used to enhance and maintain rural health services provided by counties, hospitals, physicians, and other service providers to persons who are unable to pay for their care and for whom services are not covered in whole or in part by any public or private payor.

(a) The department shall allocate to each CMSP county moneys derived from the Hospital Services Account as follows:

(1) The combined total of hospital uncompensated care costs for all county and noncounty hospitals in each CMSP county shall be calculated using the definitions, procedures, and data elements

specified in Chapter 3 (commencing with Section 16920).

(2) Each county's share shall be determined by the office, using 1988 calendar year data, as adjusted by the office, existing on the statewide file on September 1, 1989. The office shall determine each county's share based upon that county's total hospital uncompensated care costs divided by the total hospital uncompensated care costs of all CMSP counties. The product shall be multiplied by the amount appropriated from the Hospital Services Account for purposes of this chapter. The result shall be that county's allocation of the total amount available.

(3) The amount determined in paragraph (2) for each county shall be divided and distributed to county and noncounty hospitals within each CMSP county according to the methodology and requirements of Section 16946.

(b) The department shall distribute those moneys derived from the Physician Services Account and the Unallocated Account to CMSP counties based upon the percentages obtained as a result of dividing each individual CMSP county's population by the total population of all CMSP counties as reported in the most recent annual Department of Finance Research Unit Report E-1.

(1) Counties shall use moneys from the Unallocated Account to expand emergency medical transportation or public health services or to enhance other rural health care services.

(2) Counties shall distribute moneys from the Physician Services Account to reimburse or support physicians for medically necessary emergency, obstetric, and pediatric services provided by groups of, or individual, physicians, to the extent that they are not reimbursed by any other public or private party.

(c) As a condition of receiving funds under this section, a county shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 of the Health and Safety Code, upon referral by a child health and disability prevention program provider. This section shall not apply to any child eligible to receive care with no share of cost under the Medi-Cal program or who is covered by another publicly funded program or for whom such services are covered or will be paid by any other responsible party. A county may require that hospitals, physicians, and other providers receiving funds appropriated pursuant to this part participate in complying with this subdivision.

(d) For fiscal year 1989–90, each county intending to contract with the department pursuant to this section for the administration of Physician Account moneys shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than November 15, 1989. For each fiscal year thereafter a notice adopted by the board of supervisors shall be submitted no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect, in accordance with procedures

established by the department. As a condition of contracting with the department, the county shall comply with departmental requests for uniform program standards, including, but not limited to, eligibility levels, payment of claims, and deposit or transfer of funds administered.

(e) (1) Each county requesting funds pursuant to this section shall submit for approval an application for initial funding and a description of the proposed use and expenditure of the moneys, as a component of their county health services plan and budget submitted under Section 16700.

(2) The department shall review each county's application and proposed use of funds for compliance with the provisions of this section.

(f) The department shall make initial monthly payments upon approval of the county's request for funds containing assurances that the county will comply with this chapter and other applicable provisions of this part. Payments beyond April 1, 1990, and payments beyond February 1 of each subsequent fiscal year shall be contingent upon the signing of an agreement between the board of supervisors and the department.

(g) Each county shall submit a report of estimated and actual expenditures of moneys as part of the submissions required according to the procedures established by the department under Section 16706.

(h) The department shall review these reports and recoup unspent moneys, or any expenditures disallowed or not in compliance under this section or Section 16706.

(i) The department shall withhold, in part or in whole, payment of rural health services funds to a CMSP county, until the reports specified in this subdivision have been submitted to the department in the form and according to the timelines established by the department.

(j) As a condition of receiving allocations pursuant to this section, each county shall meet the requirements specified in Articles 7 (commencing with Section 16990) and 10 (commencing with Section 16995) of Chapter 5.

SEC. 17. Article 2 (commencing with Section 16943) is added to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code, to read:

Article 2. Hospital Services

16943. (a) Of those allocations made pursuant to Section 16941 for the 1989–90 fiscal year, 59.5 percent shall be used to support uncompensated services provided by county and noncounty hospitals.

(b) For allocations under Section 16941 for the 1990–91 fiscal year, the department shall establish that percentage of the total 1990–91 fiscal year appropriation to the CHIP Account which derives from

the Hospital Services Account of the fund.

(c) The percentages established in subdivisions (a) and (b), when applied to the amount of each MISP county's annual allocation pursuant to Section 16941, constitute the minimum amount of the allocation which is reserved for payment or support of uncompensated services provided by hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(d) The amount of funds calculated in subdivision (c) shall be referred to as the hospital services funding portion of each county's allocation made pursuant to Section 16941.

SEC. 18. Section 16945 of the Welfare and Institutions Code is repealed.

SEC. 19. Section 16946 of the Welfare and Institutions Code is amended to read:

16946. (a) The hospital services account portion of each county's allocation pursuant to Section 16941 shall be divided into two amounts by:

(1) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (5) of subdivision (c) of Section 16945.

(2) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (6) of subdivision (c) of Section 16945.

(b) The amount of each county's Hospital Services Account funding portion calculated in paragraph (1) of subdivision (a) shall be used for payment or support of services provided by noncounty hospitals. This amount for each county shall be further divided into two equal parts, as follows:

(1) The first part shall be allocated to each noncounty hospital within a MISP county in amounts determined by multiplying the percentages specified in paragraph (7) of subdivision (c) of Section 16945 by the amount of the first part.

(2) The remaining 50 percent of the funds from the Hospital Services Account shall be distributed by the county to hospitals, including those under contract with the county, to maintain access to emergency care and to purchase other necessary hospital services for unsponsored or medically indigent persons. Prior to distributing funds to hospitals, each county shall consult with the hospitals and consider the historic and projected patterns of care provided by hospitals to unsponsored patients, geographic catchment areas within both the urban and nonurban areas of the county, unique costs associated with treating disproportionate numbers of severely ill indigent patients, and disproportionate losses sustained by hospitals in the provision of care to unsponsored and medically indigent patients.

(c) The amount of each county's Hospital Services Account funding portion calculated in paragraph (2) of subdivision (a) may be used for the payment or support of services provided in county hospitals or noncounty hospitals as determined by each MISP county.

(d) As a condition of receiving funds under this section, each MISP county shall require each county and noncounty hospital to do all of the following:

(1) Maintain the same number and classification of emergency room permits and trauma facility designations as existed on October 2, 1989.

(2) Provide data and reports on the use and expenditure of all funds received. This information shall be in a form and according to procedures specified by the county and the department.

(3) Assure that funds received pursuant to this section are used only for uncompensated care services for persons eligible under this part.

(e) In the event a county or noncounty hospital does not comply with the provisions of this section, the county shall recover any funds received and may deny further payments required by this section until the hospital demonstrates compliance.

SEC. 20. Section 16950 of the Welfare and Institutions Code is amended to read:

16950. (a) Twelve and two tenths percent, or that portion of the CHIP Account derived from the Physician Services Account in a fiscal year, of each county's allocation under Section 16941 shall be used for the support of or payment for uncompensated physician services.

(b) Up to 50 percent of the moneys provided pursuant to subdivision (a) may be used by counties to pay for new contracts with private physicians for provision of emergency, obstetric, and pediatric services in facilities which are not owned or operated by a county, and where access to those services has been severely restricted. The contracts may provide for partial or full reimbursement for physician services provided to patients described in subdivision (f) of Section 16952, and shall be subject to Sections 16957 and 16958.

(c) At least 50 percent of the moneys provided pursuant to subdivision (a) shall be transferred to the county Physician Services Account established in accordance with Section 16952 and administered in accordance with Article 3.5 (commencing with Section 16951).

SEC. 21. Section 16950.1 of the Welfare and Institutions Code is amended to read:

16950.1. The twenty-four million nine hundred fifteen thousand dollars ($24,915,000) appropriated by Chapter 1331 of the Statutes of 1989 and the act amending this section in the 1990 portion of the 1989–90 Regular Session of the Legislature, to be allocated to counties for uncompensated physician services shall be allocated to MISP counties in accordance with percentages established in Section 16941. These funds shall be administered in accordance with subdivisions (b) and (c) of Section 16950.

SEC. 22. Section 16952 of the Welfare and Institutions Code is amended to read:

16952. (a) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.

(b) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.

No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county physician services account shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16709, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account shall be reimbursed by the account, up to 10 percent of the amount of the account.

(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer this article, or the department, in the case of those CSMP counties electing to have the state administer this article on their behalf.

(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred due to patients who are unable to pay for services rendered, and who are not eligible for Medi-Cal, Medicare, private insurance, or any other federal or state program which provides reimbursement for physician services.

(g) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services.

(h) No physician shall be reimbursed for more than 50 percent of the losses submitted to the administering agency.

SEC. 23. Section 16954 of the Welfare and Institutions Code is amended to read:

16954. As a condition of having the state administer a CSMP county's Physician Services Account, each CSMP county shall do all of the following:

(a) Contract with the department to administer its county physician services account.

(b) Transfer all funds appropriated to the county for purposes of the county Physician Services Account to the department under such conditions as the department may require.

(c) Agree to uniform operating and reimbursement policies regarding the physician services account which shall be mutually established by the participating counties in conjunction with the department.

SEC. 24. Section 16956 of the Welfare and Institutions Code is amended to read:

16956. (a) The administering agency shall establish procedures and time schedules for submission and processing of reimbursement claims submitted by physicians in accordance with this chapter.

(b) Schedules for payment established in accordance with this section shall provide for disbursement of the funds available in the account periodically and at least annually to all physicians who have submitted claims containing accurate and complete data for payment by the dates established by the administering agency.

(c) Claims which are not supported by records may be denied by the administering agency, and any reimbursement paid in accordance with this chapter to any physician which is not supported by records shall be repaid to the administering agency, and shall be a claim against the physician.

(d) Any physician who submits any claim for reimbursement under this chapter which is inaccurate or which is not supported by records may be excluded from reimbursement of future claims under this chapter.

(e) A listing of patient names shall accompany a physician's claim, and those names shall be given full confidentiality protections by the administering agency.

SEC. 24.5. Section 16961 is added to the Welfare and Institutions Code, to read:

16961. Services provided pursuant to this article include only those health care services specified in Sections 14021 and 14132 which are provided to patients who are unable to pay for their treatment and for whom payment will not be made in whole or in part through private coverage or by any program funded by the federal government.

SEC. 25. Section 16970 of the Welfare and Institutions Code is amended to read:

16970. As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program or is covered under another publicly funded program, or the services are payable under private insurance coverage. A county may require that hospitals, physicians, and other providers receiving funds appropriated pursuant to this part participate in complying with this section.

SEC. 25.3. Section 16980 of the Welfare and Institutions Code is amended to read:

16980. (a) The department shall no later than January 1, 1990, make monthly payments of county allocations made pursuant to Section 16941 upon application of the county assuring that it will

comply with the provisions of this part. Payments beyond April 1 of the 1989–90 fiscal year and February 1 of each subsequent fiscal year shall be contingent upon the signing of an agreement between the board of supervisors and the department. Funding made available pursuant to this part shall be included within the agreement required by Section 16704.

(b) Each county shall include information on programs and services which will receive funding under this chapter as part of its annual plan and budget submitted pursuant to Section 16700. The department shall review and approve this information for compliance with this part.

SEC. 25.5. Section 16990 of the Welfare and Institutions Code is amended to read:

16990. (a) Any county receiving an allocation pursuant to this chapter shall, at a minimum, maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988–89 fiscal year, provided that this amount shall be adjusted annually by the amount of any increase in county funding required by subdivision (b) of Section 16704. For purposes of this article, each county's level of financial effort shall be determined by either the 1988–89 county health services plan and budget required pursuant to Section 16700 or by the report of estimated actual expenditures, revenues, and net county costs for the 1988–89 fiscal year, required pursuant to Section 16706 after review and adjustment by the department. The level of financial effort required for compliance with this section for future fiscal years shall be based upon the plan and budget submitted for the fiscal year by the county pursuant to Section 16700 and this chapter.

(b) For purposes of this section, if a county desires to use any of its allocation pursuant to Section 16941 for programs and costs not reported as part of the plan and budget required by Section 16700, the county, as a condition of using its allocation for these purposes, must maintain an amount of county funding for those programs and costs at least equal to the 1988–89 fiscal year levels.

(c) Moneys received by a county under this chapter shall be accounted for as revenue in the plan and budget which is required pursuant to Section 16700 and shall not be used as county matching funds for purposes of Sections 16703 and 16707, or any other program requiring a county match.

SEC. 26. Section 16991 of the Welfare and Institutions Code is amended to read:

16991. (a) The sum of twenty-six million five hundred ninety-seven thousand dollars ($26,597,000) is appropriated from the General Fund to the department, for the 1989–90 fiscal year, to be allocated to each county receiving funds pursuant to subdivision (d) of Section 16703. Each county's maximum allocation under this section shall be determined as follows:

(1) The sum of one hundred twenty-six million five hundred

ninety-seven thousand dollars ($126,597,000) shall be multiplied by each county's percentage determined by subdivision (d) of Section 16703.

(2) For each county, the percentage of persons newly legalized under the Immigration Reform and Control Act of 1986 (IRCA) who are residents of that county divided by the total of all IRCA newly legalized persons for all counties eligible to receive funds pursuant to this section shall be determined. The department shall utilize the most recent data from the federal Department of Health and Human Services for this purpose.

(3) Each county's percentage determined in paragraph (2) shall then be multiplied by one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000).

(4) For each county, the amount determined in paragraph (3) shall be subtracted from the amount determined in paragraph (1). If the resulting amount is negative, no funds shall be allocated to that county. If the resulting amount is positive, that amount shall be the county's maximum allocation and shall be made available to that county in the same manner and according to the same procedures and requirements that govern funds made available pursuant to subdivision (d) of Section 16703, except that the department shall make the payment of each county's allocation as determined above in one lump sum on or before January 1, 1990.

(5) If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988–89 the state shall reimburse the county for the amount of the difference. For the 1990–91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from State Legalization Impact Assistance Grant funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988–89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement.

(6) The calculations specified in paragraph (5) shall be performed after the end of the fiscal year after all claims from a county for that fiscal year have been adjudicated. The calculations shall be performed within 90 days of the date that the final claim for a fiscal year is submitted by the county.

(7) If a county submits additional claims for services provided in a specific year and has received funds under paragraph (5) above for that year, the department shall reimburse the General Fund up to amount received under paragraph (5) from federal State Legalization Impact Assistance Grant funds otherwise payable to the

county based upon the additional claims.

(b) In determining if a county has made reasonable efforts to document and claim federal State Legalization Impact Assistance Grant funding, the department may require a county to utilize statistically valid sampling methods or to utilize the federal Cost Documentation System for Social Security matching.

(c) To the extent allowed by federal law, the department shall make quarterly prospective payments of federal State Legalization Impact Assistance Grant funds to counties for the 1988–89, 1989–90, and 1990–91 fiscal years SLIAG claims for indigent health services. Prospective payments shall not exceed the total amount of a county's 1987–88 fiscal year claim, as adjusted by the department, on an annualized basis. As a condition of receiving a prospective payment, the county shall certify that it intends to submit claims exceeding the amount of the payments. A county shall be liable for any overpayments or federal sanctions in the event of an excess drawdown of federal State Legalization Impact Assistance Grant funds.

(d) A county may apply for, and the Department of Finance may approve, a state General Fund loan in the 1989–90 fiscal year to meet anticipated shortfalls in its Medically Indigent Services Program. In order to receive funds, the county shall demonstrate to the Department of Finance that the county will not submit 1989–90 fiscal year claims totaling more than 50 percent of its estimated SLIAG amount as determined by its percentage of the newly legalized population multiplied by the amount of total SLIAG funds available. The county shall also demonstrate that the county has made reasonable efforts to document and claim federal SLIAG funds as defined in paragraph (7) of subdivision (a). In no event shall the loan amount exceed 50 percent of a county's percentage of the newly legalized population multiplied by the amount of total SLIAG funds available, or exceed the amount to which the county is entitled pursuant to paragraph (5) of subdivision (a). The loan shall be issued to the county in two equal installments on January 1, 1990 and April 1, 1990. The loan balance shall be credited in the amount of funds provided pursuant to paragraph (5) of subdivision (a) upon receipt of the funds. Repayment shall include interest calculated at the rate earned by the Pooled Money Investment Account.

SEC. 27. Section 16994 of the Welfare and Institutions Code is amended to read:

16994. (a) (1) Ninety percent of the amount appropriated for the purposes of this article shall be allocated to MISP counties according to the percentages specified in this chapter.

(2) The remaining 10 percent shall be allocated to CMSP counties, according to the following procedures:

(A) Calculate the sum of uncompensated care costs for all hospitals in each CMSP county.

(B) Divide the sum of subparagraph (A) by the sum of uncompensated care costs for all hospitals within all CMSP counties.

(C) Multiply the quotient derived from the application of subparagraph (B) by the total amount appropriated pursuant to paragraph (2) for the purposes of this article.

(b) Funding utilized under this section shall be for capital expenditure and equipment acquisition purposes associated with the direct delivery of patient care. In addition, each county may utilize up to two million dollars ($2,000,000) or 25 percent of its allocation under this section, whichever is greater, on a one-time basis only in the 1989–90 fiscal year to restore county special fund balances to their July 1, 1988, levels. Funds from this section may be allocated for this purpose only in circumstances where the county board of supervisors transferred moneys from those special funds to the county general fund or from the county general fund to health facilities enterprise funds in order to support indigent health care services in the 1988–89 fiscal year. All capital outlay moneys under this section utilized to restore county special fund or general fund balances shall be appropriated for capital expenditures and equipment acquisition associated with the direct delivery of patient care in the 1990–91 fiscal year.

(c) Except as provided in subdivision (b), no less than 67 percent of the moneys a county receives under this section shall be allocated to county acute care hospitals, University of California hospitals, or any private hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code, which operates an emergency room or a burn unit or outpatient clinic. The moneys may be expended for facility repair, renovation, remodeling, expansion, or acquisition or equipment needs.

(d) Except as provided in subdivision (b), up to 33 percent of the moneys a county receives under this section may be expended for capital improvement and equipment needs for outpatient clinics, or mental health facilities, or public health clinics or licensed community and free clinics or clinics operated by tribes or tribal organizations.

(e) Noncounty hospitals shall utilize funds received under this section only for capital expenditures related to emergency room, burn unit, and outpatient clinics.

(f) County hospitals may utilize funds received under this section for expenditures related to inpatient, outpatient, emergency room, or burn unit services.

(g) Funds utilized from this section shall be for capital expenditure purposes associated with the direct treatment of patients.

(h) Each county receiving moneys under this section shall submit a plan for the use of these moneys to the department for review and approval prior to making any commitment for the expenditure of such funds. Any subsequent revision to the county's capital improvements plan shall also be submitted for review and approval. The department's approval authority shall be limited to a determination of whether the county's plan conforms to statutory

provisions as contained in this section and part. The department may establish necessary procedures and forms for the submission, review, and approval of county plans and reports.

(i) The expenditure of moneys authorized by this section may be made without regard to fiscal year provided that moneys authorized by this section shall be available for encumbrance for three fiscal years and for expenditure for five fiscal years, including the 1989–90 fiscal year. At the end of five years any moneys which have not been expended shall be recouped by the department.

(j) Counties shall submit an annual report, in accordance with guidelines provided by the department, detailing the use and actual expenditure of moneys received pursuant to this section. The department shall recoup the amount of any county expenditure which does not conform to the provisions of this section.

(k) Funds provided under this section shall be added to the allocations and payments to MISP counties pursuant to this chapter and to CMSP counties pursuant to Chapter 4 (commencing with Section 16930).

(*l*) For the purposes of this section, "capital expenditures" means expenditures for fixed assets, major movable equipment, fixtures, structures, and improvements as defined for counties in "Accounting Standards and Procedures for Counties" issued by the Office of the Controller, Division of Local Government, Fiscal Affairs and for other providers as defined by generally accepted standards of accounting practices.

SEC. 28. Section 16996 of the Welfare and Institutions Code is amended to read:

16996. For purposes of this chapter, "children's hospital" means the following facilities:

(a) Valley Children's Hospital, Fresno.

(b) Earl and Loraine Miller Children's Hospital Medical Center of the Memorial Hospital of Long Beach, Long Beach.

(c) Children's Hospital of Los Angeles, Los Angeles.

(d) Children's Hospital Medical Center of Northern California, Oakland.

(e) Children's Hospital of Orange County, Orange.

(f) Children's Hospital of Stanford, Palo Alto.

(g) Children's Hospital and Health Center, San Diego.

SEC. 29. Section 16996.1 of the Welfare and Institutions Code is amended to read:

16996.1. Funds appropriated to the department for the purposes of this chapter shall be distributed as follows:

(a) The department shall compute the annual amount of financial assistance available to each eligible children's hospital based upon the ratio of each hospital's uncompensated care costs to the total uncompensated care costs of all children's hospitals in the state.

(b) The department shall enter into a contract with each children's hospital receiving funding pursuant to this section and may make quarterly payments provided that the hospital has

complied with subdivision (a) of Section 16996.2.

(c) Each children's hospital shall, as a condition of receiving financial assistance under this section, submit reports to the department, as required by the department, describing its use of funds received pursuant to this section.

SEC. 30. Section 16996.2 of the Welfare and Institutions Code is amended to read:

16996.2. (a) As a condition of receiving funds under Section 16996.1, a hospital shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 of the Health and Safety Code upon referral by Child Health and Disability Prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) The department shall report to the Legislature on the distribution and use of funds provided to hospitals under Section 16996.1 on an annual basis.

SEC. 31. The heading of Chapter 8 (commencing with Section 16997.1) of Part 4.7 of Division 9 of the Welfare and Institutions Code is amended and renumbered to read:

CHAPTER 7. OPERATION OF PART

SEC. 32. Section 1 of Chapter 1331 of the Statutes of 1989 is amended to read:

Section 1. (a) It is the intent of the Legislature to comply with the wishes of California voters in appropriating revenues from the Cigarette and Tobacco Products Surtax Fund. To that end, it is the intent of the Legislature that funds from the Cigarette and Tobacco Products Surtax Fund be used only for the following purposes:

(1) Programs for the prevention and reduction of tobacco use, primarily among children through school and community health education programs.

(2) Payment to private and public hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code for the treatment of hospital patients who are unable to pay for that treatment and for whom payment for hospital services will not be made through private coverage or by any program funded in whole or in part by the federal government.

(3) Payment to physicians for services to patients who are unable to pay for those services, and for whom payment for physician services will not be made through private coverage or by any program funded in whole or in part by the federal government.

(b) It is the further intent of the Legislature in enacting these programs to achieve the following goals:

(1) To maintain the integrity of existing public and private

systems of delivering care to uninsured persons unable to pay for their own care.

(2) To improve the health status of low-income children and pregnant women without any other available health coverage.

(3) To improve reimbursement of public and private providers for emergency care to uninsured persons unable to pay for care and to reduce the volume of uncompensated care in those facilities with the heaviest burden of uncompensated emergency services.

(4) To improve access to primary care and reduce reliance on emergency rooms by the medically indigent.

(5) To use Proposition 99 funds to supplement existing state and county spending programs in order to improve access to appropriate health care for the uninsured.

(6) To provide adequate funding for county health services in order to ensure basic minimum coverage of medically necessary health services to low income uninsured Californians.

SEC. 33. Section 10 of Chapter 1331 of the Statutes of 1989 is amended to read:

Sec. 10. The sum of one billion two hundred twelve million nine hundred sixty thousand dollars ($1,212,960,000) is hereby appropriated from the Cigarette and Tobacco Products Surtax Fund, according to the following schedule:

(a) Seven hundred two million five hundred six thousand dollars ($702,506,000) for the 1989–90 fiscal year, as follows:

(1) Two hundred ninety-eight million twenty-eight thousand dollars ($298,028,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) Fifty million dollars ($50,000,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Thirty-seven million sixteen thousand dollars ($37,016,000) for allocation to hospitals for uncompensated hospital services, pursuant to Chapter 3 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Nine hundred seventy thousand dollars ($970,000) for state administration.

(D) Two million dollars ($2,000,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(E) Two million nine hundred eighty-eight thousand dollars ($2,988,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Four million nine hundred eighty thousand dollars ($4,980,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Two hundred million seventy-four thousand dollars ($200,074,000) for allocation to counties participating in the

California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two hundred twenty-five thousand dollars ($225,000) from the Hospital Services Account to the Office of Statewide Health Planning and Development, for state administration.

(3) Eighty-five million two hundred fifteen thousand dollars ($85,215,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Twenty-four million nine hundred fifteen thousand dollars ($24,915,000) for allocation to counties for uncompensated physician services, pursuant to Section 16950.1 of the Welfare and Institutions Code.

(B) Four million nine hundred thirty thousand dollars ($4,930,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(C) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(D) One million nine hundred ninety-five thousand dollars ($1,995,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(E) One million nine hundred ninety-two thousand dollars ($1,992,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(F) Forty-one million ninety-nine thousand dollars ($41,099,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(G) Three hundred thirty-seven thousand dollars ($337,000) for state administration.

(4) One hundred sixty-eight million thirty-eight thousand dollars ($168,038,000) from the Unallocated Account to the State Department of Health Services, as follows:

(A) Thirty-two million two hundred eighty-eight thousand dollars ($32,288,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Ten million dollars ($10,000,000) for county data systems, pursuant to Chapter 2 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Fourteen million seven hundred eighty-nine thousand dollars ($14,789,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(D) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(E) One million nine hundred eighty-nine thousand dollars

($1,989,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Two million nine hundred eighty-two thousand dollars ($2,982,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Ninety-five million three hundred nineteen thousand dollars ($95,319,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(H) Seven hundred twenty-four thousand dollars ($724,000) for state administration.

(5) One hundred fifteen million dollars ($115,000,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) Forty-one million five hundred ninety-four thousand dollars ($41,594,000) for establishment of competitive grants, pursuant to this act.

(B) One million four hundred sixty-two thousand dollars ($1,462,000) for state administration.

(C) Two million three hundred four thousand dollars ($2,304,000) for operation of the Tobacco Education Oversight Committee created pursuant to Section 24162 of the Health and Safety Code and the contract for a systematic and independent evaluation conducted pursuant to Section 24164 of the Health and Safety Code, and development of necessary data collection and management.

(D) Fourteen million three hundred forty-nine thousand dollars ($14,349,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(E) Nineteen million six hundred ninety-six thousand dollars ($19,696,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(F) Thirty-five million five hundred ninety-five thousand dollars ($35,595,000) for allocation to local lead agencies upon the department's approval of local plan pursuant to Section 24164 of the Health and Safety Code.

(6) Thirty-six million dollars ($36,000,000) from the Health Education Account to the State Department of Education for purposes of implementing its duties under Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code, as follows:

(A) (i) Nine hundred thousand dollars ($900,000) for state administration.

(ii) The State Department of Education shall notify the chairperson of the committees of each house which considers appropriations and the Chairperson of the Joint Legislative Budget

Committee not less than 30 days prior to implementation of this paragraph pursuant to Section 28 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989.

(B) Two million five hundred thousand dollars ($2,500,000) for county offices of education administration, to be allocated pursuant to subdivision (o) of Section 24167 of the Health and Safety Code.

(C) Thirty-two million six hundred thousand dollars ($32,600,000) for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

(b) Five hundred ten million four hundred fifty-four thousand dollars ($510,454,000) for the 1990–91 fiscal year, as follows:

(1) One hundred ninety-eight million four hundred eighty-seven thousand dollars ($198,487,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) One million eight hundred ninety-six thousand dollars ($1,896,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Two million eight hundred thirty-one thousand dollars ($2,831,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(C) Four million nine hundred sixty-one thousand dollars ($4,961,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(D) One hundred eighty-eight million seven hundred ninety-nine thousand dollars ($188,799,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Fifty-six million seven hundred twenty-eight thousand dollars ($56,728,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Four million five hundred eighty thousand dollars ($4,580,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred sixty-six thousand dollars ($1,866,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(D) One million nine hundred eighty-six thousand dollars ($1,986,000) for transfer to the County Medical Services Program

Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Thirty-eight million four hundred two thousand dollars ($38,402,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(3) One hundred seventeen million forty-eight thousand dollars ($117,048,000) from the Unallocated Account, to the State Department of Health Services as follows:

(A) Thirteen million six hundred eighty-five thousand dollars ($13,685,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred forty-five thousand dollars ($1,845,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(D) Two million nine hundred seventy-one thousand dollars ($2,971,000) for transfer to the County Medical Services Account pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Eighty-eight million six hundred fifty-three thousand dollars ($88,653,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(4) Twenty-five million dollars ($25,000,000) from the Unallocated Account to the State Department of Mental Health for local mental health services.

(5) Eighty million five hundred ninety-one thousand dollars ($80,591,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) Eleven million four hundred twenty-nine thousand dollars ($11,429,000) for competitive grants, pursuant to this act.

(B) Fourteen million two hundred eighty-eight thousand dollars ($14,288,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(C) Nineteen million four hundred forty-five thousand dollars ($19,445,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(D) Thirty-five million four hundred twenty-nine thousand dollars ($35,429,000) for allocation to local lead agencies upon the department's approval of local plan pursuant to Section 24164 of the Health and Safety Code.

(6) Thirty-two million six hundred thousand dollars ($32,600,000) from the Health Education Account to the State Department of Education for local assistance. Ninety percent of these funds shall be

allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

SEC. 34. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the state to fully implement the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) to provide increased funding for specified programs to enhance the health of Californians and to provide for compensation to providers of health care to encourage them to increase their level of service to those persons unable to pay for those services, at the earliest possible time, and, in order to prevent avoidable injury to the public caused by the use of tobacco products, it is necessary that this act take effect immediately.

CHAPTER 51

An act to add Section 49412 to the Education Code, to amend Sections 443.32, 1189.109, 1216, 24162, 24164, 24165.3, 24165.5 of, to add Sections 1189.110, 24165.2, and 24169.7 to, to amend and renumber Sections 1189.110, 1189.111, and 24169.7 of, and to repeal Sections 443.32 and 1216 of, the Health and Safety Code, to amend Section 12739 of the Insurance Code, to amend Sections 16709.5, 16917, 16946, 16950, 16952, 16955, 16958, 16960, 16961, 16970, 16980, 16991, 16994, and 16996.2 of, to add Sections 16905.5, 16907.5, 16908.5, 16918, 16947, 16948, 16949, 16953.5, 16955.1, and 16961 to, to repeal Section 16907 of, and to add Chapter 1.5 (commencing with Section 16909) to Part 4.7 of, to repeal and add Chapter 4 (commencing with Section 16930) of Part 4.7 of, Division 9 of, the Welfare and Institutions Code, and to amend Sections 10 and 15 of Chapter 1331 of the Statutes of 1989, relating to health services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 17, 1990. Filed with Secretary of State April 18, 1990]

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

SECTION 1. Section 49412 is added to the Education Code, to read:

49412. (a) Except as provided in subdivision (b), counties and school districts, in the utilization of funds allocated pursuant to any appropriation from any account in the Cigarette and Tobacco Products Surtax Fund for the provision of health care to school populations, shall give initial consideration to the use of those of credentialed school nurses and school nurse practitioners employed

by the school districts, to the extent those services are within the scope of practice of those nurses, and to the extent these purposes are consistent with the Tobacco Tax and Health Protection Act of 1988 and Chapter 1331 of the Statutes of 1989.

(b) Subdivision (a) does not apply to funds appropriated from the Health Education Account in the Cigarette and Tobacco Products Surtax Fund, except for purposes of providing health screenings through the Child Health and Disability Prevention Screening program.

(c) Any county which, after the initial consideration regarding the utilization of funds, as required by subdivision (a), elects to utilize funds to which subdivisions (a) and (b) apply for the credentialed school nurses and school nurse practitioners employed by school districts may allocate those funds to the school districts for those purposes.

SEC. 1.5. Section 443.32 of the Health and Safety Code, as amended by Section 1.1 of Chapter 1331 of the Statutes of 1989, is amended to read:

443.32. Commencing with the first calendar quarter of 1986, and ending with the second quarter of 1991, summary financial and utilization data shall be reported to the office by each hospital within 45 days of the end of every calendar quarter. Adjusted reports reflecting changes as a result of audited financial statements may be filed within four months of the close of the hospital's fiscal or calendar year. The quarterly summary financial and utilization data shall conform to the uniform description of accounts as contained in the Accounting and Reporting Manual for California Hospitals and shall include all of the following:

(a) Number of licensed beds.

(b) Average number of available beds.

(c) Average number of staffed beds.

(d) Number of discharges.

(e) Number of inpatient days.

(f) Number of outpatient visits.

(g) Total operating expenses.

(h) Total inpatient gross revenues.

(i) Total outpatient gross revenues.

(j) Total deductions from revenue, including bad debts, charity care, and Medicare and Medi-Cal contractual allowances.

(k) Total capital expenditures.

(*l*) Total net fixed assets.

(m) Total number of inpatient days, outpatient visits, and discharges by payer source, including Medi-Cal, Medicare, and other sources.

(n) Total net patient revenues by payer source, including, but not limited to, Medicare, Medi-Cal, and other payers.

Hospitals reporting pursuant to subdivision (d) of Section 443.34 may provide the items in subdivisions (g), (h), (i), (j), and (n) of this section on a group basis, as described in subdivision (d) of Section

443.34.

The office shall make available at cost, to all interested parties, a hard copy of any hospital report made pursuant to this section and in addition to hard copies, shall make available at cost, a computer tape of all reports made pursuant to this section within 105 days of the end of every calendar quarter.

(o) The office, with the advice of the commission, shall adopt by regulation guidelines for the identification, assessment, and reporting of charity care services. In establishing the guidelines, the office shall consider the principles and practices recommended by professional health care industry accounting associations for differentiating between charity services and bad debts. The office shall further conduct the onsite validations of health facility accounting and reporting procedures and records as are necessary to assure that reported data are consistent with regulatory guidelines.

(p) This section shall remain operative only until July 1, 1991, and 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 443.32 of the Health and Safety Code, as added by Section 1.2 of Chapter 1331 of the Statutes of 1989, is amended to read:

443.32. (a) Commencing with the third calendar quarter of 1991, the following summary financial and utilization data shall be reported to the office by each hospital within 45 days of the end of every calendar quarter. Adjusted reports reflecting changes as a result of audited financial statements may be filed within four months of the close of the hospital's fiscal or calendar year. The quarterly summary financial and utilization data shall conform to the uniform description of accounts as contained in the Accounting and Reporting Manual for California Hospitals and shall include all of the following:

(1) Number of licensed beds.

(2) Average number of available beds.

(3) Average number of staffed beds.

(4) Number of discharges.

(5) Number of inpatient days.

(6) Number of outpatient visits.

(7) Total operating expenses.

(8) Total inpatient gross revenues by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(9) Total outpatient gross revenues by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(10) Deductions from revenue in total and by component, including the following: Medicare contractual adjustments, Medi-Cal contractual adjustments, and county indigent program contractual adjustments, other contractual adjustments, bad debts, charity care,

restricted donations and subsidies for indigents, support for clinical teaching, teaching allowances, and other deductions.

(11) Total capital expenditures.

(12) Total net fixed assets.

(13) Total number of inpatient days, outpatient visits, and discharges by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, self-pay, charity, and other payers.

(14) Total net patient revenues by payer including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(15) Other operating revenue.

(16) Nonoperating revenue net of nonoperating expenses.

(b) Hospitals reporting pursuant to subdivision (d) of Section 443.34 may provide the items in paragraphs (7), (8), (9), (10), (14), (15), and (16) of subdivision (a) on a group basis, as described in subdivision (d) of Section 443.34.

(c) The office shall make available at cost, to all interested parties, a hard copy of any hospital report made pursuant to this section and in addition to hard copies, shall make available at cost, a computer tape of all reports made pursuant to this section within 105 days of the end of every calendar quarter.

(d) The office, with the advice of the commission, shall adopt by regulation guidelines for the identification, assessment, and reporting of charity care services. In establishing the guidelines, the office shall consider the principles and practices recommended by professional health care industry accounting associations for differentiating between charity services and bad debts. The office shall further conduct the onsite validations of health facility accounting and reporting procedures and records as are necessary to assure that reported data are consistent with regulatory guidelines.

This section shall become operative July 1, 1991.

SEC. 3. Section 1189.109 of the Health and Safety Code is amended to read:

1189.109. (a) As a condition of receiving funds under this article, a clinic shall, insofar as the clinic directly provides those services for other patients, provide, or arrange, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 323.7 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) (1) Beginning with the 1990–91 fiscal year, to the extent a clinic provides dental treatment services, the clinic's responsibility to provide those services to a child in any fiscal year shall not exceed one thousand dollars ($1,000), less any reimbursement received for dental treatment services, including, but not limited to,

reimbursements received under this part.

(2) The state department shall reimburse the cost of dental services provided after June 30, 1990, which exceed one thousand dollars ($1,000) from the primary care clinic risk pool established pursuant to subdivision (a) of Section 1189.110.

(c) (1) If any child requires treatment the clinic does not provide, the clinic shall arrange for the treatment to be provided, and the name of that provider shall be noted in the patient's medical record.

(2) The clinic shall contact the provider or the patient or his or her guardian, or both, within 30 days after the arrangement for the provision of treatment is made, and shall determine if the provider has provided appropriate care, and shall note the results in the patient's medical record.

(3) If the clinic is not able to determine, within 30 days after the arrangement for the provision of treatment is made, whether the needed treatment was provided, the clinic shall provide written notice to the county child health and disability prevention program director.

(d) (1) For the 1990–91 fiscal year, the state department may establish a reimbursement program for referral case management services required pursuant to subdivision (c), provided to a child pursuant to subdivision (a).

(2) The state department may utilize funds appropriated for the purposes of this part for reimbursements under paragraph (1).

(3) The state department shall evaluate the effectiveness of the referral case management program, including the extent to which children actually receive appropriate treatment for conditions detected as part of the Child Health and Disability Prevention Program examination.

(e) From funds appropriated for the 1989–90 fiscal year, not more than ten million dollars ($10,000,000) may be utilized by the department for grants to clinics for modernization of clinic facilities and for expansion of primary care capacity in order to provide adequate access to clinic services.

SEC. 3.5. Section 1189.109 of the Health and Safety Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

1189.109. (a) As a condition of receiving funds under this article, a clinic shall, insofar as the clinic directly provides those services for other patients provide, or arrange, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 if the child was screened by the clinic or upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) (1) Beginning with the 1990–91 fiscal year, insofar as a clinic provides dental treatment services, the clinic's responsibility to provide those dental services to any child in any fiscal year shall not exceed one thousand dollars ($1,000), less any reimbursement received for dental treatment services, including, but not limited to, reimbursements received under this part.

(2) The state department shall reimburse the cost of dental services provided after June 30, 1990, which exceed one thousand dollars ($1,000) from the primary care clinic risk pool established pursuant to subdivision (a) of Section 1189.110.

(c) (1) If any child requires treatment the clinic does not provide, the clinic shall arrange for the treatment to be provided, and the name of that provider shall be noted in the patient's medical record.

(2) The clinic shall contact the provider or the patient or his or her guardian, or both, within 30 days after the arrangement for the provision of treatment is made, and shall determine if the provider has provided appropriate care, and shall note the results in the patient's medical record.

(3) If the clinic is not able to determine, within 30 days after the arrangement for the provision of treatment is made, whether the needed treatment was provided, the clinic shall provide written notice to the county child health and disability prevention program director.

(d) (1) For the 1990–91 fiscal year, the state department may establish a reimbursement program for referral case management services required pursuant to subdivision (c), provided to a child pursuant to subdivision (a).

(2) The state department may utilize funds appropriated for the purposes of this part for reimbursements under paragraph (1).

(3) The state department shall evaluate the effectiveness of the referral case management program, including the extent to which children actually receive appropriate treatment for conditions detected as part of the Child Health and Disability Prevention Program examination.

(e) From funds appropriated for the 1989–90 fiscal year, not more than ten million dollars ($10,000,000) may be utilized by the department for grants to clinics for modernization of clinic facilities and for expansion of primary care capacity in order to provide adequate access to clinic services.

SEC. 4. Section 1189.110 is added to the Health and Safety Code, to read:

1189.110. (a) For the 1990–91 fiscal year, the department shall establish a primary care clinic risk pool in which the department shall assume responsibility to pay for dental treatment of a child by the primary care clinic subsequent to the clinic's meeting the requirements of subdivision (b) of Section 1189.109.

(b) Payment under this section shall be available when the clinic has done either of the following:

(1) Detected the condition as part of a child health and disability prevention screen pursuant to Section 1189.109 and has directly provided the treatment.

(2) Provided the treatment upon referral from another child health and disability prevention provider.

SEC. 5. Section 1189.110 of the Health and Safety Code is amended and renumbered to read:

1189.112. Any entity or provider which receives funds pursuant to this part shall expend those funds in accordance with the requirements of Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code.

SEC. 5.5. Section 1189.111 is added to the Health and Safety Code, to read:

1189.111. The use of funds granted pursuant to this part for use by school-based clinics shall be limited to those school-based clinics which were licensed and in operation before January 1, 1990.

SEC. 6. Section 1189.111 of the Health and Safety Code is amended and renumbered to read:

1189.113. This part shall remain operative only until July 1, 1991, and 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. 7. Section 1216 of the Health and Safety Code, as amended by Section 3 of Chapter 1331 of the Statutes of 1989, is amended to read:

1216. (a) Every clinic holding a license shall, on or before the 15th day of February each year, file with the Office of Statewide Health Planning and Development upon forms to be furnished by the office, a verified report showing the following information relating to the previous calendar year:

(1) Number of patients served and the number of visits.

(2) Total clinic operating expenses.

(3) Total gross patient care-related revenue.

(4) Total deductions from revenue, including bad debts, charity care, and Medicare and Medi-Cal contractual allowances.

(5) County Medical Services Program (CMSP) charges.

(6) Medically Indigent Services Program (MISP) charges.

(7) County-sponsored patient charges.

(8) State Legalization Impact Assistance Grant charges (SLIAG).

(9) Additional information as may be required by the office or the department.

(b) In the event a clinic fails to file a timely report, the department may suspend the license of the clinic until the report is completed and filed with the office.

SEC. 8. Section 1216 of the Health and Safety Code, as amended by Section 3 of Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

1216. (a) Every clinic holding a license shall, on or before the 15th day of February each year, file with the Office of Statewide

Health Planning and Development upon forms to be furnished by the office, a verified report showing the following information relating to the previous calendar year:

(1) Number of patients served and the number of visits.

(2) Total clinic operating expenses.

(3) Total gross patient care-related revenue.

(4) Total deductions from revenue, including bad debts, charity care, and Medicare and Medi-Cal contractual allowances.

(5) County Medical Services Program (CMSP) charges.

(6) Medically Indigent Services Program (MISP) charges.

(7) County-sponsored patient charges.

(8) State Legalization Impact Assistance Grant charges (SLIAG).

(9) Additional information as may be required by the office or the department.

(b) In the event a clinic fails to file a timely report, the department may suspend the license of the clinic until the report is completed and filed with the office.

SEC. 9. Section 1216 of the Health and Safety Code, as amended by Section 3.1 of Chapter 1331 of the Statutes of 1989, is repealed.

SEC. 10. Section 1216 of the Health and Safety Code, as amended by Section 4 of Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is repealed.

SEC. 11. Section 24162 of the Health and Safety Code is amended to read:

24162. (a) There is hereby created the Tobacco Education Oversight Committee in state government which shall advise the State Department of Health Services and the State Department of Education with respect to policy development, integration, and evaluation of tobacco education programs funded under this chapter, and for development of a master plan for the future implementation of tobacco education programs.

(b) The Tobacco Education Oversight Committee shall be composed of 12 members to be appointed as follows:

(1) Two members representing volunteer health organizations dedicated to the reduction of tobacco use appointed by the Speaker of the Assembly.

(2) One member representing an organization that represents health care employees appointed by the Senate Rules Committee.

(3) One member of a professional education association, such as an association of teachers, appointed by the Senate Rules Committee.

(4) One member of a university facility with expertise in programs intended to reduce tobacco use appointed by the Governor.

(5) Two representatives of a target population group appointed by the Governor.

(6) One representative of the State Department of Health Services appointed by the Governor.

(7) One representative of the State Department of Education

appointed by the Superintendent of Public Instruction.

(8) One member representing the interests of the general public appointed by the Governor.

(9) One representative of local health departments appointed by the Governor.

(10) One member representing a volunteer health organization dedicated to the reduction of tobacco associated injury appointed by the Governor.

(c) Members shall serve for a term of two years, renewable at the option of the appointing authority. The initial appointments of members shall be for two or three years, to be drawn by random lot at the first meeting. The committee shall be staffed by the State Department of Health Services' coordinator of the program created pursuant to Section 24164.

(d) The committee shall meet as often as it deems necessary, but shall meet not less than four times per year.

(e) The members of the committee shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of the duties of the committee.

SEC. 12. Section 24162 of the Health and Safety Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

24162. (a) There is hereby created the Tobacco Education Oversight Committee in state government which shall advise the State Department of Health Services and the State Department of Education with respect to policy development, integration, and evaluation of tobacco education programs funded under this chapter, and for development of a master plan for the future implementation of tobacco education programs.

(b) The Tobacco Education Oversight Committee shall be composed of 12 members to be appointed as follows:

(1) Two members representing volunteer health organizations dedicated to the reduction of tobacco use appointed by the Speaker of the Assembly.

(2) One member representing an organization that represents health care employees appointed by the Senate Rules Committee.

(3) One member of a professional education association, such as an association of teachers, appointed by the Senate Rules Committee.

(4) One member of a university facility with expertise in programs intended to reduce tobacco use appointed by the Governor.

(5) Two representatives of a target population group appointed by the Governor.

(6) One representative of the State Department of Health Services appointed by the Governor.

(7) One representative of the State Department of Education appointed by the Superintendent of Public Instruction.

(8) One member representing the interests of the general public

appointed by the Governor.

(9) One representative of local health departments appointed by the Governor.

(10) One member representing a volunteer health organization dedicated to the reduction of tobacco associated injury appointed by the Governor.

(c) Members shall serve for a term of two years, renewable at the option of the appointing authority. The initial appointments of members shall be for two or three years, to be drawn by random lot at the first meeting. The committee shall be staffed by the State Department of Health Services' coordinator of the program created pursuant to Section 24164.

(d) The committee shall meet as often as it deems necessary, but shall meet not less than four times per year.

(e) The members of the committee shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of the duties of the committee.

SEC. 13. Section 24164 of the Health and Safety Code is amended to read:

24164. To prevent tobacco-related diseases and diminish tobacco use, the State Department of Health Services shall do all of the following:

(a) Contract for an initial baseline survey and followup surveys of attitudes and behavior regarding tobacco use and a description of information received by the public regarding smoking and tobacco use. The department shall issue a request for proposals for the 1989–90 baseline study, evaluate proposals and select a contractor or contractors within 90 days of the effective date of this act.

(b) The department shall produce or contract for a description of programs recognized as effective in reducing smoking and tobacco use, and the identification of portions of target populations which need information regarding the hazards of tobacco use.

(c) Establish within the state department a program on tobacco use and health to promote the study of effective tobacco use interventions and behavior programs in community and other nonschool settings. By September 1, 1990, the state department shall develop a mechanism to implement a systematic and independent evaluation of the local and state programs established under this chapter. The purpose of the evaluation is to direct the most efficient allocation of resources appropriated under this chapter to accomplish the maximum prevention and reduction of tobacco use. This comprehensive evaluation shall be designed to measure the extent to which programs funded under this chapter promote the goals identified in this chapter and in Proposition 99 of the November 1988 general election. The evaluation design shall do all of the following:

(1) Be based on sound evaluation principles and include, to the extent feasible, elements of controlled experimental methods.

(2) Monitor the overall statewide effect of health education

efforts on smoking and tobacco use, and, to the extent feasible, the resulting effects on health.

(3) Monitor the effect of the programs on individual target populations identified by this chapter or designated by the state department as meriting special attention.

(4) Provide an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications.

(5) Incorporate other aspects into the evaluation which have been identified by the state department in consultation with state and local advisory groups, local lead agencies, and other interested parties.

(d) The state department shall provide a report to the Legislature on January 1, 1992, and each succeeding year on the progress of the evaluation.

(e) The state department and local lead agencies shall use the evaluation in the administration and allocation of funds awarded pursuant to this chapter in order to maximize the effectiveness of this program.

(f) Assist the State Department of Education in identifying and developing instructional materials and curricula in school-based programs, designed to enhance the prevention of and encouraging the cessation of the continuing use of, tobacco products. The materials and curricula shall address the specific needs of persons in kindergarten and grades 1 to 12, inclusive, and in adult education programs.

(g) Contract with one or more qualified agencies for production and implementation of an ongoing public awareness of tobacco-related diseases by developing an information campaign using a variety of media approaches. The department shall issue a request for proposals for the 1989–90 media campaign, evaluate proposals submitted, and select a contractor or contractors within 120 days of the effective date of this section. Any media campaign funded with this part shall stress the importance of both preventing the initiation of tobacco use and quitting smoking and shall be based on professional market research and surveys necessary to determine the most effective method of diminishing tobacco use among specified target populations. Initial media efforts shall be directed to specific target populations. The contractors selected shall be provided with all available survey information resulting from ongoing programs funded under this chapter. Priority shall be given to minor children, ages 6 to 14, inclusive. The medium used shall be determined to be the most effective at reaching this targeted age group. With respect to the broadcast media, the message shall be aired at times expected to reach the priority age group. With respect to the print media, publications to be used shall be those which appeal to the priority age group.

(h) Provide or contract for training, consultation, support, and continuing education to health professionals, and others interested in

developing programs and services directed at preventing tobacco use and promoting smoking cesstion, utilizing, when available and determined by the state department, the expertise of universities in this state and schools of public health. The training, consultation, support, and continuing education shall include advice and support in creating a smoke-free environment.

(i) Conduct an awards program to acknowledge the outstanding achievements of those communities, organizations, and groups that have fostered movement toward a smoke-free society or have reduced the consumption of tobacco.

(j) The department shall issue guidelines for local plans for education against tobacco use. The guidelines shall require local public health departments to provide services directed at preventing tobacco use and promoting smoking cessation to the target populations enumerated in Section 24161.5 and to persons under 19 years of age who no longer attend school and to youth attending school who are not served through State Department of Education funded programs. The guidelines shall require for each target population to be served a description of the services to be provided, an estimate of the number to be served, an estimate of the success rate, and a method to determine to what extent goals have been achieved. Beginning with 1990–91 fiscal year, guidelines shall require local lead agencies to describe how local funding decisions will take into account evaluations of program effectiveness and efficiency. The guidelines shall require the submission of a budget and information on staffing configurations.

(k) Within 90 days of the effective date of this chapter, the department shall issue guidelines for fiscal year 1989–90 and within nine months of the effective date of this chapter, the department shall issue guidelines to local lead agencies on how to prepare a local plan for a comprehensive community intervention program against tobacco use.

(*l*) Provide technical assistance to local lead agencies for the development of plans required by Section 24165.5 so that the local lead agencies are able to comply with the schedule for the submission of plans specified in Section 24165.5. The technical assistance shall include, but not be limited to, the following:

(1) Developing and disseminating preventive health education program options for local communities.

(2) Providing training, consultation, and technical assistance to local health departments, local advisory committees, and service providers.

(m) Receive and approve local plans submitted by local lead agencies and provide technical assistance and guidance as necessary to ensure the compliance of the local lead agencies with this chapter. Every effort shall be made to approve or provide a list of necessary amendments to a local plan within 30 days of receipt of the local plan. The state department may authorize a local lead agency to begin implementation of its local plan on a provisional basis, with final

approval of the local plan contingent on satisfying conditions specified by the state department.

(n) Work in collaboration with the public and private sectors in implementing the activities required of the state department and provide access upon request to local plans, program statistics, and other readily available information.

(o) Provide staff, assistance, and support needed by the committee.

(p) In consultation with the committee, develop a comprehensive master plan for implementing tobacco education programs throughout the state for the prevention and cessation of tobacco use.

(q) Consult regularly with the University of California regarding trends in the frequency and the cost of treating tobacco-related diseases and the success of research efforts to reduce tobacco use and limit its adverse health effects.

(r) Establish, in consultation with the State Department of Education and county offices of education, a data collection and data management program to study effective tobacco use interventions. Under this program the department may contract for studies and evaluations in school-based and community-based programs. The department shall consult with the State Department of Education regarding the collection and evaluation of program data.

(1) The department shall require, by contract, that local lead agencies use a uniform management data and information system which will permit comparisons of workload, unit costs, and outcome measurements on a statewide basis. The department shall specify data reporting requirements for local lead agencies and their subcontractors.

(2) The department shall approve local lead agency and grantee computer software and hardware in order to ensure systemwide compatibility and capacity to expand. Departmental guidelines for local plans shall require local lead agencies to set forth their hardware and software plans and needs.

(3) The department may contract for the development or operation of a computerized management information system.

(4) The department shall consult the State Department of Education regarding computer software and hardware systems for school-based programs.

(s) Develop in consultation with the California Conference of Local Health Officers, a formula for the allocation of funds to local lead agencies for anti-tobacco programs. The formula shall take into consideration the estimated number of persons in each target population to be served and likely variations in the costs of serving different target groups.

SEC. 14. Section 24164 of the Health and Safety Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

24164. To prevent tobacco-related diseases and diminish tobacco use, the State Department of Health Services shall do all of the

following:

(a) Contract for an initial baseline survey and followup surveys of attitudes and behavior regarding tobacco use and a description of information received by the public regarding smoking and tobacco use. The department shall issue a request for proposals for the 1989–90 baseline study, evaluate proposals and select a contractor or contractors within 90 days of the effective date of this act.

(b) The department shall produce or contract for a description of programs recognized as effective in reducing smoking and tobacco use, and the identification of portions of target populations which need information regarding the hazards of tobacco use.

(c) Establish within the state department a program on tobacco use and health to promote the study of effective tobacco use interventions and behavior programs in community and other nonschool settings. By September 1, 1990, the state department shall develop a mechanism to implement a systematic and independent evaluation of the local and state programs established under this chapter. The purpose of the evaluation is to direct the most efficient allocation of resources appropriated under this chapter to accomplish the maximum prevention and reduction of tobacco use. This comprehensive evaluation shall be designed to measure the extent to which programs funded under this chapter promote the goals identified in this chapter and in Proposition 99 of the November 1988 general election. The evaluation design shall do all of the following:

(1) Be based on sound evaluation principles and include, to the extent feasible, elements of controlled experimental methods.

(2) Monitor the overall statewide effect of health education efforts on smoking and tobacco use, and, to the extent feasible, the resulting effects on health.

(3) Monitor the effect of the programs on individual target populations identified by this chapter or designated by the state department as meriting special attention.

(4) Provide an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications.

(5) Incorporate other aspects into the evaluation which have been identified by the state department in consultation with state and local advisory groups, local lead agencies, and other interested parties.

(d) The state department shall provide a report to the Legislature on January 1, 1992, and each succeeding year on the progress of the evaluation.

(e) The state department and local lead agencies shall use the evaluation in the administration and allocation of funds awarded pursuant to this chapter in order to maximize the effectiveness of this program.

(f) Assist the State Department of Education in identifying and developing instructional materials and curricula in school-based

programs, designed to enhance the prevention of and encouraging the cessation of the continuing use of, tobacco products. The materials and curricula shall address the specific needs of persons in kindergarten and grades 1 to 12, inclusive, and in adult education programs.

(g) (1) Contract with one or more qualified agencies for production and implementation of an ongoing public awareness of tobacco-related diseases by developing an information campaign using a variety of media approaches. The department shall issue a request for proposals for the 1989–90 media campaign, evaluate proposals submitted, and select a contractor or contractors within 120 days of the effective date of this section. Any media campaign funded with this part shall stress the importance of both preventing the initiation of tobacco use and quitting smoking and shall be based on professional market research and surveys necessary to determine the most effective method of diminishing tobacco use among specified target populations. Initial media efforts shall be directed to specific target populations. The contractors selected shall be provided with all available survey information resulting from ongoing programs funded under this chapter. Priority shall be given to minor children, ages 6 to 14, inclusive. The medium used shall be determined to be the most effective at reaching this targeted age group. With respect to the broadcast media, the message shall be aired at times expected to reach the priority age group. With respect to the print media, publications to be used shall be those which appeal to the priority age group.

(2) No media campaign funded pursuant to this chapter shall feature in any manner the image or voice of any elected public official or candidate for elected office, or directly represent the views of any elected public official or candidate for elected office.

(h) Provide or contract for training, consultation, support, and continuing education to health professionals, and others interested in developing programs and services directed at preventing tobacco use and promoting smoking cessation, utilizing, when available and determined appropriate by the state department, the expertise of universities in this state and schools of public health. The training, consultation, support, and continuing education shall include advice and support in creating a smoke-free environment.

(i) Conduct an awards program to acknowledge the outstanding achievements of those communities, organizations, and groups that have fostered movement toward a smoke-free society or have reduced the consumption of tobacco.

(j) The department shall issue guidelines for local plans for education against tobacco use. The guidelines shall require local public health departments to provide services directed at preventing tobacco use and promoting smoking cessation to the target populations enumerated in Section 24161.5 and to persons under 19 years of age who no longer attend school and to youth attending school who are not served through State Department of Education

funded programs. The guidelines shall require for each target population to be served a description of the services to be provided, an estimate of the number to be served, an estimate of the success rate, and a method to determine to what extent goals have been achieved. Beginning with the 1990–91 fiscal year, guidelines shall require local lead agencies to describe how local funding decisions will take into account evaluations of program effectiveness and efficiency. The guidelines shall require the submission of a budget and information on staffing configurations.

(k) Within 90 days of the effective date of this chapter, the department shall issue guidelines for fiscal year 1989–90 and within nine months of the effective date of this chapter, the department shall issue guidelines to local lead agencies on how to prepare a local plan for a comprehensive community intervention program against tobacco use.

(*l*) Provide technical assistance to local lead agencies for the development of plans required by Section 24165.5 so that the local lead agencies are able to comply with the schedule for the submission of plans specified in Section 24165.5. The technical assistance shall include, but not be limited to, the following:

(1) Developing and disseminating preventive health education program options for local communities.

(2) Providing training, consultation, and technical assistance to local health departments, local advisory committees, and service providers.

(m) Receive and approve local plans submitted by local lead agencies and provide technical assistance and guidance as necessary to ensure the compliance of the local lead agencies with this chapter. Every effort shall be made to approve or provide a list of necessary amendments to a local plan within 30 days of receipt of the local plan. The state department may authorize a local lead agency to begin implementation of its local plan on a provisional basis, with final approval of the local plan contingent on satisfying conditions specified by the state department.

(n) Work in collaboration with the public and private sectors in implementing the activities required of the state department and provide access upon request to local plans, program statistics, and other readily available information.

(o) Provide staff, assistance, and support needed by the committee.

(p) In consultation with the committee, develop a comprehensive master plan for implementing tobacco education programs throughout the state for the prevention and cessation of tobacco use.

(q) Consult regularly with the University of California regarding trends in the frequency and the cost of treating tobacco-related diseases and the success of research efforts to reduce tobacco use and limit its adverse health effects.

(r) Establish, in consultation with the State Department of Education and county offices of education, a data collection and data

management program to study effective tobacco use interventions. Under this program the department may contract for studies and evaluations in school-based and community-based programs. The department shall consult with the State Department of Education regarding the collection and evaluation of program data.

(1) The department shall require, by contract, that local lead agencies use a uniform management data and information system which will permit comparisons of workload, unit costs, and outcome measurements on a statewide basis. The department shall specify data reporting requirements for local lead agencies and their subcontractors.

(2) The department shall approve local lead agency and grantee computer software and hardware in order to ensure systemwide compatibility and capacity to expand. Departmental guidelines for local plans shall require local lead agencies to set forth their hardware and software plans and needs.

(3) The department may contract for the development or operation of a computerized management information system.

(4) The department shall consult the State Department of Education regarding computer software and hardware systems for school-based programs.

SEC. 15. Section 24165.2 is added to the Health and Safety Code, to read:

24165.2. (a) The department may employ not more than 5 percent of the funds appropriated pursuant to subparagraph (A) of paragraph (5) of subdivision (a) of Section 10 of Chapter 1331 of the Statutes of 1989 to provide program support services to local tobacco use prevention programs, which shall include, but need not be limited to, all of the following:

(1) Data collection.

(2) Educational materials.

(3) Evaluation.

(4) Technical assistance.

(5) Training.

(6) Transfer of information among programs.

(b) Services funded under this section may be awarded through a competitive request for proposal process or directly to another state agency, the Regents of the University of California, the federal government, or an auxiliary organization of the California State University.

(c) Grantees of services under this section shall demonstrate the ability to do both of the following:

(1) Improve the delivery of local tobacco use prevention programs directed at the targeted populations.

(2) Design programs to provide statewide and regional services to support local implementation of tobacco use prevention programs.

SEC. 16. Section 24165.3 of the Health and Safety Code is amended to read:

24165.3. The State Department of Health Services shall expand

the Child Health Disability Prevention (CHDP) Program contained in Article 3.4 (commencing with Section 320) of Chapter 2 of Division 1 as follows:

(a) Any person under 21 years of age who is eligible for the California Medical Assistance Program and any person under 19 years of age whose family income is not more than 200 percent of the federal poverty level shall be eligible for services under the program in the county of which they are a resident. The department shall adopt rules and regulations specifying which age groups shall be given certain types of screening tests and recommendations for referral.

(b) The first source of referral under the program shall be the child's usual source of health care. If referral is required and no regular source of health care can be identified, the facility or provider providing health screening and evaluation services shall provide a list of three qualified sources of care, without prejudice for or against any specific source.

(c) The department shall issue protocols for an antitobacco education component of the CHDP medical examination. The protocols shall include the following: dissuading children from beginning to smoke, encouraging smoking cessation, and providing information on the health effects of tobacco use on the user, children, and nonsmokers. The protocols shall also include a focus on health promotion, disease prevention, and risk reduction, utilizing a "wellness" perspective that encourages self-esteem and positive decisionmaking techniques, and referral to an appropriate community smoking cessation program.

(d) Notwithstanding any other provision of law, the department shall ensure that a portion of the funds in the Child Health Disability Prevention Program budget is used to facilitate the integration of the medical and dental components of all aspects of that program.

SEC. 17. Section 24165.5 of the Health and Safety Code is amended to read:

24165.5. (a) (1) Except as provided in paragraph (2), each county health department or city health department as provided in Section 16700 of the Welfare and Institutions Code shall be the lead local agency for its county. The local lead agency shall have the overall responsibility for the success of the programs funded pursuant to this chapter in its county.

(2) Counties contracting with the State Department of Health Services for the provision of health care services pursuant to Section 16709 of the Welfare and Institutions Code may elect to enter into an arrangement with the state department for the administration and provision of funds and services subject to this chapter in their counties. In those cases, the state department shall act as the local lead agency for that county.

(b) The local lead agency shall do all of the following:

(1) Provide, or contract for, preventive health education against tobacco services to targeted populations.

(2) Establish a coordinated information, referral, outreach, and intake system for preventive health education against tobacco services for targeted populations.

(3) Administer funds in accordance with this chapter and department guidelines.

(4) Submit local plans to implement programs for the prevention and reduction of tobacco use and implement the local plans in accordance with the following schedule:

(A) Within three months of the receipt of guidelines issued pursuant to subdivision (h) of Section 24164 relating to education against tobacco use, develop and submit a plan in accordance with those guidelines.

(B) By January 1, 1991, submit a plan in compliance with the guidelines issued pursuant to subdivision (j) of Section 24164 relating to education against tobacco use targeted at the entire community.

(C) Within 10 days of receiving approval from the state department for a local plan, the local lead agency shall begin to implement that local plan as approved by the state department. In implementing the local plan, the local lead agency may enter into agreements with agencies or organizations which satisfy the requirements of this chapter for the receipt of funds.

(5) Establish a uniform data collection system in compliance with standards and guidelines issued by the state department, and submit audit and fiscal reports as required by the state department.

(6) Coordinate services authorized by this chapter within and between county service providers.

(7) Provide technical assistance to service providers.

(8) Review, and suggest improvements to proposed county school district antitobacco plans. Prepare a letter for the county officer of education setting forth conclusions of the review. Work closely with the county office of education to ensure effective coordination of local school and nonschool antitobacco efforts.

(9) Coordinate activities with other governmental agencies.

(c) The local plans described in paragraph (4) of subdivision (b) shall include all of the following:

(1) A description of the targeted population, including age, race, ethnicity, language, education, income levels, its status as urban or rural, transportation needs, and any other information which the lead local agency determines is relevant.

(2) Local data on smoking and tobacco use among the targeted population.

(3) Goals for how many persons of the targeted population will be reached by health education, how many will participate in a smoking prevention or cessation program, and how many will quit or not start smoking as a result.

(4) A description of the direct services to be provided under the plan, including the services to be provided to the targeted populations enumerated in Section 24161.5 and schoolage youth who do not receive services through public school programs.

(5) Cost estimates for programs identified in the plan.

SEC. 18. Section 24165.5 of the Health and Safety Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

24165.5. (a) (1) Except as provided in paragraph (2), each county health department or city health department as provided in Section 16700 of the Welfare and Institutions Code shall be the lead local agency for its county. The local lead agency shall have the overall responsibility for the success of the programs funded pursuant to this chapter in its county.

(2) Counties contracting with the State Department of Health Services for the provision of health care services pursuant to Section 16709 of the Welfare and Institutions Code may elect to enter into an arrangement with the state department for the administration and provision of funds and services subject to this chapter in their counties. In those cases, the state department shall act as the local lead agency for that county.

(b) The local lead agency shall do all of the following:

(1) Provide, or contract for, preventive health education against tobacco services to targeted populations.

(2) Establish a coordinated information, referral, outreach, and intake system for preventive health education against tobacco services for targeted populations.

(3) Administer funds in accordance with this chapter, and department guidelines.

(4) Submit local plans to implement programs for the prevention and reduction of tobacco use and implement the local plans in accordance with the following schedule:

(A) Within three months of the receipt of guidelines issued pursuant to subdivision (h) of Section 24164 relating to education against tobacco use, develop and submit a plan in accordance with those guidelines.

(B) By January 1, 1991, submit a plan in compliance with the guidelines issued pursuant to subdivision (j) of Section 24164 relating to education against tobacco use targeted at the entire community.

(C) Within 10 days of receiving approval from the state department for a local plan, the local lead agency shall begin to implement that local plan as approved by the state department. In implementing the local plan, the local lead agency may enter into agreements with agencies or organizations which satisfy the requirements of this chapter for the receipt of funds.

(5) Establish a uniform data collection system in compliance with standards and guidelines issued by the state department, and submit audit and fiscal reports as required by the state department.

(6) Coordinate services authorized by this chapter within and between county service providers.

(7) Provide technical assistance to service providers.

(8) Review, and suggest improvements to proposed county school district antitobacco plans. Prepare a letter for the county officer of

education setting forth conclusions of the review. Work closely with the county office of education to ensure effective coordination of local school and nonschool antitobacco efforts.

(9) Coordinate activities with other governmental agencies.

(c) The local plans described in paragraph (4) of subdivision (b) shall include all of the following:

(1) A description of the targeted population, including age, race, ethnicity, language, education, income levels, its status as urban or rural, transportation needs, and any other information which the local lead agency determines is relevant.

(2) Local data on smoking and tobacco use among the targeted population.

(3) Goals for how many persons of the targeted population will be reached by health education, how many will participate in a smoking prevention or cessation program, and how many will quit or not start smoking as a result.

(4) A description of the direct services to be provided under the plan, including the services to be provided to the targeted populations enumerated in Section 24161.5 and schoolage youth who do not receive services through public school programs.

(5) Cost estimates for programs identified in the plan.

SEC. 19. Section 24169.7 of the Health and Safety Code is amended and renumbered to read:

24169.8. This chapter shall remain operative only until July 1, 1991, and 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. 20. Section 24169.7 is added to the Health and Safety Code, to read:

24169.7. All guidelines, criteria, standards, and requirements specified in this chapter are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as regulations.

SEC. 20.5. Section 12739 of the Insurance Code is amended to read:

12739. (a) There is hereby created in the State Treasury a special fund known as the Major Medical Insurance Fund which is, notwithstanding Section 13340 of the Government Code, continuously appropriated to the board for the purposes specified in Section 12739.1. No policies shall be issued under this program until thirty million dollars ($30,000,000) has been deposited in the Major Medical Insurance Fund.

(b) After June 30, 1991, thirty million dollars ($30,000,000) shall be deposited annually in the Major Medical Insurance Fund from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund.

SEC. 21. Section 16709.5 of the Welfare and Institutions Code is amended to read:

16709.5. (a) Funds appropriated for the purposes of this chapter shall be allocated on a monthly basis.

(b) Money allocated for the purposes of this chapter shall be used to expand the scope of benefits, to fund special projects which alleviate problems of access to health and dental care under the County Medical Service Program and to compensate hospitals and other emergency health service providers for emergency treatment of out-of-county indigent patients and shall not be used to fund existing levels of service.

(c) This section shall remain operative only until July 1, 1991, and 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. 22. Section 16905.5 is added to the Welfare and Institutions Code, to read:

16905.5. "Obstetric services" means the diagnosis of pregnancy and all other medical services provided by a licensed physician to pregnant women during their pregnancies from the time of conception until 90 days following the end of the month in which the pregnancy ends.

SEC. 22.5. Section 16907 of the Welfare and Institutions Code is repealed.

SEC. 23. Section 16907.5 is added to the Welfare and Institutions Code, to read:

16907.5. "Pediatric services" means all medical services rendered by any licensed physician to persons from birth to 21 years of age, and shall include attendance at labor and delivery.

SEC. 24. Section 16908.5 is added to the Welfare and Institutions Code, to read:

16908.5. For purposes of paragraph (1) of subdivision (b) of Section 16946 and the funds determined by Section 16932, and distributed pursuant to paragraph (1) of subdivision (b) of Section 16946, and the application of paragraph (3) of subdivision (d) of Section 16946 to these funds, all patients which meet the Office of Statewide Health Planning and Development's definition of charity care as prescribed under subdivision (o) of Section 443.32 of the Health and Safety Code qualify for the use of funds under this chapter.

SEC. 25. Chapter 1.5 (commencing with Section 16909) is added to Part 4.7 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 1.5. ADMINISTRATION OF FUNDS

16909. (a) Any county which receives funds pursuant to this part shall deposit them in a special revenue fund or trust fund established solely for this purpose, in a hospital services account, a physician services account, and other county health services account, and any other account or subaccount the department may require, before transferring or expending them for any of the uses allowed in this

part.

(b) Any county subject to the requirements of subdivision (a) shall deposit the funds in the special revenue fund or trust fund before transferring the funds to the county emergency medical services fund, as provided in subdivision (c) of Section 16933 and Section 16951.

(c) (1) Interest on each fund, account, or subaccount shall accrue to the benefit of the fund, account, or subaccount, and shall be expended for the same purposes as the other funds in the account or subaccount.

(2) Interest or other increments resulting from funds transferred to the county for noncounty hospitals pursuant to paragraph (1) or (2) of subdivision (b) of Section 16946 shall be expended under paragraph (1) or (2) of subdivision (b) of Section 16946.

16909.1. (a) Except as provided in subdivision (b), county adminstrative costs associated with the administration of each special revenue fund, trust fund, account, or subaccount required by Section 16909 shall be reimbursed from the specific fund, account, or subaccount.

(b) Funds allocated pursuant to paragraph (1) of subdivision (b) of Section 16946 shall not be reduced or utilized to offset the costs of administering the hospital services subaccount.

SEC. 26. Section 16917 of the Welfare and Institutions Code is amended to read:

16917. (a) Based on data submitted by the counties and other data available to the department, the department shall, by June 30, 1990, and January 1 of each subsequent year, prepare a report on the demographics of the medically indigent population, and the cost and utilization of health care services delivered to medically indigent persons as provided directly or indirectly by counties. The report shall be written to provide useful information for the hospital administrators, county administrators, boards of supervisors, and the health policy and fiscal committees of the Legislature. The report shall include, but not be limited to, all of the following.

(1) The demography of the medically indigent population.

(2) Utilization rates of services for:

(A) Inpatient services including the total number of patient days, total discharges, and the average length of stay for the following:

(i) Persons with AIDS or AIDS-related complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons admitted from the emergency room.

(iv) Persons below 150 percent of the federal poverty level.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total number of outpatient visits, and by the following:

(i) Persons with AIDS and Aids-Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total number of emergency room visits, and any visits which meet the following criteria:

(i) Resulting in a hospital admission.

(ii) Which did not result in a hospital admission.

(iii) For persons with AIDS and Aids-Related Complex.

(iv) For persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(3) Cost of services provided for all of the following:

(A) Inpatient services including the total cost of inpatient services, average cost per patient day, and average length of stay for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Persons admitted from the emergency room.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total costs for outpatient visits, and the average cost per outpatient visit for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons under 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total and average costs for the following:

(i) Emergency room visits resulting in a hospital admission.

(ii) Emergency room visits which did not result in a hospital admission.

(iii) Emergency room visits for persons with AIDS and AIDS-Related Complex.

(iv) Emergency room visits for persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(4) The distribution of funds expended on health care for the

medically indigent for the following:

(A) Inpatient services and for the most frequently required services, including the average length of stay and average cost per patient day.

(B) Outpatient services and for the most frequently used services.

(C) Per capita net county contribution, and the per capita county contribution as a percent of per capita county income.

(5) County revenue for health care services, by category, for the most recent five years.

(A) State assistance under the following:

(i) AB 8 inpatient and outpatient, under Part 4.5 (commencing with Section 16700).

(ii) Medi-Cal.

(iii) Medically Indigent Services Program.

(iv) California Healthcare for Indigents Program.

(v) County Medical Services Program.

(vi) Other state assistance.

(B) Federal assistance under the following:

(i) Medicare.

(ii) Federal State Legalization Impact Assistance Grants.

(iii) Other federal assistance.

(C) County assistance under the following:

(i) Enterprise funds.

(ii) County contributions.

(b) The format of the report shall include tables and figures with narrative interpretation and analysis of the data presented. The data shall be presented in a manner which provides for meaningful comparisons between counties and facilities, and displays changes in individual county and facility data from period to period.

(c) The department shall, in addition to the annual report, be responsible for the preparation of special indepth reports which evaluate the efficiency, effectiveness, and adequacy of the county health delivery system. In this capacity the department shall, from time to time, issue special indepth reports which provide information for health policy makers about county health system problems and trends. At least annually the department shall consult with the Legislature, counties, and other interested groups about the subject matter for future special reports.

SEC. 27. Section 16917 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989-90 Regular Session of the Legislature, is amended to read:

16917. (a) Based on data submitted by the counties and other data available to the department, the department shall, by June 30, 1990, initially, and by January 1 of each subsequent year, prepare a report on the demographics of the medically indigent population, and the cost and utilization of health care services delivered to medically indigent persons as provided directly or indirectly by counties. The report shall be written to provide useful information for the hospital administrators, county administrators, boards of

supervisors, and the health policy and fiscal committees of the Legislature. The report shall include, but not be limited to, all of the following:

(1) The demography of the medically indigent population.

(2) Utilization rates of services for:

(A) Inpatient services including the total number of patient days, total discharges, and the average length of stay for the following:

(i) Persons with AIDS or AIDS- Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons admitted from the emergency room.

(iv) Persons below 150 percent of the federal poverty level.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total number of outpatient visits, and by the following:

(i) Persons with AIDS and Aids-Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total number of emergency room visits, and any visits which meet the following criteria:

(i) Resulting in a hospital admission.

(ii) Which did not result in a hospital admission.

(iii) For persons with AIDS and Aids-Related Complex.

(iv) For persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(3) Cost of services provided for all of the following:

(A) Inpatient services including the total cost of inpatient services, average cost per patient day, and average length of stay for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Persons admitted from the emergency room.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total costs for outpatient visits, and the average cost per outpatient visit for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(iii) Persons under 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total and average costs for the following:

(i) Emergency room visits resulting in a hospital admission.

(ii) Emergency room visits which did not result in a hospital admission.

(iii) Emergency room visits for persons with AIDS and AIDS-Related Complex.

(iv) Emergency room visits for persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(4) The distribution of funds expended on health care for the medically indigent for the following:

(A) Inpatient services and for the most frequently required services, including the average length of stay and average cost per patient day.

(B) Outpatient services and for the most frequently used services.

(C) Per capita net county contribution, and the per capita county contribution as a percent of per capita county income.

(5) County revenue for health care services, by category, for the most recent five years.

(A) State assistance under the following:

(i) AB 8 inpatient and outpatient, under Part 4.5 (commencing with Section 16700).

(ii) Medi-Cal.

(iii) Medically Indigent Services Program.

(iv) California Healthcare for Indigents Program.

(v) County Medical Services Program.

(vi) Other state assistance.

(B) Federal assistance under the following:

(i) Medicare.

(ii) Federal State Legalization Impact Assistance Grants.

(iii) Other federal assistance.

(C) County assistance under the following:

(i) Enterprise funds.

(ii) County contributions.

(b) The format of the report shall include tables and figures with narrative interpretation and analysis of the data presented. The data shall be presented in a manner which provides for meaningful comparisons between counties and facilities, and displays changes in individual county and facility data from period to period.

(c) The department shall, in addition to the annual report, be responsible for the preparation of special indepth reports which

evaluate the efficiency, effectiveness, and adequacy of the county health delivery system. In this capacity the department shall, from time to time issue special indepth reports which provide information for health policy makers about county health system problems and trends. At least annually the department shall consult with the Legislature, counties, and other interested groups about the subject matter for future special reports.

SEC. 28. Section 16918 is added to the Welfare and Institutions Code, to read:

16918. (a) Counties shall report information on indigent health care program demographic, expenditure, and utilization data, in a form which will provide a count of persons using services funded under this part, to the department, on a quarterly basis.

(b) Data required by subdivision (a) shall include all of the following information:

(1) For the Hospital Services Account, the Physician Services Account, and the Other County Health Services Account in the trust fund established pursuant to Section 16961, the period commencing July 1, 1989, to June 30, 1991, inclusive, the data shall include all of the following:

(A) Date of birth.

(B) Sex.

(C) Residence zip code.

(D) Child Health and Disability Prevention Program followup.

(E) Other potential third-party payor source.

(F) Amount billed to the county.

(2) For the Physician Services Account and the Other County Health Services Account established pursuant to Section 16961, the following demographic data shall be reported on a minimum of 5 percent of patients eligible under this part, for the period commencing April 1, 1990, to June 30, 1991; for the Hospital Services Account in the fund, for the period commencing April 1, 1990, to June 30, 1990, the following demographic data shall be reported on a minimum of 5 percent of patients eligible under this part; for the period commencing July 1, 1990, to June 30, 1991, the level of data reported shall be on a per hospital basis as determined by the department:

(A) Ethnicity.

(B) Family size.

(C) Family gross monthly income.

(D) Family principal income source.

(3) For the Hospital Services Account, the data shall include all of the following:

(A) Date of service or inpatient admission.

(B) Type of service.

(C) Number of inpatient days; and the number of outpatient and emergency room visits.

(D) Diagnosis (inpatient only).

(4) For the Physician Services Account in the fund, the data shall

include all of the following:

(A) Date of service.

(B) Type of service.

(C) Service setting.

(D) Physician specialty.

(5) For the Other County Health Services Account during the period commencing July 1, 1989, to June 30, 1991, inclusive, the data shall include all of the following:

(A) Date of service or inpatient admission.

(B) Type of service.

(C) Number of units.

(D) Type of units.

(c) Physicians shall provide the data specified in this section, with the exception of subdivision (b).

(2) Physicians shall provide emergency services data to the extent the information is available from the hospital.

(3) Physicians shall provide office visit data under sudivision (b) on not less than 5 percent of patients for whom payment is received pursuant to Article 3.5 (commencing with Section 16951) of Chapter 5.

SEC. 29. Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 30. Chapter 4 (commencing with Section 16930) is added to Part 4.7 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 4. RURAL HEALTH SERVICES

16930. (a) (1) There is in the County Health Services Fund, created pursuant to Section 16703, the Rural Health Services Account.

(2) For purposes of this chapter, "account" means the account created by paragraph (1).

(b) All money appropriated for the purposes of this chapter shall be deposited in the account.

(c) The department shall administer moneys deposited in the account on an accrual basis, and notwithstanding any other provision of law, except as provided in this chapter, those moneys shall not be transferred to any other fund or account except for purposes of investment, as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

16931. (a) Funds appropriated for the purposes of this chapter shall be used to enhance and maintain rural health services provided by counties, hospitals, physicians, and other providers of services to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(b) The requirements of Sections 16704.1 and 16718 apply to services supported by funds appropriated for the purposes of this

chapter.

(c) Except as specifically provided in this chapter, the authority of each county established pursuant to Section 16717 shall remain unaffected.

16931.5. The county may reimburse for emergency services provided by a physician in a standby emergency room in a hospital specified in Section 1188.855 of the Health and Safety Code.

16932. The department shall allocate money derived from the Hospital Services Account in the fund to each CMSP county in the following manner:

(a) The combined total of hospital uncompensated care costs for all county and noncounty hospitals in each CMSP county shall be calculated by using the definitions, procedures, and data elements specified in Chapter 3 (commencing with Section 16920).

(b) (1) The office shall determine each county's share by using the 1988 calendar year data, as adjusted by the office, existing on the statewide file on September 1, 1989.

(2) The office shall determine each county's share based on that county's total hospital uncompensated care costs, divided by the total hospital uncompensated care costs for all CMSP counties, and by multiplying that product by the amount appropriated from the Hospital Services Account in the fund for purposes of this chapter.

(3) The amount calculated pursuant to paragraph (2) shall be each county's allocation from the total amount available for allocation to the counties under this chapter.

(c) The amounts calculated pursuant to paragraph (3) of subdivision (b) shall be divided and allocated in accordance with subdivision (b) of Section 16946.

16933. (a) The department shall distribute those moneys appropriated from the Physician Services Account and the Unallocated Account in the fund to CMSP counties on the basis of the percentages obtained by dividing each CMSP county's population by the total population of all CMSP counties, as reported in the most recent annual Department of Finance Research Unit report E-1.

(b) Each county shall use moneys allocated from the Unallocated Account in the fund to do any or all of the following:

(1) Expand emergency medical transportation or public health services.

(2) Enhance other county health services.

(c) Counties shall use moneys allocated from the Physician Services Account in the fund in one or more of the following ways to provide medically necessary emergency, obstetric, or pediatric services, or all of them, to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government:

(1) Establishment of a Physician Services Account in the county emergency medical services fund pursuant to Article 3.5 (commencing with Section 16951) of Chapter 5.

(2) Contracting with the department for the administration of all Physician Services Account moneys pursuant to subdivision (c) of Section 16952.

(3) The reimbursement or support of services, either directly or by contract, which are provided by physicians or groups of physicians.

(d) Moneys allocated from the Physician Services Account in the fund may be used to provide reimbursement for services provided on or after July 1, 1989.

16931.1. Any physician who receives funds pursuant to subdivision (b) of Section 16933 shall comply with the requirements of subdivision (d) of Section 16955.

16934. (a) As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including necessary followup dental services and prescription drugs, for any condition detected as part of a child health and disability prevention screen for a child eligible for services under Section 24165.3 of the Health and Safety Code, if the child was screened by the county, or upon referral by a child health and disability prevention program provider. This section shall not apply to any child eligible to receive care with no share of cost under the Medi-Cal program or who is covered by another publicly funded program or for whom these services are covered or will be paid by any other responsible party. A county may require that hospitals which contract with the county pursuant to paragraph (2) of subdivision (b) of Section 16946, physicians who contract with the county pursuant to paragraph (3) of subdivision (b) of Section 16933 or dentists or any provider which contracts with the county pursuant to subdivision (a) of Section 16933 and receives funds appropriated pursuant to this chapter to participate in complying with this section. A county shall not require that hospitals receiving an allocation pursuant to paragraph (1) of subdivision (b) of Section 16946 or physicians who receive payment from a physician services account established pursuant to paragraph (1) of subdivision (b) of Section 16933 participate in complying with this section.

(b) Dental services provided pursuant to this section shall be at least equal in scope and frequency to dental services available to Medi-Cal eligible children of the same age.

16934.2. (a) For the 1989–90 fiscal year, a county shall not have the option to contract with the department for payment for treatment of children required pursuant to Section 16934. However, a county may elect to limit its liability for payment of that treatment to 15 percent of the amount the county actually received under this chapter for the 1989–90 fiscal year. Any county which elects to establish a 15 percent reserve shall notify the department within 45 days of the effective date of this section of its intention. A county electing to limit its liability pursuant to this section shall reserve 15 percent of the amount it received, if the county contracts with the department for administration of its physician services account

pursuant to Section 16935. If the county does not contract with the department to administer its physician services account, the county's liability shall be 15 percent of the total allocation it received under this chapter. Payment for service provided between July 1, 1989 and June 30, 1990, pursuant to Section 16934 which exceeds the amount reserved shall be the responsibility of the state, provided that the county provides documentation that it established a 15 percent reserve and met its applicable 15 percent obligation for services provided pursuant to Section 16934. The state shall recoup any funds remaining in the 15 percent reserve which were not expended and shall use the funds to pay for treatment services required under Section 16934 in future years.

(1) A county which elects not to establish a 15 percent reserve pursuant to subdivision (a), or fails to notify the department of its intention to participate, shall retain full liability for the payment of treatment of children required pursuant to Section 16934.

(2) In addition to contractual and other arrangements with providers, the county, or the department under this subdivision, pursuant to the obligation under Section 16934, may refer a child in need of inpatient care to children's hospitals which have received funding under Chapter 6 (commencing with Section 16996), if the child meets the hospital's specific criteria for inpatient care. The county or the department shall be under no obligation to reimburse the children's hospital for these services.

(b) For the 1989–90 fiscal year, the department shall establish a separate Rural Health Services Reinsurance Account within the County Health Services Fund. For purposes of this chapter "reinsurance account" means the account established pursuant to this section.

(1) Moneys appropriated by the Legislature to establish the reinsurance account shall be deposited in the reinsurance account.

(2) Moneys deposited into the reinsurance account shall be used to pay for services provided pursuant to Section 16934 in those counties which have expended their 15 percent reserves established pursuant to subdivision (a).

(3) Any moneys remaining in the reinsurance account after June 30, 1990, which have not been expended or encumbered shall be transferred to the CHDP Treatment Account established pursuant to subdivision (b) of Section 16934.5.

16934.5. (a) For the 1990–91 fiscal year, each county may enter into a contract with the department in which the department agrees to assume the responsibility to pay for the cost of treatment service provided on or after July 1, 1990, to children pursuant to Section 16934.

(1) Each county intending to contract with the department shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than June 1, 1990. For each fiscal year thereafter a notice adopted by the board of supervisors shall be submitted no later than April 1 of the fiscal year preceding the fiscal

year for which the agreement will be in effect, in accordance with procedures established by the department. As a condition of contracting with the department, the department may establish uniform standards, forms, and procedures for the processing and payment of claims for treatment services.

(2) Each county contracting with the department pursuant to this subdivision shall agree that the department shall retain 40 percent of the allocation it would otherwise have received under this chapter. The department shall transfer amounts retained on a monthly basis to the CHDP Treatment Account established in subdivision (b).

(3) In future fiscal years the percentage retained by the department may be adjusted to reflect actual payments, projected expenditures, funds appropriated by the Legislature for treatment services, and the overall status of the account established in subdivision (b).

(b) Beginning with the 1990–91 fiscal year, the department shall establish a separate Child Health and Disability Prevention Treatment Account. For purposes of this chapter "CHDP Treatment Account" means the account established pursuant to this subdivision.

(1) The following funds shall be deposited into the CHDP Treatment Account:

(A) Funds appropriated by the Legislature to fund the reinsurance account established in subdivision (b) of Section 16934.2 which are not expended or encumbered for that purpose.

(B) Any funds recouped from those counties electing to establish a 15 percent reserve pursuant to subdivision (a) of Section 16934.2.

(C) Funds retained by the department pursuant to subdivision (a).

(D) Interest earnings on funds.

(E) Any additional funds appropriated by the Legislature.

(2) Funds deposited in the CHDP Treatment Account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this chapter, shall not be transferred to any other fund or account except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(3) Moneys deposited into the account shall constitute a risk pool which shall be used for any or all of the following purposes:

(A) Payment for services provided pursuant to Section 16934 in counties which have contracted with the department pursuant to subdivision (a).

(B) State administrative costs, including any costs associated with a contract for processing claims.

16935. (a) For the 1989–90 fiscal year, any county which intends to contract with the department for the administration of moneys allocated from the Physician Services Account in the fund pursuant to subdivision (c) of Section 16952 shall submit, to the department,

a notice of intent to contract which has been adopted by the county board of supervisors, not later than November 15, 1989.

(b) For the 1990–91 fiscal year and subsequent fiscal years, any county which intends to contract with the department for the administration of moneys allocated from the Physician Services Account in the fund shall submit, to the department, a notice of intent to contract, which has been adopted by the county board of supervisors, not later than April 1 of the fiscal year preceding the fiscal year for which the contract will be in effect and in accordance with procedure established by the department.

(c) As a condition of contracting with the department for the administration of moneys allocated from the Physician Services Account in the fund, each county shall, upon request by the department, comply with uniform program standards, including, but not limited to, eligibility levels, payment of claims, and deposit or transfer of funds administered, as established by the department.

16936. (a) (1) Any county which requests funds under this chapter shall submit to the department, for approval by the department, an application for initial funding and a description of the proposed use and expenditure of the moneys, as a component of the county health services plan and budget submitted pursuant to Section 16700.

(2) Beginning in the 1990–91 fiscal year, any county which does not contract with the department pursuant to subdivision (a) of Section 16934.5 shall include in its county plan an estimate of the costs and funding arrangement for dental services.

(b) The department shall review each county's application and proposed use of funds for compliance with this chapter.

(c) The department shall make initial monthly payments upon approval of the county's request for funds containing assurances that the county will comply with this chapter and other applicable provisions of this part.

(d) Payments made beyond April 1, 1990, and February 1 of each subsequent fiscal year, shall be contingent upon the signing of an agreement between the county board of supervisors and the department.

16937. (a) Services, associated costs, and sociodemographic characteristics of persons served by each county under Section 17000 and supported in whole or in part by funds appropriated for purposes of this chapter shall be incorporated into the reports required by Sections 16706, 16716, and 16915.

(b) Not later than July 1, 1991, to the extent possible, each county shall incorporate the data required by Section 16915 in the reports specified in subdivision (a).

16938. (a) Each county shall submit a report of estimated and actual expenditures of moneys as part of the submissions required according to the procedures established by the department pursuant to Section 16706.

(b) The department shall review the reports submitted pursuant

to subdivision (a) and recoup unspent moneys and expenditures which are not on compliance with this chapter or Section 16706.

(c) The department shall withhold, in whole or in part, payment of rural health services funds a CMSP county until the county submits the reports required by this section to the department in the form, and according to time schedules, established by the department.

16939. As a condition of receiving funds pursuant to this chapter, each county shall meet the requirements of Articles 7 (commencing with Section 16990) and 10 (commencing with Section 16995) of Chapter 5.

SEC. 32. Section 16946 of the Welfare and Institutions Code is amended to read:

16946. (a) The Hospital Services Account portion of each county's allocation pursuant to Section 16941 shall be divided into two amounts by:

(1) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (5) of subdivision (c) of Section 16945.

(2) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (6) of subdivision (c) of Section 16945.

(b) The amount of each county's Hospital Services Account funding portion calculated in paragraph (1) of subdivision (a) shall be used for payment or support of services provided on or after July 1, 1989, by noncounty hospitals within each county. This amount for each county shall be further divided into two equal parts, as follows:

(1) The first part shall be allocated to each noncounty hospital within a MISP county in amounts determined by multiplying the percentages specified in paragraph (7) of subdivision (c) of Section 16945 by the amount of the first part. Amounts calculated pursuant this paragraph shall not be reduced or utilized to offset the costs of administering the Hospital Services Account.

(2) The remaining 50 percent of the funds from the Hospital Services Account shall be distributed by the county to hospitals within the county, including those under contract with the county, to maintain access to emergency care and to purchase other necessary hospital services. Prior to distributing funds to hospitals, each county shall consult with the hospitals and consider the historic and projected patterns of care provided by hospitals, by geographic catchment areas within both urban and nonurban areas, unique costs associated with treating disproportionate numbers of severely ill indigent patients, and disproportionate losses sustained by hospitals in the provision of care.

(c) The amount of each county's Hospital Services Account funding portion calculated in paragraph (2) of subdivision (a) may be used for the payment or support of services provided on or after July 1, 1989, in county hospitals or noncounty hospitals as determined by each MISP county.

(d) As a condition of receiving funds under this section, each MISP county shall require each county and noncounty hospital to do all of the following:

(1) Maintain the same number and designation of emergency room and trauma care permits as existed on the effective date of this part.

(2) Provide data and reports on the use and expenditure of all funds received. This information shall be in a form and according to procedures specified by the county and the department.

(3) Assure that funds received pursuant to this section are used only for services for persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(e) (1) If a county or noncounty hospital does not comply with this section, the county shall recover funds received by the hospital as follows:

(A) For any violation of paragraph (1) of subdivision (d), the county shall recover that portion of the funds received which equal the ratio of the number of months not in compliance to 12 months.

(B) For any violation of paragraph (2) of subdivision (d), the county shall recover all funds received.

(C) For any violation of paragraph (3) of subdivision (d), the county shall recover the difference between the amount received and the amount for which the hospital can document that the funds were used only for services for persons who cannot afford to pay for those services and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(2) The county may deny further payments required by this section until the hospital demonstrates compliance.

(f) Funds withheld or recovered pursuant to this section may be reallocated and distributed by the county pursuant to paragraph (2) of subdivision (b).

(g) (1) Except as provided in paragraph (2), funds allocated pursuant to paragraph (1) of subdivision (b) or paragraph (2) of subdivision (b) which are not expended because a hospital does not participate shall be redistributed pursuant to paragraph (2) of subdivision (b).

(2) If no noncounty hospitals remain to participate, the county may distribute those unexpended funds pursuant to subdivision (c).

SEC. 33. Section 16946 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989-90 Regular Session of the Legislature, is amended to read:

16946. (a) The Hospital Services Account portion of each county's allocation pursuant to Section 16941 shall be divided into two amounts by:

(1) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (5) of

subdivision (c) of Section 16945.

(2) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (6) of subdivision (c) of Section 16945.

(b) The amount of each county's Hospital Services Account funding portion calculated in paragraph (1) of subdivision (a) shall be used for payment or support of services provided on or after July 1, 1989, by noncounty hospitals within each county. This amount for each county shall be further divided into two equal parts, as follows:

(1) The first part shall be allocated to each noncounty hospital within a MISP county in amounts determined by multiplying the percentages specified in paragraph (7) of subdivision (c) of Section 16945 by the amount of the first part. Amounts calculated pursuant to this paragraph shall not be reduced or utilized to offset the costs of administering the Hospital Services Account.

(2) The remaining 50 percent of the funds from the Hospital Services Account shall be distributed by the county to hospitals within the county, including those under contract with the county, to maintain access to emergency care and to purchase other necessary hospital services. Prior to distributing funds to hospitals, each county shall consult with the hospitals and consider the historic and projected patterns of care provided by hospitals, by geographic catchment areas within both urban and nonurban areas, unique costs associated with treating disproportionate numbers of severely ill indigent patients, and disproportionate losses sustained by hospitals in the provision of care.

(c) The amount of each county's Hospital Services Account funding portion calculated in paragraph (2) of subdivision (a) may be used for the payment or support of services provided on or after July 1, 1989, in county hospitals or noncounty hospitals as determined by each MISP county.

(d) As a condition of receiving funds under this section, each MISP county shall require each county and noncounty hospital to do all of the following:

(1) Maintain the same number and classification of emergency room permits and trauma facility designations as existed on October 2, 1989.

(2) Provide data and reports on the use and expenditure of all funds received. This information shall be in a form and according to procedures specified by the county and the department.

(3) Assure that funds received pursuant to this section are used only for services for persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(e) (1) If a county or noncounty hospital does not comply with this section, the county shall recover funds received by the hospital as follows:

(A) For any violation of paragraph (1) of subdivision (d), the

county shall recover that portion of the funds received which equal the ratio of the number of months not in compliance to 12 months.

(B) For any violation of paragraph (2) of subdivision (d), the county shall recover all funds received.

(C) For any violation of paragraph (3) of subdivision (d), the county shall recover the difference between the amount received and the amount for which the hospital can document that the funds were used only for services for persons who cannot afford to pay for those services and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(2) The county may deny further payments required by this section until the hospital demonstrates compliance.

(f) Funds withheld or recovered pursuant to this section may be reallocated and distributed by the county pursuant to paragraph (2) of subdivision (b).

(g) (1) Except as provided in paragraph (2), funds allocated pursuant to paragraph (1) or (2) of subdivision (b) which are not expended because a hospital does not participate shall be redistributed pursuant to paragraph (2) of subdivision (b).

(2) If no noncounty hospitals remain to participate, the county may distribute those unexpended funds pursuant to subdivision (c).

SEC. 34. Section 16947 is added to the Welfare and Institutions Code, to read:

16947. (a) Any hospital which receives funds pursuant to this chapter shall, within 90 days of the receipt of those funds, cease all current and waive all future collection efforts, by itself and by its agents, to obtain any payment from the patient with respect to whom the services funded under this chapter were rendered.

(b) This section shall not be interpreted or applied so as to prevent the hospital from doing either of the following:

(1) Seeking demographic, financial, or other information necessary for the patient to qualify for Medi-Cal program benefits under Chapter 14 (commencing with Section 14000) of Part 3 or for the reimbursement for services through any other third-party payor.

(2) Seeking payment from a patient or responsible third-party payor or arranging a repayment schedule for the cost of services rendered.

(c) If a hospital receives payment from a patient or responsible third-party payor, the hospital shall notify the county and reimburse the county in an amount equal to the amount collected from the patient or third-party payor, but not more than the amount of the payment received from the county for the patient's care.

SEC. 35. Section 16948 is added to the Welfare and Institutions Code, to read:

16948. (a) (1) Within 10 working days of enactment of this section, each county which has received an allocation pursuant to Section 16941 and Section 16932 shall distribute to each noncounty hospital that hospital's accumulated proportionate share of the funds

pursuant to paragraph (1) of subdivision (b) of Section 16946 for the 1989–90 fiscal year. This requirement shall not supersede any contractual agreement between a county and a noncounty hospital regarding the distribution of these funds.

(2) Commencing with the first day of the month following the effective date of this section for the remainder of the 1989–90 fiscal year, and for the 1990–91 fiscal year, within 10 working days of receipt of funds allocated pursuant to Section 16941 and Section 16932, the county shall distribute to each noncounty hospital that hospital's share of the funds pursuant to paragraph (1) of subdivision (b) of Section 16946.

(b) Each noncounty hospital which receives funds pursuant to paragraph (1) of subdivision (a) shall report to the county, within 90 days after receipt of the funds, information on patients for whom the distributions were used, pursuant to Section 16918.

(c) Each noncounty hospital which receives funds pursuant to paragraph (2) of subdivision (a) shall report to the county within 30 days after the receipt of the funds, information on patients for whom the distributions will be used, pursuant to Section 16918.

(d) The county shall suspend distribution of funds to any noncounty hospital which fails to provide the information required pursuant to subdivisions (b) and (c) until the hospital provides the required information.

SEC. 35.5. Section 16949 is added to the Welfare and Institutions Code, to read:

16949. (a) The Legislature recognizes that in the context of hospital services rendered as a result of emergency medical conditions, the application of the supplemental services requirement of Section 30125 of the Revenue and Taxation Code and Section 13 of Chapter 1331 of the Statutes of 1989 includes certain unique considerations, including, but not limited to, all of the following:

(1) Hospital emergency room patient loads generally are not controlled by the facility.

(2) The facility is obligated, as a condition of licensure, to take all patients in need of emergency treatment, if it is within the capacity of the facility to do so.

(3) It is the policy of the Legislature to provide less expensive alternative methods of care, rather than continue present patterns of overutilization of emergency facilities.

(b) Hospitals which provide appropriate treatment to patients who present in the emergency department and which do not impose any barriers to patients' receipt of that treatment shall be deemed to satisfy the requirements of Section 30125 of the Revenue and Taxation Code and Section 13 of Chapter 1331 of the Statutes of 1989.

(c) Each county, as part of its plan for distribution of funds under paragraph (2) of subdivision (b) of Section 16946, shall consider the use of those funds to meet emergency room patient needs and followup treatment, including the need for special hospital services.

(d) Any hospital which contracts with a county under paragraph

(2) of subdivision (b) of Section 16946 shall report to the county and to the office on any reduction in hospital emergency room specialist capability below the level which was provided at that facility on October 2, 1989.

(e) This section shall not be construed to alter or amend any hospital's obligation under Sections 1317 to 1317.9a, inclusive, of the Health and Safety Code.

SEC. 36. Section 16950 of the Welfare and Institutions Code is amended to read:

16950. (a) Twelve and two-tenths percent, or that portion of the CHIP Account derived from the Physician Services Account in a fiscal year, of each county's allocation under Section 16941 shall be used for the support of or payment for uncompensated physician services.

(b) Up to 50 percent of the moneys provided pursuant to subdivision (a) may be used by counties to pay for new contracts, with an effective date no earlier than July 1989, with private physicians for provision of emergency, obstetric, and pediatric services in facilities which are not owned or operated by a county, and where access to those services has been severely restricted. The contracts may provide for partial or full reimbursement for physician services provided to patients described in subdivision (f) of Section 16952, and shall be subject to subdivision (d) of Section 16955.

(c) At least 50 percent of the moneys provided pursuant to subdivision (a) shall be transferred to the county Physician Services Account established in accordance with Section 16952 and administered in accordance with Chapter 3.5 (commencing with Section 16951).

SEC. 37. Section 16950 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989-90 Regular Session of the Legislature, is amended to read:

16950. (a) Twelve and two-tenths percent, or that portion of the CHIP Account derived from the Physician Services Account in a fiscal year, of each county's allocation under Section 16941 shall be used for the support of or payment for uncompensated physician services.

(b) Up to 50 percent of the moneys provided pursuant to subdivision (a) may be used by counties to pay for new contracts, with an effective date no earlier than July 1989, with private physicians for provision of emergency, obstetric, and pediatric services in facilities which are not owned or operated by a county, and where access to those services has been severely restricted. The contracts may provide for partial or full reimbursement for physician services provided to patients described in subdivision (f) of Section 16952, and shall be subject to subdivision (d) of Section 16955.

(c) At least 50 percent of the moneys provided pursuant to subdivision (a) shall be transferred to the county Physician Services Account established in accordance with Section 16952 and administered in accordance with Article 3.5 (commencing with

Section 16951).

SEC. 38. Section 16952 of the Welfare and Institutions Code is amended to read:

16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.

(2) (A) Each county may encumber sufficient funds to reimburse physician losses incurred during the fiscal year for which bills will not be received until after the fiscal year.

(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.

(C) All funds which are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Section 16706.

(b) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.

No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county physician services account shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16709, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account shall be reimbursed by the account, up to 10 percent of the amount of the account.

(e) For purposes of this chapter "administering agency" means the agency designated by the board of supervisors to administer this chapter, or the department, in the case of those counties electing to have the state administer this chapter on their behalf.

(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred for services provided on or after July 1, 1989, due to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(g) (1) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.

(2) It is the intent of this subdivision to allow reimbursement for all of the following:

(A) All inpatient and outpatient obstetric services which are

medically necessary, as determined by the attending physician.

(B) All inpatient and outpatient pediatric services which are medically necessary, as determined by the attending physician.

(h) No physician shall be reimbursed for more than 50 percent of the losses submitted to the administering agency.

SEC. 39. Section 16952 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.

(2) (A) Each county may encumber sufficient funds to reimburse physician losses incurred during the fiscal year for which bills will not be received until after the fiscal year.

(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.

(C) All funds which are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Section 16706.

(b) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.

No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county physician services account shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16709, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account shall be reimbursed by the account, up to 10 percent of the amount of the account.

(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer this article, or the department, in the case of those CSMP counties electing to have the state administer this article on their behalf.

(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred for services provided on or after July 1, 1989, due to patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(g) (1) Reimbursement for losses shall be limited to emergency

services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.

(2) It is the intent of this subdivision to allow reimbursement for all of the following:

(A) All inpatient and outpatient obstetric services which are medically necessary, as determined by the attending physician.

(B) All inpatient and outpatient pediatric services which are medically necessary, as determined by the attending physician.

(h) No physician shall be reimbursed for more than 50 percent of the losses submitted to the administering agency.

SEC. 40. Section 16953.5 is added to the Welfare and Institutions Code, to read:

16953.5. The county may reimburse for emergency services provided by a physician in a standby emergency room in a hospital specified in Section 1188.855 of the Health and Safety Code.

SEC. 41. Section 16955 of the Welfare and Institutions Code is amended to read:

16955. Reimbursement for losses incurred by any physician shall be limited to services provided to a patient defined in subdivision (f) of Section 16952, and where all of the following conditions have been met:

(a) The physician has inquired if there is a responsible third-party source of payment.

(b) The physician has billed for payment of services.

(c) Either of the following:

(1) A period of not less than three months has passed from the date the physician billed the patient or responsible third-party, during which time the physician has made reasonable efforts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.

(2) The physician has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician.

(d) The physician has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of funds from the county physician services account in the county emergency medical services fund.

SEC. 42. Section 16955.1 is added to the Welfare and Institutions Code, to read:

16955.1. This article shall not be applied or interpreted so as to prevent a physician from seeking payment from a patient or responsible third-party payor, or arranging a repayment schedule for the costs of services rendered prior to receiving payment under this article.

SEC. 43. Section 16958 of the Welfare and Institutions Code is amended to read:

16958. If, after receiving payment from the account, a physician is reimbursed by a patient or a responsible third-party, the physician shall do one of the following:

(a) Notify the administering agency and the administering agency shall reduce the physician's future payment of claims from the account . In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician shall reimburse the account in an amount equal to the amount collected from the patient or third-party payor, but not more than the amount of reimbursement received from the account.

(b) Notify the administering agency of the payment and reimburse the account in an amount equal to the amount collected from the patient or third-party payor, but not more than the amount of the reimbursement received from the account for that patient's care.

SEC. 44. Section 16960 of the Welfare and Institutions Code is amended to read:

16960. (a) Twenty-eight and three-tenths percent, or that percentage of the program account deriving from the Unallocated Account of the fund in a fiscal year of each MISP county's allocation under Section 16941, shall be expended consistent with Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, at county discretion, to maintain and enhance health care services provided on or after July 1, 1989, for patients who cannot pay for those services which will not be covered by private insurance or by a program funded in whole or in part by the federal government. In those MISP counties where city public health departments exist, the county shall give consideration to those agencies in the use of funds received pursuant to this section.

(b) Counties may expend up to 5 percent or fifty thousand dollars ($50,000), whichever is greater, of the funds received pursuant to this section for costs related to the purchase of equipment and fixed assets. However, no single expenditure may exceed ten thousand dollars ($10,000).

SEC. 45. Section 16961 of the Welfare and Institutions Code, as added by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16961. Services provided pursuant to this article include only those health care services specified in Section 14021 and 14132, and Divisions 1 (commencing with Section 100) and 4 (commencing with Section 3000) of the Health and Safety Code, which are provided to patients who cannot afford to pay for those services, and for whom payment will not be made through private coverage or by any program funded in whole or in part by the federal government.

SEC. 45.3. Section 16961 is added to the Welfare and Institutions Code, to read:

16961. Services provided pursuant to this article include only those health care services specified in Section 14021 and 14132, and Divisions 1 (commencing with Section 100) and 4 (commencing with Section 3000) of the Health and Safety Code, which are provided to patients who cannot afford to pay for those services, and

for whom payment will not be made through private coverage or by any program funded in whole or in part by the federal government.

SEC. 45.5. Section 16970 of the Welfare and Institutions Code is amended to read:

16970. (a) As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 323.7 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program or is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) A county may require that hospitals, physicians, and other providers receiving funds appropriated pursuant to this part participate in complying with this section, provided that:

(1) Hospitals which receive an allocation pursuant to paragraph (1) of subdivision (b) of Section 16946 and physicians who receive payment from the physician services account of the emergency services fund established pursuant Article 3.5 (commencing with Section 16951) shall be not be required to participate in complying with subdivision (a) as a condition of receiving those allocations or payments.

(2) Only providers which contract with the county and receive funds disbursed from the Unallocated Account pursuant to Article 4 (commencing with Section 16960) or from the discretionary portion of the Physician Services Account pursuant to subdivision (b) of Section 16950, or from the discretionary portion of the Hospital Services Account pursuant to paragraph (2) of subdivision (b) of Section 16946 may be required to participate in complying with subdivision (a).

(c) Dental services provided pursuant to this section shall be at least equal in scope and frequency to dental services available to Medi-Cal eligible children of the same age.

SEC. 45.7. Section 16970 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16970. (a) As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program or is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) A county may require that hospitals, physicians, and other

providers receiving funds appropriated pursuant to this part participate in complying with this section, provided that:

(1) Hospitals which receive an allocation pursuant to paragraph (1) of subdivision (b) of Section 16946 and physicians who receive payment from the physician services account of the emergency services fund established pursuant Article 3.5 (commencing with Section 16951) shall not be required to participate in complying with subdivision (a) as a condition of receiving those allocations or payments.

(2) Only providers which contract with the county and receive funds disbursed from the Unallocated Account pursuant to Article 4 (commencing with Section 16960) or from the discretionary portion of the Physician Services Account pursuant to subdivision (b) of Section 16950, or from the discretionary portion of the Hospital Services Account pursuant to paragraph (2) of subdivision (b) of Section 16946 may be required to participate in complying with subdivision (a).

(c) Dental services provided pursuant to this section shall be at least equal in scope and frequency to dental services available to Medi-Cal eligible children of the same age.

SEC. 46. Section 16980 of the Welfare and Institutions Code is amended to read:

16980. (a) The department shall no later than January 1, 1990, make monthly payments of county allocations made pursuant to Section 16941 upon application of the county assuring that it will comply with the provisions of this part. Payments shall be made on a monthly basis. Funding made available pursuant to this part shall be included within the agreement required by Section 16704.

(b) (1) Each county shall include information on programs and services which will receive funding under this chapter as part of its annual plan and budget submitted pursuant to Section 16700. The department shall review and approve this information for compliance with this part.

(2) Beginning with the 1990–91 fiscal year, each county shall include an estimate of, and the costs and funding arrangement for, dental services in its annual plan and budget submitted pursuant to Section 16700.

SEC. 46.5. Section 16980 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16980. (a) The department shall no later than January 1, 1990, make monthly payments of county allocations made pursuant to Section 16941 upon application of the county assuring that it will comply with the provisions of this part. Payments shall be made on a monthly basis. Funding made available pursuant to this part shall be included within the agreement required by Section 16704.

(b) (1) Each county shall include information on programs and services which will receive funding under this chapter as part of its annual plan and budget submitted pursuant to Section 16700. The

department shall review and approve this information for compliance with this part.

(2) Beginning with the 1990–91 fiscal year, each county shall include an estimate of, and the costs and funding arrangement for, dental services in its annual plan and budget submitted pursuant to Section 16700.

SEC. 47.5. Section 16991 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16991. (a) The sum of twenty-six million five hundred ninety-seven thousand dollars ($26,597,000) is appropriated from the General Fund to the department, for the 1989–90 fiscal year, to be allocated to each county receiving funds pursuant to subdivision (d) of Section 16703. Each county's maximum allocation under this section shall be determined as follows:

(1) The sum of one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000) shall be multiplied by each county's percentage determined by subdivision (d) of Section 16703.

(2) For each county, the percentage of persons newly legalized under the Immigration Reform and Control Act of 1986 (IRCA) who are residents of that county divided by the total of all IRCA newly legalized persons for all counties eligible to receive funds pursuant to this section shall be determined. The department shall utilize the most recent data from the federal Department of Health and Human Services for this purpose.

(3) Each county's percentage determined in paragraph (2) shall then be multiplied by one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000).

(4) For each county, the amount determined in paragraph (3) shall be subtracted from the amount determined in paragraph (1). If the resulting amount is negative, no funds shall be allocated to that county. If the resulting amount is positive, that amount shall be the county's maximum allocation and shall be made available to that county in the same manner and according to the same procedures and requirements that govern funds made available pursuant to subdivision (d) of Section 16703, except that the department shall make the payment of each county's allocation as determined above in one lump sum on or before January 1, 1990.

(5) If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988–89 the state shall reimburse the county for the amount of the difference. For the 1990–91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from State Legalization Impact Assistance Grant funding for indigent care that year is less

than the amount of funding the county received pursuant to Section 16703 in the 1988–89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement.

(6) The calculations specified in paragraph (5) shall be performed after the end of the fiscal year after all claims from a county for that fiscal year have been adjudicated. The calculations shall be performed within 90 days of the date that the final claim for a fiscal year is submitted by the county.

(7) If a county submits additional claims for services provided in a specific year and has received funds under paragraph (5) above for that year, the department shall reimburse the General Fund up to amount received under paragraph (5) from federal State Legalization Impact Assistance Grant funds otherwise payable to the county based upon the additional claims.

(b) In determining if a county has made reasonable efforts to document and claim federal State Legalization Impact Assistance Grant funding, the department may require a county to utilize statistically valid sampling methods or to utilize the federal Cost Documentation System for Social Security matching.

(c) To the extent allowed by federal law, the department shall make quarterly prospective payments of federal State Legalization Impact Assistance Grant funds to counties for the 1988–89, 1989–90, and 1990–91 fiscal years SLIAG claims for indigent health services. Prospective payments shall not exceed the total amount of a county's 1987–88 fiscal year claim, as adjusted by the department, on an annualized basis. As a condition of receiving a prospective payment, the county shall certify that it intends to submit claims exceeding the amount of the payments. A county shall be liable for any overpayments or federal sanctions in the event of an excess drawdown of federal State Legalization Impact Assistance Grant funds.

(d) A county may apply for, and the Department of Finance may approve, a state General Fund loan in the 1989–90 fiscal year to meet anticipated shortfalls in its Medically Indigent Services Program. In order to receive funds, the county shall demonstrate to the Department of Finance that the county will not submit 1989–90 fiscal year claims totaling more than 50 percent of its estimated SLIAG amount as determined by its percentage of the newly legalized population multiplied by the amount of total SLIAG funds available. The county shall also demonstrate that the county has made reasonable efforts to document and claim federal SLIAG funds as defined in paragraph (7) of subdivision (a). In no event shall the loan amount exceed 50 percent of a county's percentage of the newly legalized population multiplied by the amount of total SLIAG funds available, or exceed the amount to which the county is entitled pursuant to paragraph (5) of subdivision (a). The loan shall be issued

to the county, as soon as possible after the enactment of Assembly Bill 1154 of the 1989–90 Regular Session of the Legislature, but no later than June 30, 1990. The loan balance shall be credited in the amount of funds provided pursuant to paragraph (5) of subdivision (a) upon receipt of the funds. Repayment shall include interest calculated at the rate earned by the Pooled Money Investment Account.

SEC. 48. Section 16994 of the Welfare and Institutions Code is amended to read:

16994. (a) (1) Ninety percent of the amount appropriated for the purposes of this article shall be allocated to MISP counties according to the percentages specified in this chapter.

(2) The remaining 10 percent shall be allocated to CMSP counties, according to the following procedures:

(A) Calculating the sum of uncompensated care costs for all hospitals in each CMSP county.

(B) Divide the sum of subparagraph (A) by the sum of uncompensated care costs for all hospitals with all CMSP counties.

(C) Multiply the quotient derived from the application of subparagraph (B) by the total amount appropriated for the purposes of this article.

(b) Funding utilized under this section shall be for capital expediture and equipment acquisition purposes associated with the direct delivery of patient care. In addition, each county may utilize up to two million dollars ($2,000,000) or 10 percent of its allocation under this section, whichever is greater, on a one-time basis only in the 1989–90 fiscal year to restore county special fund balances to their July 1, 1988 levels. Funds from this section may be allocated for this purpose only in circumstances where the county board of supervisors transferred moneys from those special funds to the county general fund or to health facilities enterprise funds in order to support indigent health care services in the 1988–89 fiscal year.

(c) Except as provided in subdivision (a), no less than 67 percent of the moneys a county receives under this section shall be allocated to county acute care hospitals, University of California hospitals, or any private hospital licensed pursuant to subdivision (d) of Section 1250 of the Health and Safety Code, which operates an emergency room or a burn unit or outpatient clinic. The moneys may be expended for facility repair, renovation, remodeling, expansion, or acquisition or equipment needs.

(d) Except as provided in subdivision (b), up to 33 percent of the moneys a county receives under this section may be expended for capital improvement and equipment needs for outpatient clinics, or mental health facilities, or public health clinics or licensed community and free clinics or clinics operated by tribes or tribal organizations.

(e) Noncounty hospitals shall utilize funds received under this section only for capital expenditures related to emergency room, burn unit, and outpatient clinics.

(f) County hospitals may utilize funds received under this section

for expenditures related to inpatient, outpatient, emergency room, or burn unit services.

(g) Funds utilized from this section shall be for capital expenditure purposes associated with the direct treatment of patients.

(h) Each county receiving moneys under this section shall submit a plan for the use of these moneys to the department for review and approval prior to making any commitment for the expenditure of such funds. Any subsequent revision to the county's capital improvements plan shall also be submitted for review and approval. The department's approval authority shall be limited to a determination of whether the county's plan conforms to statutory provisions as contained in this section and part. The department may establish necessary procedures and forms for the submission, review, and approval of county plans and reports.

(i) (1) Counties receiving moneys pursuant to this section shall deposit them in a separate capital outlay fund, established solely for this purpose, before transferring or expending them.

(2) Interest earnings on the fund established pursuant to paragraph (1) shall accrue to the benefit of that capital outlay fund, and shall be expended for uses authorized by this section.

(3) County costs of administering the fund established pursuant to this section shall be reimbursed from that fund.

(j) The expenditure of moneys authorized by this section may be made without regard to fiscal year provided that moneys authorized by this section shall be available for encumbrance for three fiscal years and for expenditure for five fiscal years, including the 1989–90 fiscal year. At the end of five years any moneys which have not been expended shall be recouped by the department.

(k) Counties shall submit an annual report, in accordance with guidelines provided by the department, detailing the use and actual expenditure of moneys received pursuant to this section. The department shall recoup the amount of any county expenditure which does not conform to the provisions of this section.

(*l*) Payment of moneys under this section shall be made as follows:

(1) Half of the county's allocation shall be paid upon the department's approval of the county plan specified in subdivision (h).

(2) The remaining half of the county's allocation shall be paid upon execution of a capital outlay standard agreement, between the county board of supervisors and the department.

(m) For the purposes of this section, "capital expenditures" means expenditures for fixed assets, major movable equipment, fixtures, structures, emergency communications systems necessary to perform the duties of a base station hospital or base hospital physician, as defined in Sections 1797.58 and 1797.59 of the Health and Safety Code, and improvements as defined for counties in "Accounting Standards and Procedures for Counties" issued by the

Office of the Controller, Division of Local Government, Fiscal Affairs and for other providers as defined by generally accepted standards of accounting practices.

SEC. 49. Section 16994 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16994. (a) (1) Ninety percent of the amount appropriated for the purposes of this article shall be allocated to MISP counties according to the percentages specified in this chapter.

(2) The remaining 10 percent shall be allocated to CMSP counties, according to the following procedures:

(A) Calculate the sum of uncompensated care costs for all hospitals in each CMSP county.

(B) Divide the sum of subparagraph (A) by the sum of uncompensated care costs for all hospitals within all CMSP counties.

(C) Multiply the quotient derived from the application of subparagraph (B) by the total amount appropriated pursuant to paragraph (2) for the purposes of this article.

(b) Funding utilized under this section shall be for capital expenditure and equipment acquisition purposes associated with the direct delivery of patient care. In addition, each county may utilize up to two million dollars ($2,000,000) or 25 percent of its allocation under this section, whichever is greater, on a one-time basis only in the 1989–90 fiscal year to restore county special fund balances to their July 1, 1988, levels. Funds from this section may be allocated for this purpose only in circumstances where the county board of supervisors transferred moneys from those special funds to the county general fund or from the county general fund to health facilities enterprise funds in order to support indigent health care services in the 1988–89 fiscal year. All capital outlay moneys under this section utilized to restore county special fund or general fund balances shall be appropriated for capital expenditures and equipment acquisition associated with the direct delivery of patient care in the 1990–91 fiscal year.

(c) Except as provided in subdivision (b), no less than 67 percent of the moneys a county receives under this section shall be allocated to county acute care hospitals, University of California hospitals, or any private hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code, which operates an emergency room or a burn unit or outpatient clinic. The moneys may be expended for facility repair, renovation, remodeling, expansion, or acquisition or equipment needs.

(d) Except as provided in subdivision (b), up to 33 percent of the moneys a county receives under this section may be expended for capital improvement and equipment needs for outpatient clinics, or mental health facilities, or public health clinics or licensed community and free clinics or clinics operated by tribes or tribal organizations.

(e) Noncounty hospitals shall utilize funds received under this

section only for capital expenditures related to emergency room, burn unit, and outpatient clinics.

(f) County hospitals may utilize funds received under this section for expenditures related to inpatient, outpatient, emergency room, or burn unit services.

(g) Funds utilized from this section shall be for capital expenditure purposes associated with the direct treatment of patients.

(h) Each county receiving moneys under this section shall submit a plan for the use of these moneys to the department for review and approval prior to making any commitment for the expenditure of such funds. Any subsequent revision to the county's capital improvements plan shall also be submitted for review and approval. The department's approval authority shall be limited to a determination of whether the county's plan conforms to statutory provisions as contained in this section and part. The department may establish necessary procedures and forms for the submission, review, and approval of county plans and reports.

(i) (1) Counties receiving moneys pursuant to this section shall deposit them in a separate capital outlay fund, established solely for this purpose, before transferring or expending them.

(2) Interest earnings on the fund established pursuant to paragraph (1) shall accrue to the benefit of that capital outlay fund, and shall be expended for uses authorized by this section.

(3) County costs of administering the fund established pursuant to this section shall be reimbursed from that fund.

(j) The expenditure of moneys authorized by this section may be made without regard to fiscal year provided that moneys authorized by this section shall be available for encumbrance for three fiscal years and for expenditure for five fiscal years, including the 1989–90 fiscal year. At the end of five years any moneys which have not been expended shall be recouped by the department.

(k) Counties shall submit an annual report, in accordance with guidelines provided by the department, detailing the use and actual expenditure of moneys received pursuant to this section. The department shall recoup the amount of any county expenditure which does not conform to the provisions of this section.

(*l*) Payment of moneys under this section shall be made as follows:

(1) Half of the county's allocation shall be paid upon the department's approval of the county plan specified in subdivision (h).

(2) The remaining half of the county's allocation shall be paid upon execution of a capital outlay standard agreement, between the county board of supervisors and the department.

(m) For the purposes of this section, "capital expenditures" means expenditures for fixed assets, major movable equipment, fixtures, structures, emergency communications systems necessary to perform the duties of a base station hospital or base hospital

physician, as defined in Sections 1797.58 and 1797.59 of the Health and Safety Code, and improvements as defined for counties in "Accounting Standards and Procedures for Counties" issued by the Office of the Controller, Division of Local Government, Fiscal Affairs and for other providers as defined by generally accepted standards of accounting practices.

SEC. 50. Section 16996.2 of the Welfare and Institutions Code is amended to read:

16996.2. (a) As a condition of receiving funds under Section 16996.1, a hospital shall provide medically necessary inpatient treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 323.7 of the Health and Safety Code. Inpatient hospital services shall be provided at no cost upon referral by a Child Health and Disability Prevention program provider, whether that provider is a physician, a county, or a primary care clinic, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) The department shall report to the Legislature on the distribution and use of funds provided to hospitals under Section 16996.1 on an annual basis.

SEC. 51. Section 16996.2 of the Welfare and Institutions Code, as amended by Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

16996.2. (a) As a condition of receiving funds under Section 16996.1, a hospital shall provide medically necessary inpatient treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 24165.3 of the Health and Safety Code. Inpatient hospital services shall be provided at no cost upon referral by a Child Health and Disability Prevention program provider, whether that provider is a physician, a county, or a primary care clinic, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) The department shall report to the Legislature on the distribution and use of funds provided to hospitals under Section 16996.1 on an annual basis.

SEC. 52. Section 10 of Chapter 1331 of the Statutes of 1989 is amended to read:

Sec. 10. The sum of one billion two hundred twelve million nine hundred sixty thousand dollars ($1,212,960,000) is hereby appropriated from the Cigarette and Tobacco Products Surtax Fund, according to the following schedule:

(a) Seven hundred two million five hundred six thousand dollars ($702,506,000) for the 1989–90 fiscal year, as follows:

(1) Two hundred ninety-eight million two hundred fifty-two thousand dollars ($298,252,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) Fifty million dollars ($50,000,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Thirty-seven million sixteen thousand dollars ($37,016,000) for allocation to hospitals for uncompensated hospital services, pursuant to Chapter 3 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Nine hundred seventy thousand dollars ($970,000) for state administration.

(D) Two million dollars ($2,000,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(E) Two million nine hundred eighty-eight thousand dollars ($2,988,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Four million nine hundred eighty thousand dollars ($4,980,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Two hundred million seventy-four thousand ($200,074,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two hundred twenty-five thousand dollars ($225,000) from the Hospital Services Account to the Office of Statewide Health Planning and Development, for state administration.

(3) Eighty-five million two hundred fifteen thousand dollars ($85,215,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Twenty-four million nine hundred fifteen thousand dollars ($24,915,000) for allocation to counties for uncompensated physician services, pursuant to Section 16950.1 of the Welfare and Institutions Code.

(B) Four million nine hundred thirty thousand dollars ($4,930,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(C) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(D) One million nine hundred ninety-five thousand dollars ($1,995,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(E) One million nine hundred ninety-two thousand dollars ($1,992,000) for transfer to the County Medical Services Program

Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(F) Forty-one million ninety-nine thousand dollars ($41,099,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(G) Three hundred thirty-seven thousand dollars ($337,000) for state administration.

(4) One hundred sixty-eight million thirty-eight thousand dollars ($168,038,000) from the Unallocated Account to the State Department of Health Services, as follows:

(A) Thirty-two million two hundred eighty-eight thousand dollars ($32,288,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Ten million dollars ($10,000,000) for county data systems, pursuant to Chapter 2 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Fourteen million seven hundred eighty-nine thousand dollars ($14,789,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(D) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(E) One million nine hundred eighty-nine thousand dollars ($1,989,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Two million nine hundred eighty-two thousand dollars ($2,982,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Ninety-five million three hundred nineteen thousand dollars ($95,319,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(H) Seven hundred twenty-four thousand dollars ($724,000) for state administration.

(5) One hundred fifteen million dollars ($115,000,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) (i) Forty-one million five hundred ninety-four thousand dollars ($41,594,000) for establishment of competitive grants, pursuant to this act.

(ii) Funds appropriated by this subparagraph may be expended or encumbered during the period which Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code is operative.

(iii) Funds appropriated by this subparagraph shall be available

only for the purposes described in Sections 24165 and 24165.2 of the Health and Safety Code.

(B) One million four hundred sixty-two thousand dollars ($1,462,000) for state administration.

(C) Two million three hundred four thousand ($2,304,000) for operation of the Tobacco Education Oversight Committee created pursuant to Section 24162 of the Health and Safety Code and the contract for a systematic and independent evaluation conducted pursuant to Section 24164 of the Health and Safety Code, and development of necessary data collection and management.

(D) Fourteen million three hundred forty-nine thousand ($14,349,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(E) Nineteen million six hundred ninety-six thousand dollars ($19,696,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(F) (i) Thirty-five million five hundred ninety-five thousand dollars ($35,595,000) for allocation to local lead agencies upon the department's approval of the local plan pursuant to Section 24164 of the Health and Safety Code.

(ii) Funds appropriated by this subparagraph may be expended or encumbered during the period which Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code is operative.

(6) Thirty-six million dollars ($36,000,000) to the State Department of Education for purposes of implementing its duties under Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code, as follows:

(A) (i) Nine hundred thousand dollars ($900,000) for state administration.

(ii) The State Department of Education shall notify the chairperson of the committees of each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee not less than 30 days prior to implementation of this paragraph pursuant to Section 28 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989.

(B) Two million five hundred thousand dollars ($2,500,000) for county offices of education administration, to be allocated pursuant to subdivision (o) of Section 24167 of the Health and Safety Code.

(C) Thirty-two million six hundred thousand dollars ($32,600,000) for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

(D) Funds appropriated by this subparagraph to the State Department of Education may be expended or encumbered during

the period which Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code is operative.

(b) Five hundred ten million four hundred fifty-four thousand dollars ($510,454,000) for the 1990–91 fiscal year, as follows:

(1) One hundred ninety-eight million four hundred eighty-seven thousand dollars ($198,487,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) One million eight hundred ninety-six thousand dollars ($1,896,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Two million eight hundred thirty-one thousand dollars ($2,831,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(C) Four million nine hundred sixty-one thousand dollars ($4,961,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(D) One hundred eighty-eight million seven hundred ninety-nine thousand dollars ($188,799,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Fifty-six million seven hundred twenty-eight thousand dollars ($56,728,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Four million five hundred eighty thousand dollars ($4,580,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred sixty-six thousand dollars ($1,866,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(D) One million nine hundred eighty-six thousand dollars ($1,986,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Thirty-eight million four hundred two thousand dollars ($38,402,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(3) One hundred sixteen million five hundred forty-eight thousand dollars ($116,548,000) from the Unallocated Account, to the State Department of Health Services as follows:

(A) Thirteen million one hundred eighty-five thousand dollars

($13,185,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred forty-five thousand dollars ($1,845,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(D) Two million nine hundred seventy-one thousand dollars ($2,971,000) for transfer to the County Medical Services Account pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Eighty-eight million six hundred fifty-three thousand dollars ($88,653,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(4) Twenty-five million dollars ($25,000,000) to the State Department of Mental Health for local mental health services.

(5) Eighty million five hundred ninety-one thousand dollars ($80,591,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) Eleven million four hundred twenty-nine thousand dollars ($11,429,000) for competitive grants, pursuant to this act.

(B) Fourteen million two hundred eighty-eight thousand dollars ($14,288,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(C) Nineteen million four hundred forty-five thousand dollars ($19,445,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(D) Thirty-five million four hundred twenty-nine thousand dollars ($35,429,000) for allocation to local lead agencies upon the department's approval of local plan pursuant to Section 24164 of the Health and Safety Code.

(5) Thirty-two million six hundred thousand dollars ($32,600,000) to the State Department of Education for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

SEC. 53. Section 10 of Chapter 1331 of the Statutes of 1989, as amended by Section 33 of Senate Bill 1412 of the 1989–90 Regular Session of the Legislature, is amended to read:

Sec. 10. The sum of one billion two hundred twelve million nine hundred sixty thousand dollars ($1,212,960,000) is hereby appropriated from the Cigarette and Tobacco Products Surtax Fund, according to the following schedule:

(a) Seven hundred two million five hundred six thousand dollars ($702,506,000) for the 1989–90 fiscal year, as follows:

(1) Two hundred ninety-eight million twenty-eight thousand dollars ($298,028,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) Fifty million dollars ($50,000,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Thirty-seven million sixteen thousand dollars ($37,016,000) for allocation to hospitals for uncompensated hospital services, pursuant to Chapter 3 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Nine hundred seventy thousand dollars ($970,000) for state administration.

(D) Two million dollars ($2,000,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(E) Two million nine hundred eighty-eight thousand dollars ($2,988,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Four million nine hundred eighty thousand dollars ($4,980,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Two hundred million seventy-four thousand dollars ($200,074,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two hundred twenty-five thousand dollars ($225,000) from the Hospital Services Account to the Office of Statewide Health Planning and Development, for state administration.

(3) Eighty-five million two hundred fifteen thousand dollars ($85,215,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Twenty-four million nine hundred fifteen thousand dollars ($24,915,000) for allocation to counties for uncompensated physician services, pursuant to Section 16950.1 of the Welfare and Institutions Code.

(B) Four million nine hundred thirty thousand dollars ($4,930,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(C) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(D) One million nine hundred ninety-five thousand dollars ($1,995,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(E) One million nine hundred ninety-two thousand dollars ($1,992,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(F) Forty-one million ninety-nine thousand dollars ($41,099,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(G) Three hundred thirty-seven thousand dollars ($337,000) for state administration.

(4) One hundred sixty-eight million thirty-eight thousand dollars ($168,038,000) from the Unallocated Account to the State Department of Health Services, as follows:

(A) Thirty-two million two hundred eighty-eight thousand dollars ($32,288,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Ten million dollars ($10,000,000) for county data systems, pursuant to Chapter 2 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Fourteen million seven hundred eighty-nine thousand dollars ($14,789,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(D) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(E) One million nine hundred eighty-nine thousand dollars ($1,989,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Two million nine hundred eighty-two thousand dollars ($2,982,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Ninety-five million three hundred nineteen thousand dollars ($95,319,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(H) Seven hundred twenty-four thousand dollars ($724,000) for state administration.

(5) One hundred fifteen million dollars ($115,000,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) (i) Forty-one million five hundred ninety-four thousand dollars ($41,594,000) for establishment of competitive grants, pursuant to this act.

(ii) Funds appropriated by this subparagraph may be expended or encumbered during the period which Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code is

operative.

(iii) Funds appropriated by this subparagraph shall be available only for the purposes described in Sections 24165 and 24165.2 of the Health and Safety Code.

(B) One million four hundred sixty-two thousand dollars ($1,462,000) for state administration.

(C) Two million three hundred four thousand dollars ($2,304,000) for operation of the Tobacco Education Oversight Committee created pursuant to Section 24162 of the Health and Safety Code and the contract for a systematic and independent evaluation conducted pursuant to Section 24164 of the Health and Safety Code, and development of necessary data collection and management.

(D) Fourteen million three hundred forty-nine thousand dollars ($14,349,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(E) Nineteen million six hundred ninety-six thousand dollars ($19,696,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(F) (i) Thirty-five million five hundred ninety-five thousand dollars ($35,595,000) for allocation to local lead agencies upon the department's approval of the local plan pursuant to Section 24164 of the Health and Safety Code.

(ii) Funds appropriated by this subparagraph may be expended or encumbered during the period which Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code is operative.

(6) Thirty-six million dollars ($36,000,000) from the Health Education Account to the State Department of Education for purposes of implementing its duties under Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code, as follows:

(A) (i) Nine hundred thousand dollars ($900,000) for state administration.

(ii) The State Department of Education shall notify the chairperson of the committees of each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee not less than 30 days prior to implementation of this paragraph pursuant to Section 28 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989.

(B) Two million five hundred thousand dollars ($2,500,000) for county offices of education administration, to be allocated pursuant to subdivision (o) of Section 24167 of the Health and Safety Code.

(C) Thirty-two million six hundred thousand dollars ($32,600,000) for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to

Section 24168 of the Health and Safety Code.

(D) Funds appropriated by this subparagraph to the State Department of Education may be expended or encumbered during the period which Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code is operative.

(b) Five hundred ten million four hundred fifty-four thousand dollars ($510,454,000) for the 1990–91 fiscal year, as follows:

(1) One hundred ninety-eight million four hundred eighty-seven thousand dollars ($198,487,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) One million eight hundred ninety-six thousand dollars ($1,896,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Two million eight hundred thirty-one thousand dollars ($2,831,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(C) Four million nine hundred sixty-one thousand dollars ($4,961,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(D) One hundred eighty-eight million seven hundred ninety-nine thousand dollars ($188,799,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Fifty-six million seven hundred twenty-eight thousand dollars ($56,728,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Four million five hundred eighty thousand dollars ($4,580,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred sixty-six thousand dollars ($1,866,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(D) One million nine hundred eighty-six thousand dollars ($1,986,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Thirty-eight million four hundred two thousand dollars ($38,402,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(3) One hundred sixteen million five hundred forty-eight

thousand dollars ($116,548,000) from the Unallocated Account, to the State Department of Health Services as follows:

(A) Thirteen million one hundred eighty-five thousand dollars ($13,185,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred forty-five thousand dollars ($1,845,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(D) Two million nine hundred seventy-one thousand dollars ($2,971,000) for transfer to the County Medical Services Account pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Eighty-eight million six hundred fifty-three thousand dollars ($88,653,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(4) Twenty-five million dollars ($25,000,000) from the Unallocated Account to the State Department of Mental Health for local mental health services.

(5) Eighty million five hundred ninety-one thousand dollars ($80,591,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) Eleven million four hundred twenty-nine thousand dollars ($11,429,000) for competitive grants, pursuant to this act.

(B) Fourteen million two hundred eighty-eight thousand dollars ($14,288,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(C) Nineteen million four hundred forty-five thousand dollars ($19,445,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(D) Thirty-five million four hundred twenty-nine thousand dollars ($35,429,000) for allocation to local lead agencies upon the department's approval of local plan pursuant to Section 24164 of the Health and Safety Code.

(6) Thirty-two million six hundred thousand dollars ($32,600,000) from the Health Education Account to the State Department of Education for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

SEC. 54. Section 15 of Chapter 1331 of the Statutes of 1989 is amended to read:

Sec. 15. No funds derived from the imposition of taxes pursuant

to Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, which are appropriated from the Hospital Services Account, the Physician Services Account, or the Unallocated Account, in the Cigarette and Tobacco Products Surtax Fund for the purposes of this act shall be used to pay for services except for the treatment of patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

SEC. 55. (a) Except as provided in Section 16970 and subdivision (d) of Section 16930 of the Welfare and Institutions Code, any obligation of a county to provide health care services to any person or persons pursuant to Chapter 1331 of the Statutes of 1989 shall be limited to the funds appropriated by Chapter 1331 of the Statutes of 1989, as amended.

(b) A county's obligation to provide or pay for health care services pursuant to Chapter 1331 of the Statutes of 1989 and this act does not mandate a level of service or payment, modify the county's obligation under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, create a cause of action, or limit a county's flexibility to manage county health systems with available resources.

(c) The flexibility of any county, although not limited by Chapter 1331 of the Statutes of 1989 or by this act, shall not diminish a county's responsibilities under Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

SEC. 56. The sum of one million dollars ($1,000,000) is appropriated from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund to the State Department of Health Services, for the 1989–90 fiscal year, to establish the Rural Health Services Reinsurance Account pursuant to Section 16934.2 of the Welfare and Institutions Code.

SEC. 57. The sum of one million dollars ($1,000,000) is appropriated from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund to the State Department of Health Services, for expenditure in the 1990–91 fiscal year, to increase access to dental services under the Child Health and Disability Prevention Program pursuant to Section 16934.5 of the Welfare and Institutions Code.

SEC. 58. The State Department of Health Services may transfer up to one hundred thousand dollars ($100,000) from the amount appropriated by Chapter 1331 of the Statutes of 1989, for administrative costs in the establishment of additional positions and to fund other costs associated with the implementation of the Rural Health Services Reinsurance Account established pursuant to Section 16934.2 of the Welfare and Institutions Code, and the implementation of the Child Health and Disability Prevention Treatment Account established pursuant to Section 16934.5 of the Welfare and Institutions Code.

SEC. 59. Notwithstanding any other provision of law, the State Department of Health Services may execute change orders to fiscal intermediary contracts to implement Part 4.7 (commencing with Section 16900) of Division 9 of the Welfare and Institutions Code, without any change order notification periods or control agency approvals. Within 30 days of execution of a change pursuant to this section, the State Department of Health Services shall notify the normal reviewing agencies of the execution of the change order.

SEC. 60. The sum of ten million dollars ($10,000,000) is appropriated from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund to the State Department of Mental Health for allocation to counties, on June 30, 1990, for support of local mental health services provided during the 1990–91 fiscal year.

SEC. 61. Those amounts appropriated by Section 60 of this act and those funds appropriated by paragraph (4) of subdivision (b) of Section 10 of Chapter 1331 of the Statutes of 1989 are for assistance to local agencies in the establishment and operation of mental health services in accordance with Division 5 (commencing with Section 5000) of the Welfare and Institutions Code, and shall be expended and accounted for in accordance with Division 5.

SEC. 62. Notwithstanding any other provision of law, including, but not limited to, Section 5600 of the Welfare and Institutions Code, amounts appropriated by Section 60 shall be allocated to counties as follows:

(a) Seven million five hundred thousand dollars ($7,500,000) shall be allocated on the basis of the poverty population formula.

(b) Two million five hundred thousand dollars ($2,500,000) shall be allocated to those counties whose share of the total relative resource base is below their relative need.

SEC. 63. (a) The sum of four million two hundred seventy thousand dollars ($4,270,000) is appropriated from the General Fund to the Cigarette and Tobacco Products Surtax Fund.

(b) The Controller shall distribute those funds appropriated by subdivision (a) to those accounts established by Section 30122 of the Revenue and Taxation Code, according to the following schedule:

(1) Health Education Account	$ 854,000
(2) Hospital Services Account	1,494,000
(3) Physician Services Account	427,000
(4) Research Account	213,500
(5) Public Resources Account	213,500
(6) Unallocated Account	1,067,500

(c) Notwithstanding Section 12739 of the Insurance Code, those funds appropriated and distributed by this section shall be available for appropriation for the purposes specified in Section 30122 of the Revenue and Taxation Code.

SEC. 64. The sum of twelve million dollars ($12,000,000) is appropriated from the Hospital Services Account in the Cigarette

and Tobacco Products Surtax Fund, for the 1989–90 fiscal year, to the Major Medical Insurance Fund for the purposes of Chapter 1168 of the Statutes of 1989.

SEC. 65. The sum of three million dollars ($3,000,000) is appropriated from the Physician Services Account in the Cigarette and Tobacco Products Surtax Fund, for the 1989–90 fiscal year, to the Major Medical Insurance Fund for the purposes of Chapter 1168 of the Statutes of 1989.

SEC. 66. The Controller shall, on June 30, 1990, transfer an amount, not to exceed fifteen million dollars ($15,000,000), from that amount of the unencumbered balance in the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund in excess of twenty-two million five hundred thirty thousand dollars ($22,530,000) to the Major Medical Insurance Fund for the purposes of Chapter 1168 of the Statutes of 1989.

SEC. 67. (a) The sum of one million dollars ($1,000,000) is appropriated from the Health Education Account in the Cigarette and Tobacco Products Surtax Fund to the State Department of Health Services, for expenditure during the 1989–90 and 1990–91 fiscal years.

(b) Funds appropriated by this section shall be used to increase the number of immunization clinics and conduct outreach programs to parents in California who do not currently seek immunizations for their children.

(c) The Legislature finds and declares all of the following:

(1) Immunizations protect children against dangerous preventable diseases, such as polio, measles, and mumps, some of which are so serious they can be fatal.

(2) California is currently experiencing its worst measles (rubella) epidemic since the 1970s and its highest numbers of measles deaths in a quarter century.

(3) Over 20 counties and multiple parts of the state have reported clusters of cases or outbreaks in early 1990, and the disease is at major epidemic levels in Southern California and the San Joaquin Valley. A majority of the cases are infants and children under five years of age.

(4) Epidemic activity has been most intense in low-income communities. While at least 40 percent of the children with measles are Hispanic, children in all ethnic groups have been affected and all are at risk if they are not immunized.

SEC. 68. The sum of five million eight hundred thousand dollars ($5,800,000) is appropriated from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund to the State Department of Health Services for the following purposes, for expenditure during the 1989–90 and 1990–91 fiscal years:

(a) To provide funding for the vaccine and administrative costs necessary to immunize all California children against measles, mumps, rubella (MMR), diptheria, pertussis, tetanus, and polio.

(b) To immunize those children in a way that ensures, to the

extent possible, their entry into a system of continuing primary and preventive health care.

SEC. 69. The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund for expenditure in fiscal year 1990–91, to the State Department of Health Services for the primary care clinic risk pool established pursuant to subdivision (a) of Section 1189.110.

SEC. 70. Section 3.5 of this bill incorporates amendments to Section 1189.109 of the Health and Safety Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 1189.109 of the Health and Safety Code, and (3) this bill is enacted after SB 1412, in which case Section 1189.109 of the Health and Safety Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 71. Sections 8 and 10 of this bill incorporate amendments to Section 1216 of the Health and Safety Code proposed by this bill and SB 1412. Those sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 1216 of the Health and Safety Code, and (3) this bill is enacted after SB 1412, in which case, Section 1216 of the Health and Safety Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Sections 8 and 10 of this bill shall become operative, and Sections 7 and 9 of this bill shall not become operative.

SEC. 72. Section 12 of this bill incorporates amendments to Section 24162 of the Health and Safety Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 24162 of the Health and Safety Code, and (3) this bill is enacted after SB 1412, in which case Section 24162 of the Health and Safety Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 12 of this bill shall become operative, and Section 11 of this bill shall not become operative.

SEC. 73. Section 14 of this bill incorporates amendments to Section 24164 of the Health and Safety Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 24164 of the Health and Safety Code, and (3) this bill is enacted after SB 1412, in which case Section 24164 of the Health and Safety Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 14 of this bill shall become operative, and Section 13 of this bill shall not become operative.

SEC. 74. Section 18 of this bill incorporates amendments to

Section 24165.5 of the Health and Safety Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 24165.5 of the Health and Safety Code, and (3) this bill is enacted after SB 1412, in which case Section 24165.5 of the Health and Safety Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 18 of this bill shall become operative, and Section 17 of this bill shall not become operative.

SEC. 75. Sections 22.5 and 45.3 of this bill shall become operative only if Senate Bill 1412 of the 1989–90 Regular Session is not enacted, or is enacted but does not add Section 16961 to the Welfare and Institutions Code, in which case, Section 45 of this bill shall not become operative.

SEC. 76. Section 33 of this bill incorporates amendments to Section 16946 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 16946 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1412, in which case Section 16946 of the Welfare and Institutions Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 33 of this bill shall become operative, and Section 32 of this bill shall not become operative.

SEC. 77. Section 37 of this bill incorporates amendments to Section 16950 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 16950 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1412, in which case Section 16950 of the Welfare and Institutions Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 37 of this bill shall become operative, and Section 36 of this bill shall not become operative.

SEC. 78. Section 39 of this bill incorporates amendments to Section 16952 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 16952 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1412, in which case Section 16952 of the Welfare and Institutions Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 39 of this bill shall become operative, and Section 38 of this bill shall not become operative.

SEC. 79. Section 45.7 of this bill incorporates amendments to Section 16970 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 16970 of the Welfare and Institutions Code, and

(3) this bill is enacted after SB 1412, in which case Section 16970 of the Welfare and Institutions Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 45.7 of this bill shall become operative, and Section 45.5 of this bill shall not become operative.

SEC. 80. Section 46.5 of this bill incorporates amendments to Section 16980 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 16980 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1412, in which case Section 16994 of the Welfare and Institutions Code, as amended by Section 1412, shall remain operative only until the operative date of this bill, at which time Section 46.5 of this bill shall become operative, and Section 46 of this bill shall not become operative.

SEC. 81. Section 49 of this bill incorporates amendments to Section 16994 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991 (2) each bill amends Section 16994 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1412, in which case Section 16994 of the Welfare and Institutions Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 49 of this bill shall become operative, and Section 48 of this bill shall not become operative.

SEC. 82. Section 51 of this bill incorporates amendments to Section 16996.2 of the Welfare and Institutions Code proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 16996.2 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1412, in which case Section 16996.2 of the Welfare and Institutions Code, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 51 of this bill shall become operative, and Section 50 of this bill shall not become operative.

SEC. 83. Section 53 of this bill incorporates amendments to Section 10 of Chapter 1331 of the Statutes of 1989 proposed by this bill and SB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 10 of Chapter 1331 of the Statutes of 1989, and (3) this bill is enacted after SB 1412, in which case Section 10 of Chapter 1331 of the Statutes of 1989, as amended by SB 1412, shall remain operative only until the operative date of this bill, at which time Section 53 of this bill shall become operative, and Section 52 of this bill shall not become operative.

SEC. 84. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the state to fully implement the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) to provide increased funding for specified programs to enhance the health of Californians and to provide for compensation to providers of health care to encourage them to increase their level of service to those persons unable to pay for those services, at the earliest possible time, and, in order to prevent avoidable injury to the public caused by the use of tobacco products, it is necessary that this act take effect immediately.

CHAPTER 52

An act to add Section 13147 to the Health and Safety Code, relating to schools.

[Approved by Governor April 20, 1990. Filed with Secretary of State April 20, 1990.]

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

SECTION 1. Section 13147 is added to the Health and Safety Code, to read:

13147. The regulations adopted pursuant to subdivision (a) of Section 13143 shall require that the new construction of any school building for which review and approval is required under subdivision (a) of Section 39140 of the Education Code include the placement of fire hydrants and water piping as necessary to supply the water capacity required for the fire protection of the building.

CHAPTER 53

An act to amend Section 1000 of the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 20, 1990 Filed with Secretary of State April 20, 1990.]

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

SECTION 1. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision

(d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the district attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged divertible offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has been diverted pursuant to this chapter within five years prior to the alleged commission of the charged divertible offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged divertible offense.

(b) The district attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) are applicable to the defendant. Upon the agreement of the district attorney, law enforcement, the public defender, the presiding judge of the criminal division of the municipal court or a judge designated by the presiding judge, and the probation department of each county, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the diversion hearing at the arraignment. If the defendant is found ineligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. Nothing in this subdivision shall be construed to affect the obligation of a probation department to conduct an investigation and make a report to the court, pursuant to subdivision (b) of Section 1000.1 and Section 1000.2.

(c) Successful completion of diversion for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.5.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the court, in making its determination regarding drug diversion, is provided with the report of the probation department pursuant to subdivision (b) of Section 1000.1 and Section 1000.2 of the Penal Code regarding the defendant, it is essential that this act take effect immediately.

CHAPTER 54

An act to amend Section 21670.2 of the Public Utilities Code, relating to airport land use commissions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 20, 1990. Filed with Secretary of State April 20, 1990.]

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

SECTION 1. Section 21670.2 of the Public Utilities Code is amended to read:

21670.2. (a) Sections 21670 and 21670.1 do not apply to the County of Los Angeles. In that county, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on such an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal.

(b) By January 1, 1992, the county regional planning commission shall adopt the comprehensive land use plans required pursuant to Section 21675.

(c) Sections 21675.1, 21675.2, and 21679.5 do not apply to the County of Los Angeles until January 1, 1992. If the comprehensive land use plans required pursuant to Section 21675 are not adopted by the county regional planning commission by January 1, 1992, Sections 21675.1 and 21675.2 shall apply to the County of Los Angeles until the plans are adopted.

SEC. 2. The Legislature finds and declares that this act, which is applicable only to Los Angeles County, is necessary because of the unique and special comprehensive land use planning process in the county. Due to these unique facts and circumstances, 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, and the enactment of this special statute is necessary for comprehensive and coordinated planning and development in

the county.

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

The Los Angeles County Regional Planning Commission has adopted none of the required comprehensive land use plans for the 17 public use airports in Los Angeles County. The implementation of Sections 21675.1, 21675.2, and 21679.5 of the Public Utilities Code will create hardships on local officials and landowners who wish to develop their property. To avoid further confusion and to ease these hardships, it is necessary that this act take immediate effect.

CHAPTER 55

An act to amend Sections 207, 208, and 209 of the Penal Code, relating to crimes.

[Approved by Governor April 20, 1990 Filed with Secretary of State April 20, 1990]

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

SECTION 1. Section 207 of the Penal Code is amended to read:

207. (a) Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.

(b) Every person, who for the purpose of committing any act defined in Section 288, hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any child under the age of 14 years to go out of this country, state, or county, or into another part of the same county, is guilty of kidnapping.

(c) Every person who forcibly, or by any other means of instilling fear, takes or holds, detains, or arrests any person, with a design to take the person out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell that person into slavery or involuntary servitude, or otherwise to employ that person for his or her own use, or to the use of another, without the free will and consent of that persuaded person, is guilty of kidnapping.

(d) Every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where that act is committed, and brings, sends, or conveys that person within the

limits of this state, and is afterwards found within the limits thereof, is guilty of kidnapping.

(e) Subdivisions (a) to (d), inclusive, do not apply to any of the following:

(1) To any person who steals, takes, entices away, detains, conceals, or harbors any child under the age of 14 years, if that act is taken to protect the child from danger of imminent harm.

(2) To any person acting under Section 834 or 837.

SEC. 2. Section 208 of the Penal Code is amended to read:

208. (a) Kidnapping is punishable by imprisonment in the state prison for three, five, or eight years.

(b) If the person kidnapped is under 14 years of age at the time of the commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. This subdivision is not applicable to the taking, detaining, or concealing, of a minor child by a biological parent, a natural father, as specified in subdivision (a) of Section 7004 of the Civil Code, an adoptive parent, or a person who has been granted access to the minor child by a court order.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

SEC. 3. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes such person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b) Any person who kidnaps or carries away any individual to commit robbery shall be punished by imprisonment in the state prison for life with possibility of parole.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason

or reasons for imposing a lesser penalty.

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 56

An act to amend Sections 6322.1 and 6360 of the Business and Professions Code, and to amend Sections 26820.6 and 72055 of, and to add Section 72055.2 to, the Government Code, relating to law libraries, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 20, 1990. Filed with Secretary of State April 20, 1990.]

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

SECTION 1. Section 6322.1 of the Business and Professions Code is amended to read:

6322.1. (a) Except in counties containing a population of 4,000,000 and over, the board of supervisors of any county may increase the costs provided in Sections 6321 and 6322 to not more than twenty dollars ($20) for each event therein described, to apply only to actions and proceedings in which the claim for money damages, if any, exceeds the monetary jurisdiction of small claims court, whenever it shall determine that the increase is necessary to defray the expenses of the law library. After January 1, 1995, the board of supervisors of the county may increase those costs to an amount over twenty dollars ($20) but in no case may this increase in any year be greater than three dollars ($3) if the board of supervisors excludes the library fee from the definition of the "total filing fee," nor more than five dollars ($5) in any year if the library fee is included in the definition of "total filing fee," under Sections 26820.6 and 72055 of the Government Code.

Until January 1, 1994, the board of supervisors may exclude no more than eight dollars ($8) of the increase in the law library fee over the law library fee which was in effect on January 1, 1990, from the definition of "total fee" under Sections 26820.6 and 72055 of the Government Code.

In no event may the total law library fee in actions and proceedings

in which a claim for money damages falls within the monetary jurisdiction of small claims court exceed the law library fee in effect on January 1, 1990. To facilitate computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees to the January 1, 1990, level that the case filed qualifies for the lower fee because the claim for money damages will not exceed the monetary jurisdiction of small claims court.

(b) In counties containing a population of 4,000,000 and over, the board of law library trustees may increase the costs provided in Sections 6321 and 6322 to not more than ten dollars ($10) for each event therein described, to apply only to actions and proceedings in which the claim for money damages, if any, exceeds the monetary jurisdiction of small claims court, whenever it shall determine that the increase is necessary to defray the expenses of the law library. After January 1, 1995, the board of supervisors of the county may increase those costs to an amount over ten dollars ($10) but in no case may this increase in any year be greater than two dollars ($2) if the board of supervisors excludes the library fee from the definition of the "total filing fee," nor more than four dollars ($4) in any year if the library fee is included in the definition of "total filing fee" under Sections 26820.6 and 72055 of the Government Code.

Until January 1, 1994, the board of supervisors may exclude no more than eight dollars ($8) of the increase in the law library fee over the law library fee which was in effect on January 1, 1990, from the definition of "total fee" under Sections 26820.6 and 72055 of the Government Code.

In no event may the total law library fee in actions and proceedings in which a claim for money damages falls within the monetary jurisdiction of small claims court exceed the law library fee in effect on January 1, 1990. To facilitate computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees to the January 1, 1990, level that the case filed qualifies for the lower fee because the claim for money damages will not exceed the monetary jurisdiction of small claims court.

(c) Notwithstanding the provisions of any other section, any increase or decrease in costs of law library fees in any county shall not be effective until January 1 of the year next following adoption by the board of supervisors or the law library board of trustees of the increase or decrease, except that any fee increase adopted by a board of supervisors in 1990 in accordance with subdivision (a) or (b) may be immediately implemented in accordance with the resolution of the board of supervisors.

SEC. 2. Section 6360 of the Business and Professions Code is amended to read:

6360. A law library established under this chapter shall be free to the judiciary, to state and county officials, to members of the State Bar, and to all residents of the county, for the examination of books

and other publications at the library or its branches.

The board of law library trustees may permit the removal of such books and other publications from the library and its branches as it considers proper, subject to such rules, and, in its discretion, the giving of such security, as it may provide to ensure the safekeeping and prompt return thereof, but no security shall be required of members of the judiciary or county officials. The board may provide for the levying of fines and charges for violation of the rules, and may make charges to cover the cost of special services, such as the making of photo copies of pages of library books, and messenger service.

The board of law library trustees may require persons other than members of the judiciary, county officials, and members of the bar resident in the county, to pay such dues as the board may fix for the privilege of removing books and other publications from the library. With the approval of the board of supervisors, the board of law library trustees may charge individual members of the bar resident in the county fees for the removal of books and other publications from the library. These fees shall not exceed the cost of providing the service.

SEC. 3. Section 26820.6 of the Government Code is amended to read:

26820.6. The term "total fee" as used in Sections 26820.4, 26826, and 26827, includes the clerk's fee, the amount allocated to the Judges' Retirement Fund pursuant to Section 26822.3, and any amount allocated to the Court Reporter Fund. The fees authorized for the maintenance of the conciliation court pursuant to Sections 26840.3 and 26840.4, and for the automation and conversion of court records pursuant to Section 26863, may be included in the total fee, or may be in addition thereto, as determined by the board of supervisors pursuant to Section 68090. The law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code may be included in the total fee, or until January 1, 1994, up to eight dollars ($8) may be in addition thereto in accordance with Section 6322.1 of the Business and Professions Code, as determined by the board of supervisors pursuant to Section 68090.

SEC. 4. Section 72055 of the Government Code is amended to read:

72055. The total fee for filing of the first paper in a civil action or proceeding in the municipal or justice court, shall be the sum fixed by the board of supervisors pursuant to Section 68090, which shall not exceed the following maximum amounts:

(a) In any court where a fee is collected for the Court Reporter Fund, the total fee shall not exceed forty dollars ($40).

(b) In any court where a fee is not collected for the Court Reporter Fund, the total fee shall not exceed twenty-nine dollars ($29).

This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the

transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

The term "total fee" as used in this section and Section 72056 includes the clerk's fee, any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, and any amount allocated to the Court Reporter Fund. The law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code, may be included in the total fee or, until January 1, 1994, up to eight dollars ($8) may be in addition thereto in accordance with Section 6322.1 of the Business and Professions Code, as determined by the board of supervisors pursuant to Section 68090.

(c) The fee shall be waived in any action for damages against a defendant, based upon the defendant's commission of a felony offense, upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived fees against the defendant and order the defendant to pay that sum to the county.

SEC. 5. Section 72055.2 is added to the Government Code, to read:

72055.2. Notwithstanding any other provision of law or limitation implied by law, the board of supervisors, pursuant to Section 68090 of the Government Code, shall have the authority to establish the filing fee contribution necessary pursuant to its determination to support the operation of the county law library.

SEC. 6. Notwithstanding Section 68090 of the Government Code or any other provision of law, county boards of supervisors may immediately on or after the effective date of this act, adopt and implement the fee adjustments permitted by this act for 1990.

SEC. 7. In enacting these provisions, it is the intent of the Legislature that California continue its century old tradition of making legal materials available to all its citizens via adequately funded, staffed, and maintained county law libraries. By the terms of this act, the county boards of supervisors are charged with monitoring the needs of the county law library within their respective jurisdictions and adjusting filing fees as permitted to enable the county law library to fulfill its defined mission.

SEC. 8. 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.

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:

To prevent the possible closing of various law libraries as a result of financial necessity, it is necessary that this act take effect immediately.

CHAPTER 57

An act to amend Sections 1250.2, 1254, 1254.1, 1266, 1272, 1275.5 and 1373 of, and to add Section 1266.1 to, the Health and Safety Code, to amend Sections 10125, 10127, and 11512.5 of the Insurance Code, to amend Section 1365 of the Penal Code, and to amend Item 4440-141-001 of Section 2 of the Budget Act of 1989 (Chapter 93 of the Statutes of 1989), relating to mental health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 20, 1990 Filed with Secretary of State April 20, 1990]

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

SECTION 1. Section 1250.2 of the Health and Safety Code is amended to read:

1250.2. (a) As defined in Section 1250, "health facility" includes the following type: "psychiatric health facility" means a health facility, licensed by the State Department of Mental Health, which provides 24-hour inpatient care for mentally disordered, incompetent, or other persons described in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code. This care shall include, but not be limited to, the following basic services: psychiatry, clinical psychology, psychiatric nursing, social work, rehabilitation, drug administration, and appropriate food services for those persons whose physical health needs can be met in an affiliated hospital or in outpatient settings.

It is the intent of the Legislature that the psychiatric health facility shall provide a distinct type of service to psychiatric patients in a nonhospital setting. The State Department of Mental Health shall require regular utilization reviews of admission and discharge criteria and lengths of stays in order to assure that these patients are moved to less restrictive levels of care as soon as appropriate.

(b) Any reference in any statute to Section 1250 shall be deemed and construed to also be a reference to this section.

SEC. 2. Section 1254 of the Health and Safety Code is amended to read:

1254. (a) Except as provided in subdivision (e), the state department shall inspect and license health facilities. The state department shall license health facilities to provide their respective basic services specified in Section 1250. Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. The state department shall develop and adopt regulations to implement the provisions contained in this section.

(b) Upon approval, the state department shall issue a separate license for the provision of the basic services enumerated in subdivision (c) or (d) of Section 1250 whenever these basic services are to be provided by an acute care hospital, as defined in subdivision (a), (b), or (f) of that section, where the services enumerated in subdivision (c) or (d) of Section 1250 are to be provided in any separate freestanding facility, whether or not the location of the separate freestanding facility is contiguous to the acute care hospital. The same requirement shall apply to any new freestanding facility constructed for the purpose of providing basic services, as defined in subdivision (c) or (d) of Section 1250, by any acute care hospital on or after January 1, 1984.

(c) (1) Those beds licensed to an acute care hospital which, prior to January 1, 1984, were separate freestanding beds and were not part of the physical structure licensed to provide acute care, and which beds were licensed to provide those services enumerated in subdivision (c) or (d) of Section 1250, are exempt from the requirements of subdivision (b).

(2) All beds licensed to an acute care hospital and located within the physical structure in which acute care is provided are exempt from the requirements of subdivision (b) irrespective of the date of original licensure of the beds, or the licensed category of the beds.

(3) All beds licensed to an acute care hospital owned and operated by the State of California or any other public agency are exempt from the requirements of subdivision (b).

(4) All beds licensed to an acute care hospital in a rural area as defined by Chapter 1010, of the Statutes of 1982, are exempt from the requirements of subdivision (b), except where there is a freestanding skilled nursing facility or intermediate care facility which has experienced an occupancy rate of 95 percent or less during the past 12 months within a 25-mile radius or which may be reached within 30 minutes using a motor vehicle.

(5) All beds licensed to an acute care hospital which meet the criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and published by the California Health Facilities Commission, and all beds in hospitals which have fewer than 76 licensed acute care beds and which are located in a census designation place of 15,000 or less population, are

exempt from the requirements of subdivision (b), except where there is a free-standing skilled nursing facility or intermediate care facility which has experienced an occupancy rate of 95 percent or less during the past 12 months within a 25-mile radius or which may be reached within 30 minutes using a motor vehicle.

(6) All beds licensed to an acute care hospital which has had a certificate of need approved by a health systems agency on or before July 1, 1983, are exempt from the requirements of subdivision (b).

(7) All beds licensed to an acute care hospital are exempt from the requirements of subdivision (b), if reimbursement from the Medi-Cal program for beds licensed for the provision of services enumerated in subdivision (c) or (d) of Section 1250 and not otherwise exempt does not exceed the reimbursement which would be received if the beds were in a separately licensed facility.

(d) Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. The state department shall develop and adopt regulations to implement subdivisions (a) to (d), inclusive, of this section.

(e) The State Department of Mental Health shall inspect and license psychiatric health facilities. The State Department of Mental Health shall license psychiatric health facilities to provide their basic services specified in Section 1250.2. The State Department of Mental Health shall develop and adopt regulations to implement this subdivision.

SEC. 3. Section 1254 1 of the Health and Safety Code is amended to read:

1254.1. (a) The State Department of Mental Health shall license psychiatric health facilities to provide their basic services specified in Section 1250.

(b) Any reference in any statute to Section 1254 shall be deemed and construed to also be a reference to this section.

SEC. 4. Section 1266 of the Health and Safety Code, as amended by Section 4 of Chapter 1393 of the Statutes of 1989, is amended to read:

1266. (a) Each new and renewal application for a license for the health facilities listed below shall be accompanied by an annual fee as set forth below.

The annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, and chemical dependency recovery hospital, based on the number of licensed beds, is as follows:

1–49 beds	$460 plus $8 per bed
50–99 beds	$850 plus $8 per bed
100 or more beds	$1,175 plus $8 per bed

The annual fee for a skilled nursing facility, intermediate care facility, and intermediate care facility/developmentally disabled, based on the number of licensed beds, is as follows:

1–59 beds	$2,068 plus $26 per bed
60–99 beds	$2,543 plus $26 per bed
100 or more beds	$3,183 plus $26 per bed

The fees provided in this subdivision shall be adjusted, commencing July 1, 1983, as proposed in the state department's 1983–84 fiscal year Health Facility License Fee Report to the Legislature. Commencing July 1, 1984, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(b) The state department shall submit to the Legislature, on or before January 17 of each year, a report describing program costs within the Licensing and Certification Division, and a methodology for calculating fee levels in an amount sufficient to provide revenues equal to (1) the General Fund expenditures for the fiscal year ending on June 30 of that year, as specified in the proposed Governor's Annual Budget, less license fees which shall be collected in that fiscal year by the Licensing and Certification Program pursuant to sections other than this section, plus (2) the amount of federal funds budgeted for the fiscal year ending June 30 of that year for the Licensing and Certification Program, less federal funds received or credited, or anticipated to be received or credited, during that fiscal year for that purpose. The methodology for calculating the fee levels shall include an adjustment which takes into consideration the actual amount of license fee revenue collected in the prior fiscal year pursuant to this section, as compared to the amount of license fee revenue estimated to be collected pursuant to this section for that prior fiscal year.

The report shall specifically identify federal funds received, but not previously budgeted, for the Licensing and Certification Program which are used to offset the amount of General Fund dollars to be recovered through license fees. The report shall also identify the purpose of federal funds received for any additional activities under the Licensing and Certification Program which are not used to offset the amount of General Fund dollars.

(c) The annual fees determined pursuant to this section shall be waived for any health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county.

(d) The department shall, by July 30 of each year, publish a list of

actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Prior to the establishment of the annual fee, the state department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

The analysis under this subdivision shall include all of the following:

(1) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(2) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(3) The number of facilities receiving full surveys and the frequency and number of followup visits.

(4) The number and timeliness of complaint investigations.

(5) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(6) Training courses provided for surveyors.

(7) Other applicable activities of the licensing and certification division.

The analysis shall also include recommendations for administrative changes to streamline and prioritize the survey process, complaint investigations, management information systems, word processing capabilities and effectiveness, consumer information system, and surveyor training.

The annual staffing and systems analysis shall be presented to the Health Care Advisory Committee and the Legislature prior to the establishment and adoption of the annual fee.

(f) The annual fee for a congregate living health facility shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds	$ 800
4–6 beds	$1,000
7–10 beds	$1,200
11–15 beds	$1,500
16 or more beds	$1,700

Commencing July 1, 1991, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual budget.

SEC. 5. Section 1266.1 is added to the Health and Safety Code, to

read:

1266.1. (a) Each new or renewal application for a license for a psychiatric health facility shall be accompanied by a fee equal in amount to the fee for an acute psychiatric hospital as specified in subdivision (a) of Section 1266.

(b) New or renewal licensure application fees for psychiatric health facilities shall be collected by the State Department of Mental Health.

(c) The State Department of Mental Health shall make available to the Legislature and other interested parties, on or before January 17 of each year, information describing program costs within the State Department of Mental Health for licensure, regulation, and monitoring of psychiatric health facilities.

(d) The annual fees shall be waived for any psychiatric health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county.

SEC. 6. Section 1272 of the Health and Safety Code is amended to read:

1272. (a) There is hereby created the Health Care Advisory Committee which shall assist, advise, and make written recommendations to the director regarding existing and proposed regulations, policies, and administrative practices affecting the delivery of services rendered by skilled nursing facilities, intermediate care facilities, intermediate care facilities/developmentally disabled, general acute care hospitals, acute psychiatric hospitals, special hospitals, chemical dependency recovery hospitals, home health agencies, and specialty clinics. For these purposes, the committee shall serve as consultants to the director.

(b) The committee shall consist of the director, or the director's designee, who shall serve as chairman ex officio, and 12 members who shall be appointed by the Governor. Five members shall be public members representing consumers, at least one of whom shall be knowledgeable in long-term care services, one member shall be an ombudsman certified by the Department of Aging, and six members shall be representatives of the health care industry, consisting of one member representing general acute care hospitals, one member representing acute psychiatric hospitals, one member representing chemical dependency recovery hospitals, one member representing home health agencies, one member representing skilled nursing facilities, and one member representing intermediate care facilities for the developmentally disabled, habilitative and nursing, and one of the above members shall be a physician and surgeon and one of the above members shall be a registered nurse currently licensed to practice in this state. The changes and additions in the fields which members represent shall be implemented prospectively only as new members are appointed.

(c) Committee members shall serve for four-year terms and until the appointment and qualification of their successors. Initial terms of the members of the committee shall expire in the following order: one public member, the certified ombudsman, and one industry member, on July 1, 1986; two public members, the physician and surgeon, and three industry members, on July 1, 1987; two public members and two industry members on July 1, 1988. Upon the expiration of the term of the physician and surgeon, a person who is a physician and surgeon and represents one of the fields specified in subdivision (b) shall be appointed. Upon the expiration of one public member's term, on July 1, 1987, and on July 1, 1988, an industry member shall be appointed instead.

(d) The Governor shall designate the term for which each member is initially appointed pursuant to subdivision (c). Vacancies shall be filled by the Governor for the unexpired term.

SEC. 7. Section 1275.5 of the Health and Safety Code is amended to read:

1275.5. (a) The regulations relating to the licensing of hospitals, heretofore adopted by the Department of Public Health pursuant to Chapter 2 (commencing with Section 1400) of Division 2, and in effect immediately prior to July 1, 1973, shall remain in effect and shall be fully enforceable with respect to any hospital required to be licensed by this chapter, unless and until the regulations are readopted, amended, or repealed by the director.

(b) The regulations relating to private institutions receiving or caring for any mentally disordered persons, mentally retarded persons, and other incompetent persons, heretofore adopted by the Department of Mental Hygiene pursuant to Chapter 1 (commencing with Section 7000) of Division 7 of the Welfare and Institutions Code, and in effect immediately prior to July 1, 1973, shall remain in effect and shall be fully enforceable with respect to any facility, establishment, or institution for the reception and care of mentally disordered persons, mentally retarded persons and other incompetent persons, required to be licensed by the provisions of this chapter unless and until said regulations are readopted, amended, or repealed by the director.

(c) All regulations relating to the licensing of psychiatric health facilities heretofore adopted by the State Department of Health Services, pursuant to authority now vested in the State Department of Mental Health by Section 5652.5 of the Welfare and Institutions Code, and in effect immediately preceding September 20, 1988, shall remain in effect and shall be fully enforceable by the State Department of Mental Health with respect to any facility or program required to be licensed as a psychiatric health facility, unless and until readopted, amended, or repealed by the Director of Mental Health.

SEC. 8. Section 1373 of the Health and Safety Code, as amended by Section 39 of Chapter 1104 of the Statutes of 1989, 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 the 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 these 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 Mental Health. A health care service plan that offers outpatient mental health services but does not cover these 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 (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), 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 (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage, family, and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, (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 the time that 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, and the certificate holder is 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 (42 U.S.C. Sec. 300e-1, subsec. (5)).

(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. 9. Section 10125 of the Insurance Code is amended to read:

10125. (a) On and after January 1, 1974, every insurer issuing group disability insurance which covers hospital, medical, or surgical expenses shall offer coverage for expenses incurred as a result of mental or nervous disorders, under the terms and conditions which may be agreed upon between the group policyholder and the

insurer. If the terms and conditions include coverage for inpatient care for nervous or mental disorders, the coverage shall extend to treatment provided at all of the following facilities:

(1) A general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(2) An acute psychiatric hospital as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(3) A psychiatric health facility as defined by Section 1250.2 of the Health and Safety Code operating pursuant to licensure by the State Department of Mental Health.

Nothing in this subdivision prohibits an insurer which negotiates and enters into a contract with a professional or institutional provider for alternative rates of payment pursuant to Sections 10133 and 11512 of this code from restricting or modifying the choice of providers.

(b) Every insurer shall communicate to prospective group policyholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders. Every insurer shall communicate the availability of that coverage to all group policyholders and to all prospective group policyholders with whom they are negotiating. This coverage may include community residential treatment services, as described in Section 5458 of the Welfare and Institutions Code, which are alternatives to institutional care.

SEC. 10. Section 10127 of the Insurance Code is amended to read:

10127. On and after January 1, 1974, every self-insured employee welfare benefit plan which provides coverage for hospital, medical, or surgical expenses shall offer coverage for expenses incurred as a result of mental or nervous disorders, under the terms and conditions which may be agreed upon between the self-insured welfare benefit plan and the member. 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 of the Health and Safety Code, and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility, as defined by Section 1250.2 of the Health and Safety Code, operating pursuant to licensure by the State Department of Mental Health. Every plan shall communicate to prospective members as to the availability of outpatient coverage for the treatment of mental or nervous disorders. Every self-insured welfare benefit plan shall communicate the availability of this coverage to all members and prospective members. This coverage may include community residential treatment services, as described in Section 5458 of the Welfare and Institutions Code, which are alternatives to institutional care.

SEC. 11. Section 11512.5 of the Insurance Code is amended to read:

11512.5. (a) On and after January 1, 1974, every nonprofit hospital service plan, including those plans issuing group hospital service contracts, which does not provide or arrange direct health

care services for its members, shall offer coverage for expenses incurred as a result of mental or nervous disorders, under the terms and conditions which may be agreed upon between the plan and the group contractholder. If the terms and conditions include coverage for inpatient care for nervous or mental disorders, the coverage shall extend to treatment provided at all of the following facilities:

(1) A general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(2) An acute psychiatric hospital as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(3) A psychiatric health facility as defined by Section 1250.2 of the Health and Safety Code operating pursuant to licensure by the State Department of Mental Health.

Nothing in this subdivision prohibits the plan which negotiates and enters into a contract with a professional or institutional provider for alternative rates of payment pursuant to Sections 10133 and 11512 from restricting or modifying the choice of providers.

(b) Every nonprofit hospital service plan, including those issuing group hospital service contracts, shall communicate the availability of that coverage to all group contractholders, and to all prospective group contractholders with whom they are negotiating. Every plan shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders. This coverage may include community residential treatment services, as described in Section 5458 of the Welfare and Institutions Code, which are alternatives to institutional care.

SEC. 12. Section 1365 of the Penal Code is amended to read:

1365. The program described in Section 1364 shall be established according to a valid experimental design in order that the most effective, newest, and promising methods of treatment of sex offenders may be rigorously tested. The State Department of Mental Health shall submit an evaluation report to the Legislature by July 1, 1985. Subsequent evaluation reports shall include treatment outcome measures and shall be submitted every two years thereafter until the termination of the program. The program established pursuant to Section 1364 shall terminate June 30, 1995.

SEC. 13. Item 4440-141-001 of Section 2.00 of the Budget Act of 1989 (Chapter 93, Statutes of 1989) is amended to read:

4440-141-001—For local assistance, Department of Mental Health, for services provided in Institutions for Mental Diseases	69,115,000
Schedule:	
(a) 10.95 Institutions for Mental Diseases 80,839,000	
(b) Reimbursements ..... -11,724,000	
Provisions:	
1. The funds appropriated in this item shall be used to provide mental health services for persons	

who are 64 years of age and under, in skilled nursing facilities/special treatment programs (SNF/STP/IMD) in accordance with Division 5 (commencing with Section 5000) of the Welfare and Institutions Code and as approved for funding by the Department of Mental Health.

2. Notwithstanding any other provision of law, counties shall not be required to match funds in this item.
3. Notwithstanding any provision of Article 4 (commencing with Section 10335) of Chapter 2 of Part 3 of Division 2 of the Public Contract Code, the Department of Mental Health may enter into sole source contracts with SNF/STP/IMD facilities.
4. Allocations from this item shall not be subject to Section 5600 of the Welfare and Institutions Code. The Department of Mental Health may also limit the number of beds which will be reimbursed with the funds provided.
5. Notwithstanding any other provision of law, the Department of Mental Health may authorize estimated or advanced payments to SNF/STP/IMD programs. These payments will be adjusted, as necessary, to reflect actual utilization and be offset by revenues. These payments shall not be limited to nonprofit facilities.
6. The operation of SNF/STP/IMD programs shall be consistent with Department of Mental Health policies and regulations for 24-hour care facilities.
7. Prior to any payment being made, a provider shall enter into a placement agreement with each county from which it accepts a patient.
8. Rates of payment for SNF/STP/IMDs in this item shall be limited to the Medi-Cal SNF/STP rate. In order to receive this level of payment, SNF/STP/IMDs shall continue to provide the level of services required prior to the loss of federal funding. Any reductions in services below this level shall be accompanied by rate reductions equal to the savings in costs attributable to reducing services.
9. A loan shall be made available to the Department of Mental Health from the General Fund, subject to approval by the Department of Finance, not to exceed a cumulative total of one-twelfth of the amount which is appropriated in Schedule (a) of this item. The loan funds shall

be transferred to this item as needed to meet cash-flow needs due to delays in the collection of SSI/SSP reimbursements, and subject to the repayment provisions of Section 16351 of the Government Code.

10. Upon order of the Director of Finance, the Controller shall transfer between this item and Item 4440-011-001 and/or Item 4440-101-001 those funds which are necessary to support patients who may be transferred to the state hospitals and/or other facilities as the result of the decertification of the special treatment program in a skilled nursing facility funded by this item. Other transfers between this item and Item 4440-101-001 may be made not sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than such lesser time as the chairperson of the committee, or his/her designee, may in each instance determine.

12. To the extent feasible, the Department of Mental Health shall target new resources for Institutions for Mental Disease (IMD) for use by clients in under-equity counties.

13. Notwithstanding any other provision of law, the unencumbered balance in this item which is due to delayed startup of new beds shall be identified as funds by the Department of Mental Health which may be allocated to counties identified by the Department of Mental Health as having substantially less current relative IMD resources than their relative need for such resources. Allocation of these funds shall not be subject to Section 5600 of the Welfare and Institutions Code. These funds shall be used by the counties for the purchase of intensive mental health treatment services or for such other costs relating to the operation of SNF/STP/IMD programs as the Department of Mental Health shall approve. Notwithstanding any other provision of law, counties shall not be required to match these funds. These funds shall be subject to Section 5714.2 of the Welfare and Institutions Code.

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.

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 confusion regarding licensure of psychiatric health facilities and to ensure the continuity and timeliness of licensure and operating of these facilities, it is necessary that this act take effect immediately.

CHAPTER 58

An act to amend Sections 61305 and 61376 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor April 20, 1990. Filed with Secretary of State April 20, 1990]

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

SECTION 1. Section 61305 of the Food and Agricultural Code is amended to read:

61305. "Dairy product" means any product classified as Class 1 or Class 2 under Section 61932, 61933, or 61936; any frozen product or frozen product mix classified as Class 3 under Section 61934; any product classified as Class 4b under subdivision (b) of Section 61935; butter; pasteurized process cheese; and any filled product or any imitation milk product in which the use of market milk or any component of market milk is required by Section 38925. This definition applies to the designated products whether processed or manufactured in the state or outside of the state and irrespective of the classification of those products at a point of origin outside the state.

SEC. 2. Section 61376 of the Food and Agricultural Code is amended to read:

61376. This article does not prohibit the giving of any prize to a consumer in a sweepstakes, contest, or drawing conducted in connection with the sale or marketing of any yogurt, soft fresh cheese product (fromage frais), or any Class 2, 3, or 4 product, if no purchase of the product is required and the sweepstakes or drawing otherwise complies with all of the requirements of this chapter and other

applicable state law. For purposes of determining compliance with this chapter and other applicable state laws, the total cost of all prizes permitted under this section, and of the advertising, promotion, and administration associated with the sweepstakes or drawing, shall be prorated among all applicable products sold within the state during the term of the sweepstakes or drawing.

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 59

An act relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 20, 1990 Filed with Secretary of State April 20, 1990]

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

SECTION 1. The Legislature finds and declares that in 1988, proceedings began under the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code) to incorporate the City of Diamond Bar. The Legislature further finds and declares that the process took an exceptional amount of time due to circumstances beyond the control of the affected parties, and that a relatively short extension of time from a deadline to file with the State Board of Equalization is necessary in order that the City of Diamond Bar not be denied its allocation of property taxes for the 1989–90 fiscal year.

SEC. 2. Due to the unique circumstances surrounding the incorporation of the City of Diamond Bar, 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, 54902.1, and 54903 of the Government Code, the incorporation of the City of Diamond Bar shall be effective for assessment and taxation purposes for the 1989–90 fiscal year if the required statements and maps were filed with the State Board of Equalization on or before May 1, 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 City of Diamond Bar and its residents not be denied their allocation of property taxes for the 1989–90 fiscal year due to exceptional circumstances beyond the control of the parties, it is necessary that this act take immediate effect.

CHAPTER 60

An act to add Sections 41203.5, 41203.6, 41203.7, 41203.8, and 41206.5 to the Education Code, and to amend Section 7901 of, and to add Section 7914 to, the Government Code, relating to appropriations limitations.

[Approved by Governor April 23, 1990 Filed with Secretary of State April 24, 1990]

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

SECTION 1. Section 41203.5 is added to the Education Code, to read:

41203.5. (a) In any fiscal year in which the amount of the moneys that are required to be applied by the state for the support of school districts and community college districts is determined under paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, a supplemental appropriation shall be made from the General Fund for the support of those entities in that sum by which the amount determined under that paragraph is exceeded by the amount computed under subdivision (b) of this section.

(b) The amount of General Fund revenues required to assure that the rate of growth in total allocations per unit of average daily attendance to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, and allocated local proceeds of taxes is not less than the rate of growth in per capita appropriations for all other programs and services from General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution.

(c) In no event shall the total amount appropriated in any fiscal year pursuant to this section and paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution exceed the amount which would have been computed pursuant to paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

SEC. 2. Section 41203.6 is added to the Education Code, to read:

41203.6. For purposes of subdivision (c) of Section 8 of Article XVI of the California Constitution, "the amount computed pursuant to paragraph (2) of subdivision (b)" shall not be deemed to mean either the amount applied by the state for the support of school districts and community college districts in a fiscal year for which subdivision (b) of Section 8 of Article XVI of the California Constitution is suspended pursuant to subdivision (h) of that section, or the amount computed pursuant to paragraph (3) of subdivision (b) of that section.

SEC. 3. Section 41203.7 is added to the Education Code, to read:

41203.7. (a) Notwithstanding any other provision of law, in addition to the moneys that are required to be applied by the state for the support of school districts and community college districts under subdivision (b) of Section 8 of Article XVI of the California Constitution, a supplemental appropriation shall be made from the General Fund for the support of school districts, as defined in Section 41302.5, in each fiscal year for the purposes set forth in subdivision (c). The amount of that supplemental appropriation shall be equal to the sum of the amount allocated to school districts pursuant to this section in the prior fiscal year and 25 percent of the amount allocated to school districts in the prior fiscal year pursuant to Section 8.5 of Article XVI of the California Constitution. That amount shall be adjusted annually for changes in enrollment, and for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution.

(b) The funds appropriated pursuant to subdivision (a) shall be allocated to each school district in an equal amount per enrollment, in accordance with the allocation procedure set forth in subdivision (c) of Section 8.5 of Article XVI of the California Constitution.

(c) The amount allocated to each school district pursuant to this section shall be used only for the reduction of class size in any grade level or subject area in accordance with Chapter 6.8 (commencing with Section 52080) of Part 28 of the Education Code, or in any other manner determined by the school district governing board. No later than 90 days following each fiscal year in which a school district receives funding pursuant to this section, the governing board of that school district shall certify in writing to the Superintendent of Public Instruction that all expenditures of that funding were in compliance with this subdivision.

(d) For purposes of paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution, "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes" does not include funding allocated pursuant to this section.

SEC. 4. Section 41203.8 is added to the Education Code, to read:

41203.8. (a) Notwithstanding any other provision of law, in addition to the moneys that are required to be applied by the state

for the support of school districts and community college districts under subdivision (b) of Section 8 of Article XVI of the California Constitution, a supplemental appropriation shall be made from the General Fund in the annual Budget Act for the support of community college districts in each fiscal year for the purposes specified in the Budget Act. The amount of that supplemental appropriation shall be equal to the sum of the amount allocated to community college districts pursuant to this section in the prior fiscal year and 25 percent of the amount allocated to community college districts in the prior fiscal year pursuant to Section 8.5 of Article XVI of the California Constitution. That amount shall be adjusted annually for changes in enrollment, and for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution.

(b) The funds appropriated pursuant to subdivision (a) shall be allocated to each community college district in an equal amount per enrollment, in accordance with the allocation procedure set forth in subdivision (c) of Section 8.5 of Article XVI of the California Constitution.

(c) For purposes of paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution, "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes" does not include funding allocated pursuant to this section.

SEC. 5. *Section 41206.5 is added to the Education Code, to read:*

41206.5. For purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes" for any fiscal year shall include the revenues that are allocated to school districts and community college districts in the subsequent fiscal year as a result of the determination, pursuant to the two-year calculation set forth in subdivision (a) of Section 2 of Article XIII B of the California Constitution, that their allocation would not result in an appropriation of state revenues in excess of the amount that may be appropriated by the state in compliance with Article XIII B of the California Constitution.

SEC. 6. Section 7901 of the Government Code is amended to read:

7901. For the purposes of Article XIII B of the California Constitution and this division:

(a) "Change in California per capita personal income" means the number resulting when the quotient of the California personal income, as published by the United States Department of Commerce in the Survey of Current Business for the fourth quarter of a calendar year divided by the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly determined quotient for the next prior

year. For example, the change in California per capita personal income for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the fourth quarter 1979 personal income divided by the January 1, 1980, population, the quotient divided by the fourth quarter 1978 personal income divided by the January 1, 1979, population.

(b) "Change in population" for a local agency for a calendar year means the number resulting when the percentage change in population between January 1 of the next calendar year and January 1 of the calendar year in question, as estimated by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code for each city and county and Section 2228 of the Revenue and Taxation Code for each special district, plus 100, is divided by 100. For example, the change in population for 1979 would equal the percentage change in population between January 1, 1980, and January 1, 1979, plus 100, the sum divided by 100. For purposes of the state's appropriations limit, "change in population" means the number resulting when the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly estimated population for January 1 of the calendar year in question. For example, the change in population for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the January 1, 1980, population divided by the January 1, 1979, population.

A city or special district may choose to use the change in population within its jurisdiction or within the county in which it is located. For a special district located in two or more counties, the special district may choose to use the change in population in the county in which the portion of the district is located which has the highest assessed valuation. Each city and special district shall select its change in population pursuant to this paragraph annually by a recorded vote of the governing body of the city or special district. A charter city and county may choose to use the change in population provided in this paragraph or may choose to use the change in population provided in Section 2 of Chapter 1221 of the Statutes of 1980.

A county may choose to use any one of the following:

(1) The change in population within its jurisdiction.

(2) The change in population within its jurisdiction, combined with the change in population within all counties having borders that are contiguous to that county.

(3) The change in population within the incorporated portion of the county.

(c) "Change in population" for a school district means the change in average daily attendance between the year prior to that for which the appropriations limit is being computed and the year for which the appropriations limit is being computed, using the average daily attendance as defined in Section 7906.

(d) "Change in population" for a community college district

means the number resulting when the average daily attendance reported by the community college district for state apportionment funding purposes computed pursuant to Article 2 (commencing with Section 84520) of Chapter 4 of Part 50 of the Education Code is divided by the similarly computed average daily attendance for the previous year.

(e) "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12½ cents per $100 of assessed value for the 1977–78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

If a special district levied, or had levied on its behalf, different property tax rates for the 1977–78 fiscal year depending on which area or zone within the district boundaries property was located, it shall be deemed not to have levied a secured property tax rate in excess of 12½ cents per $100 of assessed value if the total revenue derived from the ad valorem property tax levied by or for the district for 1977–78, divided by the total amount of taxable assessed valuation within the district's boundaries for 1977–78, does not exceed .00125.

(f) "School district" means an elementary, high school, or unified school district.

(g) "Local jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

(h) As used in Section 2 and subdivision (b) of Section 3 of Article XIII B, "revenues" means all tax revenues and the proceeds to a local jurisdiction or the state received from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues as described in subdivision (i) of Section 8 of Article XIII B. For a local jurisdiction, revenues and appropriations shall also include subventions, as defined in Section 7903, and with respect to the state, revenues and appropriations shall exclude those subventions.

(i) (1) "Proceeds of taxes" shall not include proceeds to a local jurisdiction or the state from regulatory licenses, user charges, or user fees except to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service.

(2) "Proceeds of taxes" also does not include the proceeds received by a local jurisdiction from a license tax imposed pursuant to Section 25149.5 of the Health and Safety Code or a tax or fee

imposed pursuant to Section 25173.5 of the Health and Safety Code on the operation of a hazardous waste facility, or the proceeds received by a local jurisdiction from a surcharge which is collected by a regional disposal facility, as authorized pursuant to Section 25878 of the Health and Safety Code to the extent that these proceeds of the license tax, tax, fee, or surcharge are expended for costs or increased burdens on local jurisdictions which are associated with the hazardous waste facility or regional disposal facility. These costs or burdens include, but are not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, emergency medical response, law enforcement, air and groundwater monitoring, epidemiological studies, emergency response training, and equipment related to the hosting of the hazardous waste facility or regional disposal facility.

SEC. 7. Section 7914 is added to the Government Code, to read:

7914. An appropriation for a "qualified capital outlay project," as used in subdivision (d) of Section 9 of Article XIII B of the California Constitution, means an appropriation for a fixed asset (including land and construction) with a useful life of 10 or more years and a value which equals or exceeds one hundred thousand dollars ($100,000).

SEC. 8. Regardless of when this act becomes effective, it is the intent of the Legislature to make changes in state apportionments to local government agencies for the entire 1990–91 fiscal year. For the purpose of implementing the changes required by this act, the Superintendent of Public Instruction, the Chancellor of the California Community Colleges, and other public officers shall take all necessary steps to effect the required adjustments, including the authority to adjust allowance computations, apportionments, and disbursements ordered from Sections A and B of the State School Fund and other public funds.

SEC. 9. This act shall become operative only if Senate Constitutional Amendment No. 1 of the 1989–90 Regular Session is approved by the voters and, if approved, this act shall become operative on the same date Senate Constitutional Amendment No. 1 is effective.

CHAPTER 61

An act to add Sections 41203.7, 41203.8, and 41206.5 to the Education Code, relating to education.

[Approved by Governor April 23, 1990. Filed with Secretary of State April 24, 1990.]

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

SECTION 1. Section 41203.7 is added to the Education Code, to read:

41203.7. (a) Notwithstanding any other provision of law, a supplemental appropriation shall be made from the General Fund for the support of school districts, as defined in Section 41302.5, in each fiscal year for the purposes set forth in subdivision (c). The amount of that supplemental appropriation shall be equal to the sum of the amount allocated to school districts pursuant to this section in the prior fiscal year and 25 percent of the amount, if any, allocated to school districts in the prior fiscal year pursuant to Section 8.5 of Article XVI of the California Constitution. That amount shall be adjusted annually for changes in enrollment, and for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution.

(b) The funds appropriated for the purposes of subdivision (a) shall be allocated to each school district in an equal amount per unit of enrollment, in accordance with the allocation procedure set forth in subdivision (c) of Section 8.5 of Article XVI of the California Constitution.

(c) The amount allocated to each school district pursuant to this section shall be used only for the reduction of class size in any grade level or subject area. That class size reduction shall occur in accordance with Chapter 6.8 (commencing with Section 52080) of Part 28 of the Education Code, or in any other manner determined by the school district governing board. Not later than 90 days following each fiscal year in which a school district receives funding pursuant to this section, the governing board of that school district shall certify in writing to the Superintendent of Public Instruction that all expenditures of that funding were in compliance with this subdivision.

SEC. 2. Section 41203.8 is added to the Education Code, to read:

41203.8. (a) Notwithstanding any other provision of law, a supplemental appropriation shall be made from the General Fund in the annual Budget Act for the support of community college districts in each fiscal year for the purposes specified in the Budget Act. The amount of that supplemental appropriation shall be equal to the sum of the amount allocated to community college districts pursuant to this section in the prior fiscal year and 25 percent of the amount, if any, allocated to community college districts in the prior fiscal year

pursuant to Section 8.5 of Article XVI of the California Constitution. That amount shall be adjusted annually for changes in enrollment, and for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution.

(b) The funds appropriated for the purposes of subdivision (a) shall be allocated to each community college district in an equal amount per unit of enrollment, in accordance with the allocation procedure set forth in subdivision (c) of Section 8.5 of Article XVI of the California Constitution.

SEC. 3. Section 41206.5 is added to the Education Code, to read:

41206.5. For purposes of paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution, "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes" for any fiscal year shall include any revenues that are allocated to school districts and community college districts, as a result of the determination, pursuant to the two-year calculation set forth in subdivision (a) of Section 2 of Article XIII B of the California Constitution, that their allocation would not result in an appropriation by the state in compliance with Article XIII B of the California Constitution.

SEC. 4. If both this bill and Senate Bill 88 of the 1989–90 Regular Session are enacted on or before January 1, 1991, and this bill is enacted after Senate Bill 88, Sections 41203.7, 41203.8, and 41206.5 of the Education Code, as added by Senate Bill 88, shall not become operative.

SEC. 5. This act shall become operative only if Senate Constitutional Amendment 1 of the 1989–90 Regular Session is approved by the voters at the statewide election on June 5, 1990.

CHAPTER 62

An act to add Section 15250.5 to, and to repeal Section 15265 of, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 15250.5 is added to the Vehicle Code, to read:

15250.5. (a) No person shall operate firefighting equipment unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle operated, or a license issued pursuant to subdivision (b).

(b) The department may issue a restricted driver's license for the appropriate class of vehicle to a firefighter for the operation of firefighting equipment. The restricted license shall be valid only for operating (1) firefighting equipment within this state, or in another state during a response under a mutual aid pact, or (2) any vehicle for which a class 3 driver's license is required.

(c) The restricted firefighter's license may be issued only to an applicant qualified by examination prescribed and conducted by the department.

The pretrip inspection and driving test required to receive the license shall be the same as required to obtain a license under Section 15250.

The written examination shall be developed by the department with the cooperation of the State Fire Marshal. The department shall include a sufficient number of questions from the examinations required to obtain a license under Section 15250 to ensure that passing the special examination under this section assures a level of safety comparable to examinations given under Section 15250.

(d) In lieu of a report of medical examination required by Sections 12804 and 12804.9, an applicant for a restricted license issued pursuant to subdivision (b) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(e) Upon application for issuance of an original driver's license pursuant to subdivision (b), there shall be paid to the department a fee of twenty-five dollars ($25).

(f) A "firefighter" is any person employed as such by a state agency or by a regularly organized fire department of a city, county, city and county, or district, or registered as a volunteer member of a regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) "Firefighting equipment" means a motor vehicle used to travel to and to suppress fires and which is owned by, or under the exclusive control of, a state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(h) For purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300), the operation of firefighting equipment under a license issued pursuant to subdivision (b) is deemed to be the operation of a commercial motor vehicle.

SEC. 2. Section 15265 of the Vehicle Code is repealed.

SEC. 3. The Department of Motor Vehicles shall prepare and submit to the Legislature, on or before January 1, 1992, a report on the sufficiency of the fee for a restricted driver's license for the operation of firefighting equipment established by subdivision (e) of Section 15250.5 of the Vehicle Code, including its recommendations

with respect to the appropriate amount of that fee.

SEC. 4. This act shall become operative on July 1, 1990.

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 financial burden on small fire districts as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 63

An act to amend Section 451 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990.]

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 addition to any enhancement imposed pursuant to Section 667, if the person was previously convicted of arson of a structure or forest land and the prior conviction is charged in the accusatory 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.

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 correct a drafting error in existing law it is necessary that this bill take effect immediately.

CHAPTER 64

An act to amend Section 30158 of, and to add and repeal Section 30161 of, the Streets and Highways Code, relating to toll bridges.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 30158 of the Streets and Highways Code is amended to read:

30158. The department may issue permits for the use of any toll bridge or other toll highway crossing acquired or constructed pursuant to this chapter on a credit basis. Except in the case of municipal or other public corporations, governmental agencies, or common carriers having contracts directly with the commission for the operation of the transportation facilities of the bridge or crossing, and except as provided in Section 30161, the department shall require the holder of a permit for the use of any toll bridge or other toll highway crossing on a credit basis to furnish and maintain in force a bond executed by an admitted surety insurer, approved by the department, in an amount equal to twice the department's estimate of the toll charges to be incurred under the permit during one month.

SEC. 2. Section 30161 is added to the Streets and Highways Code, to read:

30161. (a) For any bridge at which an automatic vehicle identification system, as described in this section, has been installed and is in operation, the department may waive the requirement that the holder of a credit permit furnish and maintain a surety bond. The automatic vehicle identification system shall have the capability of identifying each vehicle operating under the permit and of tabulating the number of bridge crossings by those vehicles. This section does not affect the authority of the department under Section 30796.8.

(b) The department shall notify the Legislature of the date upon which it commences operation of the system described in subdivision

(a) on any bridge other than the bridge described in Section 30796.

(c) This section shall become inoperative five years from the date specified by the department pursuant to subdivision (b), and as of January 1 next following that date is repealed, unless a later enacted statute, which becomes effective on or before that January 1, deletes or extends that date.

(d) Nine months prior to the end of the five-year period specified in subdivision (c), the department shall submit a report to the Legislature on the implementation of subdivision (a). The report shall include an analysis of credit delinquencies encountered in operating the system and the administrative costs incurred in debt collection.

CHAPTER 65

An act to amend Sections 17911.4, 17911.5, 40080, 40081, 40087, and 40088 of, to amend, repeal and add Sections 40083 and 40085.5 of, and to add Section 17912.3 to, of the Education Code, to amend Section 5373.1 of the Public Utilities Code, and to amend Sections 1808.1 and 12804.6 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 30, 1990 Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 17911.4 of the Education Code is amended to read:

17911.4. All candidate schoolbuses selected by the commission for replacement shall be inspected by the department to determine all of the following criteria:

(a) The dates of manufacture of the schoolbuses. The schoolbuses shall have been manufactured prior to April 1, 1977, and shall have been certified during the prior school year pursuant to Section 2807 of the Vehicle Code.

(b) The total accumulated mileage of each candidate schoolbus, as supported by the owner's records and records of the department. Any records maintained by the superintendent may also be considered in determining the true accumulated mileage of a candidate schoolbus. Only mileage accumulated on the candidate schoolbus during usage by the applicant district may be considered by the commission as mileage under this subdivision.

(c) The average number of miles per day each candidate schoolbus traveled during the prior school year and to date during the current school year, as evidenced by the owner's records. Any records maintained by the department or by the superintendent may also be considered in determining the true average daily miles

of a candidate schoolbus.

(d) The dates of each of the last three annual certifications and the odometer reading for each of those dates.

SEC. 2. Section 17911.5 of the Education Code is amended to read:

17911.5. (a) Schoolbuses shall be purchased by the Department of General Services pursuant to specifications developed by the commission. Title to any schoolbus purchased by the Department of General Services pursuant to this section shall be in the name of the local educational agency for which the schoolbus was purchased.

(b) Any schoolbus purchased with these funds shall meet all applicable federal motor vehicle safety standards, operate with greater energy efficiency, and produce fewer adverse air emissions than the schoolbus being replaced.

(c) Except as provided in this subdivision, no replacement schoolbus shall exceed the capacity of the schoolbus being replaced, as estimated by the department. A local educational agency may use funds from any available source, other than grants received pursuant to this part, to pay that part of the cost of a schoolbus that exceeds the cost of a replacement schoolbus of the same capacity and with the same features as the schoolbus being replaced, as estimated by the Department of General Services.

(d) A replacement schoolbus may be of the same design, configuration, and nonpower-train specifications as the retired schoolbus.

SEC. 3. Section 17912.3 is added to the Education Code, to read:

17912.3. No school district shall purchase for use as a schoolbus, as defined in Section 545 of the Vehicle Code, any schoolbus which does not meet federal Motor Vehicle Safety Standards 220, 221, and 222, (49 C.F.R. Secs. 571.220, 571.221, and 571.222) applicable to schoolbuses commencing April 1, 1977.

SEC. 4. Section 40080 of the Education Code is amended to read:

40080. (a) This article governs the minimum training required for drivers to obtain or renew a 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.

SEC. 5. Section 40081 of the Education Code is amended to read:

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 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 certification pursuant to Section 12804.6 of the Vehicle Code.

SEC. 6. Section 40083 of the Education Code is amended to read:

40083. An original applicant for a 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, or other classroom curricula which the department has certified meets or exceeds the standards in its curricula. All classroom instruction, for a certificate to drive a bus defined by Section 546 of the Vehicle Code, shall be given by, or in the presence of, a state-certified instructor of the appropriate class. An instructor who has received a certificate as described in subdivision (d) of Section 40081, or who is state certified, or who has been designated in writing by the chief executive officer of a transit operator or other employer, may provide the training for an original applicant for a certificate 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, or at least 20 hours of other behind-the-wheel training or driving experience which the department has certified meets or exceeds the standards of its 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 a certificate 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, or the delegated behind-the-wheel trainer as designated by an instructor designated in writing by the chief executive officer of a transit operator or other employer.

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. 7. Section 40083 is added to the Education Code, to read:

40083. An original applicant for a 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, or other classroom curricula which the department has certified meets or exceeds the standards in its curricula. 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 a certificate 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, or at least 20 hours of other behind-the-wheel training or driving experience which the department has certified meets or exceeds the standards of its 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 a certificate 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.

This section shall become operative on January 1, 1993.

SEC. 8. Section 40085.5 of the Education Code is amended to read:

40085.5. Applicants seeking to renew a certificate 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, an instructor designated in writing by the chief executive officer of a transit operator or other employer, 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 validity of the certificate, 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 certificate. All training required by Section 40089 may be accepted in lieu of the requirements of this section.

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. Section 40085.5 is added to the Education Code, to read:

40085.5. Applicants seeking to renew a certificate 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 validity of the certificate, 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 certificate. All training required by Section 40089 may be accepted in lieu of the requirements of this section.

This section shall become operative on January 1, 1993.

SEC. 10. Section 40087 of the Education Code is amended to read:

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 a certificate or for renewal of a certificate.

SEC. 11. Section 40088 of the Education Code is amended to read:

40088. (a) An applicant for a school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate shall successfully complete the appropriate instructor course given or approved by the department.

(b) An applicant for the course shall possess:

(1) A valid driver's license and endorsement valid for driving the vehicles for which the driver instructor rating is sought.

(2) A certificate or endorsement valid for driving the vehicles for which the driver instructor rating is sought.

(3) Five years of experience as a driver in the appropriate vehicle category, or two years experience of that driving experience and three years equivalent experience driving vehicles that require a class A or B driver's license.

(4) A high school diploma or General Education Development (GED) equivalent.

(5) A driving record with no chargeable accidents within the past three years preceding the date of application for the instructor certificate.

The department may waive any or all of the requirements of this subdivision as it determines is necessary to ensure that there are an adequate number of state-certified instructors in the state.

(c) (1) A state-certified schoolbus driver instructor of the appropriate class may instruct all applicants for a schoolbus, school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver's certificate.

(2) A state-certified school pupil activity bus (SPAB) driver instructor of the appropriate class may instruct all applicants for a school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver's certificate, but not a schoolbus certificate.

(3) A state-certified transit bus instructor of the appropriate class may instruct all applicants for a transit bus or farm labor driver's

certificate, but not a school pupil activity bus (SPAB) or a schoolbus certificate.

(4) A state-certified farm labor vehicle driver instructor may instruct applicants only for a certificate to drive a farm labor vehicle.

(d) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate shall be valid until suspended, revoked, or canceled if it is accompanied by a valid driver's license and a special driver's certificate or valid driver's license and endorsement of the appropriate class or is limited to classroom or in-service training only.

(e) The department may suspend or revoke a school pupil activity bus (SPAB), transit bus, schoolbus or farm labor 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).

SEC. 12. Section 5373.1 of the Public Utilities Code is amended to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates—five hundred dollars ($500).

(2) Class B certificates—five hundred dollars ($500).

(3) Class C certificates—five hundred dollars ($500).

(4) Permits—five hundred dollars ($500).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars ($15) per

tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars ($6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars ($15) per tour bus, or a maximum of six thousand five hundred dollars ($6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

(e) If an applicant has already purchased a class B certificate at a fee of five hundred dollars ($500), and the applicant qualifies for a class C certificate, the fee may be transferred in order to obtain a class C certificate.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 13. Section 5373.1 of the Public Utilities Code is amended to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates—five hundred dollars ($500).

(2) Class B certificates—five hundred dollars ($500).

(3) Permits—five hundred dollars ($500).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars ($15) per tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars ($6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars ($15) per tour bus, or a maximum of six thousand five hundred dollars ($6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

(e) This section shall become operative on January 1, 1994.

SEC. 14. 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, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 12524, 12804.1, or 12804.3, shall obtain a report

showing the driver's current public record as recorded by the department.

(b) The employer of a driver who drives a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 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.

(c) The employer of a driver of a vehicle requiring a class 1, class 2, class A, or class B driver's license 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 may notify the department to cancel any reports required by this section.

(e) For the purposes of the pull notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 3557 of the Public Utilities Code, and employers who drive vehicles described in subdivisions (b) and (c), shall be enrolled as if they were employees. Family members and volunteer drivers who drive vehicles described in subdivisions (b) and (c) shall also be enrolled as if they were employees.

(f) 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.

(g) 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, as defined in Section 99210 of the Public Utilities Code, 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.

(h) 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. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports in subdivision (c) to employers on a regular basis without the need for individual requests.

(j) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

(k) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 12524, 12804.1, or 12804.3. A report is current if it was issued less than six months prior to the date the employer employs the driver. As used in this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months.

SEC. 15. Section 12804.6 of the Vehicle Code is amended 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. Any transit busdriver who was employed as a busdriver on or before July 1, 1990, shall comply with Section 40085.5 of the Education Code

instead of Section 44083 of that code in order to receive his or her original certificate.

(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 he or she has complied with Section 40083 of the Education Code.

(2) Proof that he or she has complied with Section 40085.5 of the Education Code.

(e) The department may charge a fee of ten dollars ($10) to an applicant for an original or a duplicate or renewal certificate under this section.

(f) The department shall issue a certificate to the applicant. The status of the certificate shall also become part of the pull notice and periodic reports issued pursuant to Section 1808.1. The certificate or the pull notice or periodic reports 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.

(g) The term of a certificate shall be a period not to exceed four years, and shall expire with the driver's license.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the bus safety enhancements prescribed by this act at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 66

An act to add Section 42239.6 to the Education Code, relating to school finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990]

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

SECTION 1. Section 42239.6 is added to the Education Code, to read:

42239.6. (a) Elementary and secondary school pupils in voluntary after-school programs in multitrack year-round schools shall be eligible for summer school apportionments calculated

pursuant to Section 42239 if those programs meet the following conditions:

(1) The instruction supplements the regular instructional program in the core academic areas specified in paragraph (2) of subdivision (d) of Section 42239.

(2) The instruction is provided after the end of the full schoolday offered for the purposes of incentive funding pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26, and does not exceed 120 minutes.

(3) Attendance is not required by the participating schools and districts.

(b) Participating school districts shall encourage the participation of elementary and secondary schools with low academic performance.

SEC. 2. The State Department of Education shall review existing statutes authorizing the establishment of summer school programs and develop a proposal that would allow summer school programs to be conducted at any reasonable time, other than during the full regular schoolday, and shall submit the proposal to the appropriate policy committees of the Legislature not later than June 30, 1990.

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

In order that the changes pursuant to this act commence with the 1990–91 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 67

An act to add Section 17533.10 to the Business and Professions Code, relating to controlled substances.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 17533.10 is added to the Business and Professions Code, to read:

17533.10. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of anabolic steroids as defined in subdivision (f) of Section 11056 of the Health and Safety Code, unless there be conspicuously displayed or stated in connection with the name and description of any of those

anabolic steroids, a direct and unequivocal statement which will clearly indicate that the possession by, or sale to, an ultimate consumer of anabolic steroids is a crime punishable by a substantial fine and imprisonment, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, pursuant to Sections 11377, 11378, and 11379 of the Health and Safety 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 68

An act to amend Section 1203.09 of the Penal Code, relating to crimes.

[Approved by Governor April 30, 1990 Filed with Secretary of State May 1, 1990]

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

SECTION 1. Section 1203.09 of the Penal Code is amended to read:

1203.09. (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 who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, a quadriplegic, or a person confined to a wheelchair and such disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon such person.

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

(i) Murder.

(ii) Robbery, in violation of Section 211.

(iii) Kidnapping, in violation of Section 207.

(iv) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

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

(vi) Rape by force or violence, in violation of subdivision (2) of

Section 261.

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

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

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

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

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

CHAPTER 69

An act to amend Section 87500 of, and to add Article 3.5 (commencing with Section 87350) to Chapter 7 of Title 9 of, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990]

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

SECTION 1. Article 3.5 (commencing with Section 87350) is added to Chapter 7 of Title 9 of the Government Code, to read:

Article 3.5. Multiagency Filers

87350. Notwithstanding any other provision of this title, a person required to file more than one assuming office statement, statement of economic interests, or leaving office statement, due to his or her status as a designated employee for more than one joint powers insurance agency, may elect to file a multiagency statement disclosing all investments in entities doing business in the state, all interests in real property located within the state, and all income received during the applicable time period, in lieu of filing the

disclosure statements for each agency.

The filer shall notify the commission of his or her decision to become a multiagency filer. This status shall continue until revoked by the filer.

SEC. 2. Section 87500 of the Government Code is amended to read:

87500. Statements of economic interests required by this chapter shall be filed as follows:

(a) Statewide elected officer—one original with the agency which shall make and retain a copy and forward the original to the commission, which shall retain the original and send one copy to the Registrar-Recorder of Los Angeles County and one copy with the Clerk of the City and County of San Francisco. The commission shall be the filing officer.

(b) Candidates for statewide elective office—one original with the person with whom the candidate's declaration of candidacy is filed, who shall forward the original to the commission which shall retain the original and send one copy to the Registrar-Recorder of Los Angeles County and one copy with the Clerk of the City and County of San Francisco. The commission shall be the filing officer.

(c) Members of the Legislature and Board of Equalization—one original with the agency which shall make and retain a copy and forward the original to the commission, which shall retain the original and send one copy to the clerk of the county which contains the largest percentage of registered voters in the election district which the officeholder represents, and one copy to the clerk of the county in which the officeholder resides. No more than one copy of each statement need be filed with the clerk of any one county. The commission shall be the filing officer.

(d) Candidates for the Legislature or the Board of Equalization—one original with the person with whom the candidate's declaration of candidacy is filed, who shall forward the original to the commission which shall retain the original and send one copy to the clerk of the county which contains the largest percentage of registered voters in the election district in which the candidate seeks nomination or election, and one copy to the clerk of the county in which the candidate resides. No more than one copy of each statement need be filed with the clerk of any one county. The commission shall be the filing officer.

(e) Persons holding the office of chief administrative officer and candidates for and persons holding the office of district attorney, county counsel, and member of the board of supervisors—one original with the county clerk who shall make and retain a copy and forward the original to the commission which shall be the filing officer.

(f) Persons holding the office of city manager or, if there is no city manager, the chief administrative officer, and candidates for and persons holding the office of city council member, city attorney, and mayor—one original with the city clerk who shall make and retain

a copy and forward the original to the commission which shall be the filing officer.

(g) Members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, planning commissioners, and members of the California Coastal Commission—one original with the agency which shall make and retain a copy and forward the original to the commission which shall be the filing officer.

(h) Members of the Fair Political Practices Commission—one original with the commission which shall make and retain a copy and forward the original to the office of the Attorney General which shall be the filing officer.

(i) Judges, court commissioners, and candidates for the office of judge—one original with the clerk of the court who shall make and retain a copy and forward the original to the commission which shall be the filing officer.

(j) Except as provided for in subdivision (k), heads of agencies, members of boards or commissions not under a department of state government or members of boards or commissions not under the jurisdiction of a local legislative body—one original with the agency, which shall make and retain a copy and forward the original to the code reviewing body which shall be the filing officer. In its discretion, the code reviewing body may provide that the original be filed directly with the code reviewing body and that no copy be retained by the agency.

(k) Heads of local government agencies and members of local government boards or commissions, for which the Fair Political Practices Commission is the code reviewing body, one original to the agency or board or commission which shall be the filing officer, unless at its discretion the Fair Political Practices Commission elects to act as the filing officer. In this instance, the original shall be filed with the agency or board or commission, which shall make and retain a copy and forward the original to the Fair Political Practices Commission.

(*l*) Designated employees of the Legislature—one original with the house of the Legislature by which the designated employee is employed. In its discretion, each house of the Legislature may provide that the originals of statements filed by its designated employees be filed directly with the commission, and that no copies be retained by that house.

(m) Designated employees under contract to more than one joint powers insurance agency and who elect to file a multiagency statement pursuant to Section 87350, the original of the statement with the commission which shall be the filing officer, and a statement with each agency with which they are under contract, declaring that their statement of economic interests is on file with the commission and available upon request.

(n) Persons not mentioned above—one original with the agency or with the code reviewing body, as provided by the code reviewing

body in the agency's conflict of interest 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. 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 70

An act to amend Section 1166 of, and to add Section 1162.5 to, the Streets and Highways Code, relating to highways.

[Approved by Governor April 30, 1990 Filed with Secretary of State May 1, 1990]

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

SECTION 1. Section 1162.5 is added to the Streets and Highways Code, to read:

1162.5. (a) In lieu of submission of a petition pursuant to Section 1162, formation of a division may be initiated by a resolution of the board of supervisors. The resolution shall meet all the requirements of Section 1162 except those relating to signatures of landowners. In addition, the resolution shall fix a time and place for a public hearing on the establishment of the proposed division which shall not be less than 30 nor more than 60 days after the adoption of the resolution.

(b) The clerk of the board of supervisors shall publish a notice of the hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the county, or, if there is no newspaper published in the county, in a newspaper of general circulation which is circulated in the territory proposed to be included within the division. Publication shall be complete at least seven days prior to the date of the hearing. The notice shall contain the text of the resolution, the time and place for the hearing, and a statement that at the hearing the testimony of all interested persons for or against the establishment of the division will be heard.

At least 20 days before the date set for the hearing, the clerk of the board of supervisors shall mail copies of the notice to all affected landowners whose names appear on the last equalized assessment

roll.

(c) At the hearing, protests against the establishment of the division may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk of the board of supervisors on or before the time fixed for the hearing and may be withdrawn in writing at any time before the conclusion of the hearing. The board may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings.

(d) If written protests are received from at least 25 percent but not more than 50 percent of the affected landowners, or landowners who would be required to pay any proposed special tax or parcel charge which represents more than 25 percent of the total amount of the expected revenue necessary to finance the division, and those protests are not withdrawn by the end of the hearing, the proposed division shall be submitted to the landowners for majority voter approval.

If written protests are received from 50 percent or more of the affected landowners, or landowners who would be required to pay any proposed special tax or parcel charge which represents more than 50 percent of the total amount of the expected revenue necessary to finance the division and those protests are not withdrawn by the end of the hearing, the proposed division shall be abandonded for at least one year.

(e) The board of supervisors may conduct, by mail, any election held to approve or disapprove a proposed division.

(f) If no election is required pursuant to subdivision (d), the division may be formed pursuant to Section 1166.

(g) If an election is required pursuant to subdivision (d), the board of supervisors may include on the same ballot the question of whether a special tax shall be levied within the division. The board of supervisors may submit the question of levy of a special tax to the voters separately from the question of formation of the division, or may consolidate both questions into a single measure. Sections 1173 to 1178, inclusive, are applicable to an election held pursuant to this subdivision.

SEC. 2. Section 1166 of the Streets and Highways Code is amended to read:

1166. Following the hearing or election, as the case may be, the board shall decide if the proposed division is to be formed. If the board decides to form the division, it may make changes in the boundaries as it finds proper and shall define and establish the boundaries. The changes shall not include any territory outside of the boundaries described in the petition or resolution unless the board has given at least 15 days' notice of its intention to include that territory in the division. The notice shall be given by publication, in the the manner authorized by Section 1196, and by leaving a copy

of the notice at each place of abode in the outside territory.

CHAPTER 71

An act to amend Sections 26103, 27454, 27459, 27460, and 27465 of, to add Sections 605 and 27459.5 to, and to repeal Section 27459.6 of, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 30, 1990. Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 605 is added to the Vehicle Code, to read:

605. "Tire traction devices" are devices or mechanisms having a composition and design capable of improving vehicle traction, braking, and cornering ability upon snow or ice-covered surfaces. Tire traction devices shall be constructed and assembled to provide sufficient structural integrity and to prevent accidental detachment from vehicles. Tire traction devices shall, at the time of manufacture or final assembly, bear a permanent impression indicating the name, initials, or trademark of the assembling company or primary manufacturer, and the country in which the devices were manufactured or assembled in final form.

SEC. 2. Section 26103 of the Vehicle Code is amended to read:

26103. (a) The department may adopt and enforce regulations establishing standards and specifications for lighting equipment listed in Section 375 and for safety belts, safety glazing material, safety helmets, sirens, tire traction devices, bunk stakes, and synthetic binders. The standards and specifications may include installation and aiming requirements.

(b) If there exists a Federal Motor Vehicle Safety Standard adopted pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.) covering the same aspect of performance of a device, the provisions of that standard shall prevail over provisions of this code or regulations adopted pursuant to this code. Lamps, devices, and equipment certified by the manufacturer to meet applicable federal motor vehicle safety standards as original equipment on new vehicles and the identical replacements for those items need not be certified to the department.

SEC. 3. Section 27454 of the Vehicle Code is amended to read:

27454. No tire on any vehicle upon any highway shall have on its periphery any block, stud, flange, cleat, ridge, bead, or any other protuberance of metal or wood which projects beyond the tread of the traction surface of the tire.

This section does not apply to the following:

(a) Tire traction devices of reasonable size used to prevent

skidding when upon wet surfaces or when upon snow or ice.

(b) Pneumatic tires which have embedded therein wire not to exceed 0.075 of an inch in diameter and which are so constructed that under no conditions will the percentage of metal in contact with the roadway exceed 5 percent of the total tire area in contact with the roadway, except that during the first 1,000 miles of use or operation of any such tire, the metal in contact with the roadway may exceed 5 percent of the tire area in contact with the roadway, but shall in no event exceed 20 percent of such area.

(c) Vehicles operated upon unimproved roadways when necessary in the construction or repair of highways.

(d) Traction engines or tractors when operated under the conditions of a permit first obtained from the Department of Transportation.

(e) Pneumatic tires containing metal-type studs of tungsten carbide or other suitable material and which are so inserted or constructed that under no conditions will the number of studs or the percentage of metal in contact with the roadway exceed 3 percent of the total tire area in contact with the roadway, between the first day of November and the first day of April. The commissioner, after consultation with the Department of Transportation, may extend the period during which studded pneumatic tires may be used in any area of the state for the protection of the public because of adverse weather conditions.

(f) Pneumatic tires used on an authorized emergency vehicle, as defined in Section 165, containing metal-type studs of tungsten carbide or other suitable material, if the studs are so inserted or constructed that under no conditions will the number of studs or the percentage of metal in contact with the roadway exceed 3 percent of the total tire area in contact with the roadway. Notwithstanding subdivision (e), authorized emergency vehicles are permitted the unrestricted use of studded pneumatic tires throughout the year.

SEC. 4. Section 27459 of the Vehicle Code is amended to read:

27459. No person shall operate any motor vehicle, trailer or semitrailer upon any portion of a highway without tire traction devices when that portion of the highway is signed for the requirement of tire traction devices. In any case where a passenger vehicle or motortruck having an unladen weight of 6,000 pounds or less may be required by the Department of Transportation or local authorities to be equipped with tire traction devices, the devices shall be placed on at least two drive wheels, or the department or local authorities may provide, in the alternative, that the vehicle may be equipped with snow-tread tires on at least two drive wheels when the weather and surface conditions at the time are such that the stopping, tractive, and cornering abilities of the snow-tread tires are adequate. The snow-tread tires shall be of a type and design manufactured for use on snow as a replacement for tire chains or tire traction devices, shall be in good condition, and shall bear the marking of M-S, M/S, or other marking indicating that the tire was

manufactured for use on snow, or, in the case of tires purchased before January 1, 1987, shall either bear the markings or, in the opinion of the inspecting officer, comply with the tread pattern requirements of Section 558.

SEC. 5. Section 27459.5 is added to the Vehicle Code, to read:

27459.5. (a) No person shall sell, offer for sale, lease, install, or replace on a vehicle for use on a highway, any tire traction devices which are not in compliance with requirements specified in Section 605.

(b) Every manufacturer who sells, offers for sale, or manufactures for use upon a vehicle, tire traction devices subject to the requirements of Section 605 shall, before the device is offered for sale, have laboratory test data showing compliance with those requirements. Tests may be conducted by the manufacturer.

SEC. 6. Section 27459.6 of the Vehicle Code is repealed.

SEC. 7. Section 27460 of the Vehicle Code is amended to read:

27460. Any passenger vehicle or motortruck having an unladen weight of 6,500 pounds or less and operated and equipped with four-wheel drive and with snow-tread tires on all four drive wheels may be operated upon any portion of a highway without tire traction devices, notwithstanding the fact that the highway is signed for the requirement of those devices and provided that tire traction devices for at least one set of drive wheels are carried in or upon the vehicle. The snow-tread tires shall meet the requirements specified in Section 27459, and the vehicle shall not, when so operated, tow another vehicle except as may be necessary to move a disabled vehicle from the roadway.

No person shall use those tires on four-wheel drive vehicles in place of tire traction devices whenever weather and roadway conditions at the time are such that the stopping, tractive, and cornering abilities of the tires are not adequate or whenever the Department of Transportation or local authorities, in their respective jurisdictions, place signs prohibiting their operation unless equipped with tire traction devices.

SEC. 8. Section 27465 of the Vehicle Code is amended to read:

27465. (a) No dealer or person holding a retail seller's permit shall sell, offer for sale, expose for sale, or install on a vehicle axle for use on a highway, a pneumatic tire when the tire has less than the tread depth specified in subdivision (b). This subdivision does not apply to any person who installs on a vehicle, as part of an emergency service rendered to a disabled vehicle upon a highway, a spare tire with which the disabled vehicle was equipped.

(b) No person shall use on a highway a pneumatic tire on a vehicle axle when the tire has less than the following tread depth, except when temporarily installed on a disabled vehicle as specified in subdivision (a):

(1) One thirty-second ($\frac{1}{32}$) of an inch tread depth in any two adjacent grooves at any location of the tire, except as provided in paragraphs (2) and (3).

(2) Four thirty-second (4/32) of an inch tread depth at all points in all major grooves on a tire on the steering axle of any motor vehicle specified in Section 34500, and two thirty-second (2/32) of an inch tread depth at all points in all major grooves on all other tires on the axles of these vehicles.

(3) Six thirty-second (6/32) of an inch tread depth at all points in all major grooves on snow tires used in lieu of tire traction devices in posted tire traction device control areas.

(c) The measurement of tread depth shall not be made where tie bars, humps, or fillets are located.

(d) The requirements of this section shall not apply to implements of husbandry.

(e) The department, if it determines that such action is appropriate and in keeping with reasonable safety requirements, may adopt regulations establishing more stringent tread depth requirements than those specified in this section for those vehicles defined in Sections 322 and 545, and may adopt regulations establishing tread depth requirements different from those specified in this section for those vehicles listed in Section 34500.

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.

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:

Applicable requirements for tire chains expired on January 1, 1990, and, in order to provide minimum statutory requirements for motorist safety relating to tire traction devices, it is necessary that this act take effect immediately.

CHAPTER 72

An act to amend Sections 16009 and 16013 of the Health and Safety Code, relating to essential services buildings.

[Approved by Governor May 1, 1990. Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 16009 of the Health and Safety Code is amended to read:

16009. The appropriate enforcement agency which meets the requirements of Sections 16017 and 16018 shall review the design and inspect the construction of essential services buildings or the reconstruction, alteration, or addition to any essential services building to the extent it deems necessary to ensure that:

(1) When the enforcement agency is a local agency, drawings and specifications comply with the locally adopted editions of the model codes, as defined in Section 18916, the administrative regulations contained in Part 1 (commencing with Section 1-101) of Title 24 of the California Code of Regulations, and the regulations contained in Part 2 (commencing with Section 101), except for Chapters 23 to 30, inclusive, and Chapter 47 of Title 24 of the California Code of Regulations.

(2) When the enforcement agency is the Office of the State Architect, that drawings and specifications comply with all parts of the State Building Standards Code, as contained in Title 24 of the California Code of Regulations, as adopted by that agency.

(3) For the protection of life and property that the work of construction has been performed in accordance with the approved drawings and specifications and this chapter.

SEC. 2. Section 16013 of the Health and Safety Code is amended to read:

16013. The enforcement agency shall approve or reject all drawings and specifications for the construction or the alteration of all essential services buildings, and in doing so, shall review the design calculations, drawings, and specifications to ensure compliance with the requirements of this chapter. A record shall be kept by the enforcement agency indicating that design calculations, drawings, and specifications have been reviewed and conform with:

(1) When the enforcement agency is a local agency, the locally adopted editions of the model codes, as defined in Section 18916, the administrative regulations contained in Part 1 (commencing with Section 1-101) of Title 24 of the California Code of Regulations, and the regulations contained in Part 2 (commencing with Section 101), except for Chapters 23 to 30, inclusive, and Chapter 47 of Title 24 of the California Code of Regulations.

(2) When the enforcement agency is the Office of the State

Architect, all parts of the State Building Standards Code, as contained in Title 24 of the California Code of Regulations and adopted by that agency.

CHAPTER 73

An act to add Section 22651.2 to the Vehicle Code, relating to vehicles.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 22651.2 is added to the Vehicle Code, to read:

22651.2. (a) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act when the vehicle is found upon a highway or any public lands, and if all of the following requirements are satisfied:

(1) Because of the size and placement of signs or placards on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to advertise to the public an event or function on private property or on public property hired for a private event or function to which the public is invited.

(2) The vehicle is known to have been previously issued a notice of parking violation which was accompanied by a notice warning that an additional parking violation may result in the impoundment of the vehicle.

(3) The registered owner of the vehicle has been mailed a notice advising of the existence of the parking violation and that an additional violation may result in the impoundment of the vehicle.

(b) Subdivision (a) does not apply to a vehicle bearing any sign or placard advertising any business or enterprise carried on by or through the use of that vehicle.

(c) Section 22852 applies to the removal of any vehicle pursuant to this section.

CHAPTER 74

An act to amend Sections 7261 and 9024 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 7261 of the Revenue and Taxation Code is amended to read:

7261. (a) The transactions tax portion of any transactions and use taxes ordinance adopted under this part shall be imposed for the privilege of selling tangible personal property at retail, and shall include provisions in substance as follows:

(1) A provision imposing a tax for the privilege of selling tangible personal property at retail upon every retailer in the district at a rate of one-half of 1 percent of the gross receipts of the retailer from the sale of all tangible personal property sold by that person at retail in the district.

(2) Provisions identical to those contained in Part 1 (commencing with Section 6001), insofar as they relate to sales taxes and are not inconsistent with this part, except that the name of the district as the taxing agency shall be substituted for that of the state and that an additional transactor's permit shall not be required if a seller's permit has been or is issued to the transactor under Section 6067.

(3) A provision that all amendments subsequent to the effective date of this part to Part 1 (commencing with Section 6001) relating to sales tax and not inconsistent with this part shall automatically become a part of the transactions and use taxes ordinance; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by the district's board.

(4) A provision that the amount subject to tax shall not include the amount of sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or the amount of any state-administered transactions or use tax.

(5) A provision that there are exempted from the tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

(6) A provision that sales of property to be used outside the district which are shipped to a point outside the district, pursuant to the contract of sale, by delivery to such point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment

to a consignee at such point, are exempt from the tax.

For purposes of this section, "delivery" of vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code shall be satisfied by registration to an out-of-district address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence.

"Delivery" of commercial vehicles shall be satisfied by registration to a place of business out of district and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(7) A provision that the sale of tangible personal property is exempt from tax if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance. A lease of tangible personal property which is a continuing sale of such property is exempt from tax for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance. For the purposes of this subdivision, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(b) This section shall cease to be operative on March 1, 1984, and thereafter this section shall become operative on January 1, 1988.

SEC. 2. Section 9024 of the Revenue and Taxation Code is amended to read:

9024. 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 8851) of Chapter 4. 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. This chapter, with respect to the collection of any amount required to be paid under this part, shall apply when the notice becomes final.

CHAPTER 75

An act to amend Section 54691 of the Education Code, relating to education.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 1, 1990.]

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

SECTION 1. Section 54691 of the Education Code is amended to read:

54691. Commencing with the 1987–88 fiscal year, from the funds appropriated for that purpose, the Superintendent of Public Instruction shall issue grants to school districts maintaining high schools that meet the specifications of Section 54692, for purposes of planning, establishing, and maintaining academies, as follows:

(a) For the 1987–88, 1988–89, 1989–90, and 1990–91 fiscal years, the superintendent may issue a maximum of 15 grants per year, for purposes of planning partnership academies and developing the curriculum. The Superintendent of Public Instruction, when issuing the grants to school districts, shall ensure that the grants are equitably distributed among high-wealth and low-wealth school districts in urban, rural, and suburban areas. Each planning grant shall be in the amount of fifteen thousand dollars ($15,000).

(b) For the 1987–88 fiscal year, and each fiscal year thereafter, the superintendent may issue grants for the implementation and maintenance of academies initiated by the Sequoia Union High School District, the Peninsula Academies Model Program, or planned pursuant to subdivision (a). Implementation and maintenance grants shall be calculated in accordance with the following schedule:

(1) Districts operating academies established under the Peninsula Academies Model Program or the Sequoia Union High School District may receive seven hundred fifty dollars ($750) per year for each qualified student enrolled in an academy, provided that no more than sixty-seven thousand five hundred dollars ($67,500) may be granted to any one academy for each fiscal year.

(2) Districts operating one or more academies may receive two thousand two hundred fifty dollars ($2,250) for each qualified student enrolled in an academy during the first year of that academy's operation, provided that no more than sixty-seven thousand five hundred dollars ($67,500) may be granted to any one academy for the initial year.

(3) Districts operating one or more academies may receive one thousand five hundred dollars ($1,500) for each qualified student enrolled in an academy during the second year of that academy's operation, provided that no more than ninety thousand dollars ($90,000) may be granted to any one academy for the second year.

(4) Districts operating one or more academies may receive seven hundred fifty dollars ($750) per year for each qualified student enrolled in an academy during the third year and for each year of operation thereafter, provided that no more than sixty-seven thousand five hundred dollars ($67,500) may be granted to any one academy for each fiscal year.

(c) For purposes of this article, a qualified student is a student who is enrolled in an academy for the 10th, 11th, or 12th grade, successfully completes a school year in the academy with an attendance record of no less than 80 percent positive attendance, and obtains 90 percent of the credits each academic year in courses that are required for graduation. An academy student who successfully completes the first semester of the school year with the specified positive attendance record and with at least one-half of the credits specified for the full year is considered qualified for the first semester and the district may receive one-half of the yearly amount for that student. Credits earned in summer session are attributable to meeting the previous year credit requirement.

(d) At the end of each school year, school districts that have been approved to operate academies pursuant to this article shall certify the following information to the Superintendent of Public Instruction:

(1) The number of qualified students enrolled during the just completed school year, by grade level, for each academy operated by the district.

(2) The operation of each academy in accordance with this article, including Sections 54692 and 54694.

(3) The amount of matching funds and the dollar value of in-kind support made available to each academy in accordance with subdivisions (a) and (b) of Section 54692.

(e) The superintendent shall adjust each school district's grant in accordance with the certification made to him or her pursuant to subdivision (d) or in accordance with any discrepancies to the certification that may be revealed by audit. Notwithstanding the provisions of this section, the superintendent may advance the funding as he or she deems appropriate to districts that are approved to operate, or plan to operate partnership academies.

(f) Funds granted to school districts pursuant to this article may be expended without regard to fiscal year.

CHAPTER 76

An act to amend Section 11461 of the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 1, 1990. Filed with Secretary of State May 2, 1990.]

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

SECTION 1. Section 11461 of the Welfare and Institutions Code is amended to read:

11461. (a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0–4	$ 294
5–8	319
9–11	340
12–14	378
15–20	412

(b) (1) Any county that, as of October 1, 1989, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of October 1, 1989, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall continue to receive the same level of state participation as it received on October 1, 1989.

(c) The amounts in the schedule of basic rates in subdivision (a) shall be adjusted as follows:

(1) Effective January 1, 1990, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 12 percent.

(2) Effective May 1, 1990, any county which did not increase the basic rate by 12 percent on January 1, 1990, shall do all of the following:

(A) Increase the basic rate in effect December 31, 1989, for which state participation is received by 12 percent.

(B) Increase the basic rate, as adjusted pursuant to subparagraph (A) by an additional 5 percent.

(3) (A) Except as provided in subparagraph (B), effective July 1, 1990, for the 1990–91 fiscal year, the amounts in the schedule of basic rates in subdivision (a) shall be increased by an additional 5 percent.

(B) The rate increase required by subparagraph (A) shall not be

applied to rates increased May 1, 1990, pursuant to paragraph (2).

(d) (1) Beginning with the 1991–92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(2) Any county that, as of the 1991–92 fiscal year, receives state participation for a basic rate that exceeds the amount set forth in the schedule of basic rates in subdivision (a) shall receive an increase each year in state participation for that basic rate of one-half of the percentage adjustments specified in paragraph (1) until the difference between the county's adjusted state participation level for its basic rate and the adjusted schedule of basic rates is eliminated.

(3) If a county has, after receiving the adjustments specified in paragraph (2), a state participation level for a basic rate that is below the amount set forth in the adjusted schedule of basic rates for that fiscal year, the state participation level for that rate shall be further increased to the amount specified in the adjusted schedule of basic rates.

(e) (1) As used in this section, "specialized care increment" means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.

(2) Any county that, as of the effective date of this section, has in effect specialized care increments that have been approved by the department, shall continue to receive state participation for those payments.

(3) Any county that, as of the effective date of this section, has in effect specialized care increments that exceed the amounts that have been approved by the department, shall continue to receive the same level of state participation as it received on the effective date of this section.

(4) Except for subparagraph (A), beginning January 1, 1990, specialized care increments shall be adjusted in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall receive state participation for any increases in a specialized care increment which exceeds the adjustments made in accordance with this methodology.

(A) It is the intent of the Legislature that for fiscal year 1991–92, an amount equal to 5 percent of the State Treasury appropriation for family homes be added to the total augmentation for the AFDC-FC program in order to provide incentives and assistance to counties in the area of specialized care. This appropriation shall be used, but not limited to, encouraging counties to implement or expand specialized care payment systems, to recruit and train foster parents for the placement of children with specialized care needs, and to develop county systems to encourage the placement of children in family

homes. It is also the intent of the Legislature that in the use of these funds, federal financial participation shall be claimed whenever possible.

(5) The department shall report, in consultation with counties, the State Foster Parents Association, and representatives of other foster care providers, to the Legislature by December 31, 1990, on the department's specialized care ratesetting system regarding its effectiveness in meeting the special needs of children in foster care. At a minimum, the department's report shall address the following:

(A) A description of the current specialized care system and its strengths and weaknesses.

(B) The characteristics of children receiving specialized care and the cost of that care.

(C) The types of specialized care which are needed by children but which are not readily available for these children; the cost of providing that care; and the current placements of children with special needs in the absence of that care.

(D) The extent to which specialized foster family care can provide an alternative to group home care and the costs and savings which would be associated with greater emphasis on specialized family foster care.

(E) Recommendations on needed improvements to specialized family foster care.

(F) (1) As used in this section, "clothing allowance" means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms.

(2) Any county that, as of the effective date of this section, has in effect clothing allowances, shall continue to receive the same level as it received on the effective date of this section.

(3) Beginning January 1, 1990, clothing allowances shall be adjusted annually in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall be reimbursed for any increases in clothing allowances which exceed the adjustments made in accordance with this methodology.

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.

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 equitable funding to preserve the health, safety, and welfare of foster care children in California as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 77

An act to amend Section 12500.10 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor May 1, 1990. Filed with Secretary of State May 2, 1990.]

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

SECTION 1. Section 12500.10 of the Business and Professions Code is amended to read:

12500.10. (a) A sealer shall cause to be removed from commercial usage any weighing, measuring, or counting instrument or device sold or used in violation of Section 12500.5. The instrument or device may be either seized or marked with a tag or other suitable device with the words "unapproved device".

(b) Upon proof of compliance with Section 12500.5, the sealer shall remove the tag or device bearing the words "unapproved device".

(c) If the owner or user of any weighing, measuring, or counting instrument or device marked "unapproved device" refused or neglected to have it brought into compliance with Section 12500.5 within 30 days after the instrument or device was so marked, it shall be subject to seizure by the sealer. Any instrument or device which has been seized by the sealer pursuant to this section shall be subject to disposition as ordered by a court of competent jurisdiction upon petition for a disposition order by the owner or by any person claiming an interest in the seized instrument or device. If no disposition order is issued within four years after the date of the seizure, that instrument or device shall be defaced, destroyed, or otherwise disposed of by the sealer. The sealer shall, immediately following the defacing, destruction, or disposal of that instrument or device, notify, in writing, the board of supervisors of the county in which the sealer is serving of that fact together with the name and address of the owner or user of the instrument or device.

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 78

An act to amend Section 25503.3 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 2, 1990]

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

SECTION 1. Section 25503.3 of the Business and Professions Code is amended to read:

25503.3. Anything in this division to the contrary notwithstanding, any winegrower, beer manufacturer, brandy manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent may, at parties held, or in hospitality rooms maintained, in conjunction with meetings, conventions, or combined conventions and trade shows of bona fide trade associations of retail licensees, serve and provide free of charge, food, and alcoholic and nonalcoholic beverages to the retail licensees and their guests while attending those meetings, conventions, or combined conventions and trade shows.

Any person specified in this section may advertise in any regular publication of a bona fide trade association the members of which are food or alcoholic beverage retailers, published at least quarterly, if that publication does not advertise on behalf of, or directly benefit, any individual retail licensee.

CHAPTER 79

An act to amend Sections 683 and 954 of the Civil Code, to amend Sections 852, 952, 6661, 6800, 6804, 6855, 14854, 14860, and 18318.5 of the Financial Code, to amend Section 8751.1 of the Health and Safety Code, and to repeal and reenact the Probate Code, relating to probate.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 2, 1990]

NOTE: The Probate Code consists of this chapter as originally enacted, and also contains all the amendments made thereto by chapters 140, 324, 710, 1208, 1307, 1530, and 1598.

Said amendatory chapters become effective January 1, 1991, with the following exceptions:

Chapter 324—July 17, 1990.

Chapter 1208—September 24, 1990.

For the approval dates, see said chapters in their numerical sequence.

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

SECTION 1. Section 683 of the Civil Code is amended to read:

683. (a) A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from a husband and wife, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement.

(b) Provisions of this section do not apply to a joint account in a financial institution if Part 2 (commencing with Section 5100) of Division 5 of the Probate Code applies to such account.

SEC. 2. Section 954 of the Civil Code is amended to read:

954. A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner.

SEC. 3. Section 852 of the Financial Code is amended to read:

852. A bank account that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 4. Section 952 of the Financial Code is amended to read:

952. Notice to any bank of an adverse claim (the person making the adverse claim being hereinafter called "adverse claimant") to a deposit standing on its books to the credit of or to personal property held for the account of any person shall be disregarded, and the bank, notwithstanding the notice, shall honor the checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands and on demand shall deliver that property to, or on the order of, the person for whose account the property is held, without any liability on the part of the bank; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the bank at the office at which the deposit is carried or at which the property is held an affidavit of the adverse claimant stating that of the adverse claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse

claimant and that the adverse claimant has reason to believe the fiduciary is about to misappropriate the deposit or the property, and stating the facts on which the claim of fiduciary relationship and the belief are founded, the bank shall refuse payment of the deposit and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the bank received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank at the office at which the deposit is carried or at which the property is held a restraining order, injunction, or other appropriate order against the bank from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the deposit stands or for whose account the property is held are parties, the bank shall comply with the order or injunction, without liability on its part.

(c) This section shall be applicable even though the name of the person appearing on the bank's books to whose credit the deposit stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent", "trustee", or other word or phrase indicating that the person may not be the owner in his or her own right of the deposit or property.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

SEC. 5. Section 6661 of the Financial Code is amended to read:

6661. Notice to an association or federal association of an adverse claim to a savings account of, or to personal property held for the account of, any person shall be disregarded, and the association or federal association, notwithstanding the notice, shall honor withdrawal applications and shall pay withdrawals and interest to the person or persons to whose credit the account stands or shall deliver the property to or upon the order of the person for whose account the property is held, without any liability on the part of the association or federal association; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the association or federal association at the office at which the account is carried or the property held an affidavit of the claimant stating that of the claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the claimant has reason to believe the fiduciary is about to misappropriate the account or the property, and stating the facts upon which the claim of fiduciary relationship and the belief are founded, the association or federal association shall refuse to pay withdrawals or interest on the account and shall refuse to deliver the property for a period of not more than three court days

(including the day of delivery) from the date that the association or federal association received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the association or federal association at the office at which the account is carried or the property held a restraining order, injunction, or other appropriate order against the association or federal association from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the account stands or for whose account the property is held are the parties, the association or federal association shall comply with the order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the books to whose credit the account stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that the person may hold the account or property in a fiduciary capacity.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

SEC. 6. Section 6800 of the Financial Code is amended to read:

6800. An account in an association or federal association that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 7. Section 6804 of the Financial Code is amended to read:

6804. No association or federal association paying any survivor in accordance with Part 2 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

SEC. 8. Section 6855 of the Financial Code is amended to read:

6855. No association paying any fiduciary, beneficiary, or designated person in accordance with this article or the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.

SEC. 9. Section 14854 of the Financial Code is amended to read:

14854. Subject to Section 14860, a credit union share account that is a multiple-party account, as defined in Section 5132 of the Probate Code, is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 10. Section 14860 of the Financial Code is amended to read:

14860. Except as provided in this section and Part 2 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as

a trust company pursuant to Division 1 (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401 or Section 408 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The credit union shall maintain individual records for each participant or beneficiary which show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right.

(2) When shares are issued in an irrevocable trust, the settlor or the beneficiary shall be a member of this credit union in his or her own right. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.

SEC. 11. Section 18318.5 of the Financial Code is amended to read:

18318.5. An investment or thrift certificate that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.

SEC. 12. 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 Part 4 (commencing with Section 16000) of Division 9 of the Probate Code.

SEC. 13. The Probate Code is repealed.

SEC. 14. The Probate Code is enacted, to read:

PROBATE CODE

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

PART 1. PRELIMINARY PROVISIONS

1. This code shall be known as the Probate Code.

2. (a) A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

(b) A provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision.

3. (a) As used in this section:

(1) "New law" means either of the following, as the case may be:

(A) The act that enacted this code.

(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of any provision of this code.

(2) "Old law" means the applicable law in effect before the operative date of the new law.

(3) "Operative date" means the operative date of the new law.

(b) This section governs the application of a new law except to the extent otherwise expressly provided in the new law.

(c) Subject to the limitations provided in this section, a new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date, including, but not limited to, creation of a fiduciary relationship, death of a person, commencement of a proceeding, making of an order, or taking of an action.

(d) If a petition, account, report, inventory, appraisal, or other document or paper is filed before the operative date, the contents, execution, and notice thereof are governed by the old law and not by the new law; but any subsequent proceedings taken after the operative date concerning the petition, account, report, inventory, appraisal, or other document or paper, including an objection or response, a hearing, an order, or other matter relating thereto is governed by the new law and not by the old law.

(e) If an order is made before the operative date, including an order appointing a personal representative, guardian, conservator, trustee, probate referee, or any other fiduciary or officer, or any action on an order is taken before the operative date, the validity of the order or action is governed by the old law and not by the new law. Nothing in this subdivision precludes proceedings after the operative date to modify an order made, or alter a course of action commenced, before the operative date to the extent proceedings for modification of an order or alteration of a course of action of that type are otherwise provided by statute.

(f) No personal representative, guardian, conservator, trustee, probate referee, or any other fiduciary, officer, or person is liable for any action taken before the operative date that was proper at the time the action was taken, even though the action would be improper if taken on or after the operative date, and such a person has no duty, as a result of the enactment of the new law, to take any step to alter the course of action or its consequences.

(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its amendment or repeal by the new law.

(h) If a party shows, and the court determines, that application of a particular provision of the new law or of the old law in the manner required by this section or by the new law would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons in connection with an event that occurred or circumstance that existed before the operative date, the court may, notwithstanding this section or the new law, apply either the new law or the old law to the extent reasonably necessary to mitigate the substantial interference.

4. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

5. If a notice or other communication is required by this code to be mailed by registered mail, the mailing of the notice or other communication by certified mail is deemed to be sufficient compliance with the requirement.

6. Unless the provision or context otherwise requires, the general provisions and rules of construction in this part govern the construction of this code.

7. Whenever a reference is made to any portion of this code or to any other law, the reference applies to all amendments and additions heretofore or hereafter made.

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

9. The present tense includes the past and future tenses, and the future, the present.

10. The singular number includes the plural, and the plural, the singular.

11. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

12. "Shall" is mandatory and "may" is permissive.

PART 2. DEFINITIONS

20. (a) Unless the provision or context otherwise requires, the definitions in this part govern the construction of this code.

21. "Account," when used to mean a contract of deposit of funds between a depositor and a financial institution, includes a checking account, savings account, certificate of deposit, share account, mutual capital certificate, and other like arrangements.

22. "Account in an insured credit union" means a share account in a credit union, either federally chartered or state licensed, that is insured under Title II of the Federal Credit Union Act (12 U.S.C. Sec. 1781, et seq.).

23. (a) "Account in an insured savings and loan association" means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724, et seq.).

(b) As used in this section:

(1) "Federal association" has the meaning given that term in subdivision (b) of Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the meaning given that term in Section 5111 of the Financial Code.

(3) "Savings account" has the meaning given that term in Section 5116 of the Financial Code.

(4) "Savings association" has the meaning given that term in subdivision (a) of Section 5102 of the Financial Code.

24. "Beneficiary" means a person to whom a donative transfer of property is made or that person's successor in interest, and:

(a) As it relates to the intestate estate of a decedent, means an

heir.

(b) As it relates to the testate estate of a decedent, means a devisee.

(c) As it relates to a trust, means a person who has any present or future interest, vested or contingent.

(d) As it relates to a charitable trust, includes any person entitled to enforce the trust.

26. "Child" means any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

28. "Community property" means:

(a) Community property heretofore or hereafter acquired during marriage by a married person while domiciled in this state.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person while domiciled elsewhere, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time of its acquisition.

(c) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person in exchange for real or personal property, wherever situated, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time the property so exchanged was acquired.

29. "Conservatee" includes a limited conservatee.

30. "Conservator" includes a limited conservator.

32. "Devise," when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will.

34. (a) "Devisee" means any person designated in a will to receive a devise.

(b) In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

36. "Dissolution of marriage" includes divorce.

38. "Family allowance" means an allowance provided for in Chapter 4 (commencing with Section 6540) of Part 3 of Division 6.

39. "Fiduciary" means personal representative, trustee, guardian, conservator, or other legal representative.

40. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization.

42. "General personal representative" is defined in subdivision (b) of Section 58.

44. "Heir" means any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession under this code.

45. "Instrument" means a will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property.

46. "Insured account in a financial institution" means an account in a bank, an account in an insured credit union, and an account in an insured savings and loan association, to the extent that the account is insured.

48. (a) Subject to subdivision (b), "interested person" includes any of the following:

(1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.

(2) Any person having priority for appointment as personal representative.

(3) A fiduciary representing an interested person.

(b) The meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

50. "Issue" of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent.

52. "Letters":

(a) As it relates to a personal representative, means letters testamentary, letters of administration, letters of administration with the will annexed, or letters of special administration.

(b) As it relates to a guardian or conservator, means letters of guardianship or conservatorship or temporary guardianship or conservatorship.

54. "Parent" means any individual entitled to take as a parent under this code by intestate succession from the child whose relationship is involved.

55. "Pay-on-death account" or "P.O.D. account" is defined in Section 5140.

56. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

58. (a) "Personal representative" means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status.

(b) "General personal representative" excludes a special administrator unless the special administrator has the powers, duties, and obligations of a general personal representative under Section 8545.

59. "Predeceased spouse" means a person who died before the decedent while married to the decedent, except that the term does not include any of the following:

(a) A person who obtains or consents to a final decree or judgment

of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.

(b) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony to a third person.

(c) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

60. "Probate homestead" means a homestead provided for in Chapter 3 (commencing with Section 6520) of Part 3 of Division 6.

62. "Property" means anything that may be the subject of ownership and includes both real and personal property and any interest therein.

66. "Quasi-community property" means the following property, other than community property as defined in Section 28:

(a) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired by a decedent while domiciled elsewhere that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the property so exchanged was acquired.

68. "Real property" includes a leasehold interest in real property.

70. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

74. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

76. A "subscribing witness" to a will means a witness who signs the will as provided in Section 6110.

78. "Surviving spouse" does not include any of the following:

(a) A person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

(b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final

decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.

(c) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony with a third person.

(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

80. "Totten trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. In a Totten trust account, it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A Totten trust account does not include (1) a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account or (2) a fiduciary account arising from a fiduciary relation such as attorney-client.

81. "Transferor" means the testator, settlor, grantor, owner, or other person who executes an instrument.

82. (a) "Trust" includes the following:

(1) An express trust, private or charitable, with additions thereto, wherever and however created.

(2) A trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" excludes the following:

(1) Constructive trusts, other than those described in paragraph (2) of subdivision (a), and resulting trusts.

(2) Guardianships and conservatorships.

(3) Personal representatives.

(4) Totten trust accounts.

(5) Custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state.

(6) Business trusts that are taxed as partnerships or corporations.

(7) Investment trusts subject to regulation under the laws of this state or any other jurisdiction.

(8) Common trust funds.

(9) Voting trusts.

(10) Security arrangements.

(11) Transfers in trust for purpose of suit or enforcement of a claim or right.

(12) Liquidation trusts.

(13) Trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind.

(14) Any arrangement under which a person is nominee or escrowee for another.

83. "Trust company" means an entity that has qualified to engage in and conduct a trust business in this state.

84. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

88. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

DIVISION 2. GENERAL PROVISIONS

PART 1. EFFECT OF DEATH OF MARRIED PERSON ON COMMUNITY AND QUASI-COMMUNITY PROPERTY

100. Upon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent.

101. Upon the death of a married person domiciled in this state, one-half of the decedent's quasi-community property belongs to the surviving spouse and the other half belongs to the decedent.

102. (a) The decedent's surviving spouse may require the transferee of property in which the surviving spouse had an expectancy under Section 101 at the time of the transfer to restore to the decedent's estate one-half of the property if the transferee retains the property or, if not, one-half of its proceeds or, if none, one-half of its value at the time of transfer, if all of the following requirements are satisfied:

(1) The decedent died domiciled in this state.

(2) The decedent made a transfer of the property to a person other than the surviving spouse without receiving in exchange a consideration of substantial value and without the written consent or joinder of the surviving spouse.

(3) The transfer is any of the following types:

(A) A transfer under which the decedent retained at the time of death the possession or enjoyment of, or the right to income from, the property.

(B) A transfer to the extent that the decedent retained at the time of death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for the decedent's own benefit.

(C) A transfer whereby property is held at the time of the decedent's death by the decedent and another with right of survivorship.

(b) Nothing in this section requires a transferee to restore to the decedent's estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(c) All property restored to the decedent's estate under this

section belongs to the surviving spouse pursuant to Section 101 as though the transfer had not been made.

103. Except as provided by Section 224, if a husband and wife die leaving community or quasi-community property and it cannot be established by clear and convincing evidence that one spouse survived the other:

(a) One-half of the community property and one-half of the quasi-community property shall be administered or distributed, or otherwise dealt with, as if one spouse had survived and as if that half belonged to that spouse.

(b) The other half of the community property and the other half of the quasi-community property shall be administered or distributed, or otherwise dealt with, as if the other spouse had survived and as if that half belonged to that spouse.

104. Notwithstanding Section 100, community property held in a revocable trust described in Section 5110.150 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

105. This part does not apply where the decedent died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985.

PART 2. SURVIVING SPOUSE'S RIGHT IN CALIFORNIA REAL PROPERTY OF NONDOMICILIARY DECEDENT

120. If a married person dies not domiciled in this state and leaves a valid will disposing of real property in this state which is not the community property of the decedent and the surviving spouse, the surviving spouse has the same right to elect to take a portion of or interest in such property against the will of the decedent as though the property were located in the decedent's domicile at death.

PART 3. CONTRACTUAL ARRANGEMENTS RELATING TO RIGHTS AT DEATH

CHAPTER 1. SURVIVING SPOUSE'S WAIVER OF RIGHTS

140. As used in this chapter, "waiver" means a waiver by the surviving spouse of any of the rights listed in subdivision (a) of Section 141, whether signed before or during marriage.

141. (a) The right of a surviving spouse to any of the following may be waived in whole or in part by a waiver under this chapter:

(1) Property that would pass from the decedent by intestate succession.

(2) Property that would pass from the decedent by testamentary disposition in a will executed before the waiver.

(3) A probate homestead.

(4) The right to have exempt property set aside.

(5) Family allowance.

(6) The right to have an estate set aside under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6.

(7) The right to elect to take community or quasi-community property against the decedent's will.

(8) The right to take the statutory share of an omitted spouse.

(9) The right to be appointed as the personal representative of the decedent's estate.

(b) Nothing in this chapter affects or limits the waiver or manner of waiver of rights other than those referred to in subdivision (a), including but not limited to the right to property that would pass from the decedent to the surviving spouse by nonprobate transfer upon the death of the decedent, such as the survivorship interest under a joint tenancy, a Totten trust account, or a pay-on-death account.

142. (a) A waiver under this chapter shall be in writing and shall be signed by the surviving spouse.

(b) Subject to subdivision (c), a waiver under this chapter is enforceable only if it satisfies the requirements of subdivision (a) and is enforceable under either Section 143 or Section 144.

(c) Enforcement of the waiver against the surviving spouse is subject to the same defenses as enforcement of a contract, except that:

(1) Lack of consideration is not a defense to enforcement of the waiver.

(2) A minor intending to marry may make a waiver under this chapter as if married, but the waiver becomes effective only upon the marriage.

143. (a) Subject to Section 142, a waiver is enforceable under this section unless the surviving spouse proves either of the following:

(1) A fair and reasonable disclosure of the property or financial obligations of the decedent was not provided to the surviving spouse prior to the signing of the waiver unless the surviving spouse waived such a fair and reasonable disclosure after advice by independent legal counsel.

(2) The surviving spouse was not represented by independent legal counsel at the time of signing of the waiver.

(b) Subdivision (b) of Section 5103 of the Civil Code does not apply if the waiver is enforceable under this section.

144. (a) Except as provided in subdivision (b), subject to Section 142, a waiver is enforceable under this section if the court determines either of the following:

(1) The waiver at the time of signing made a fair and reasonable disposition of the rights of the surviving spouse.

(2) The surviving spouse had, or reasonably should have had, an adequate knowledge of the property and financial obligations of the decedent and the decedent did not violate the duty imposed by subdivision (b) of Section 5103 of the Civil Code.

(b) If, after considering all relevant facts and circumstances, the court finds that enforcement of the waiver pursuant to subdivision

(a) would be unconscionable under the circumstances existing at the time enforcement is sought, the court may refuse to enforce the waiver, enforce the remainder of the waiver without the unconscionable provisions, or limit the application of the unconscionable provisions to avoid an unconscionable result.

(c) Except as provided in paragraph (2) of subdivision (a), subdivision (b) of Section 5103 of the Civil Code does not apply if the waiver is enforceable under this section.

145. Unless the waiver or property settlement provides to the contrary, a waiver under this chapter of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse, or a complete property settlement entered into after or in anticipation of separation or dissolution or annulment of marriage, is a waiver by the spouse of the rights described in subdivision (a) of Section 141.

146. (a) As used in this section, "agreement" means a written agreement signed by each spouse or prospective spouse altering, amending, or revoking a waiver under this chapter.

(b) Except as provided in subdivisions (c) and (d) of Section 147, unless the waiver specifically otherwise provides, a waiver under this chapter may not be altered, amended, or revoked except by a subsequent written agreement signed by each spouse or prospective spouse.

(c) Subject to subdivision (d), the agreement is enforceable only if it satisfies the requirements of subdivision (b) and is enforceable under either subdivision (e) or subdivision (f).

(d) Enforcement of the agreement against a party to the agreement is subject to the same defenses as enforcement of any other contract, except that:

(1) Lack of consideration is not a defense to enforcement of the agreement.

(2) A minor intending to marry may enter into the agreement as if married, but the agreement becomes effective only upon the marriage.

(e) Subject to subdivision (d), an agreement is enforceable under this subdivision unless the party to the agreement against whom enforcement is sought proves either of the following:

(1) A fair and reasonable disclosure of the property or financial obligations of the other spouse was not provided to the spouse against whom enforcement is sought prior to the signing of the agreement unless the spouse against whom enforcement is sought waived such a fair and reasonable disclosure after advice by independent legal counsel.

(2) The spouse against whom enforcement is sought was not represented by independent legal counsel at the time of signing of the agreement.

(f) Subject to subdivisions (d) and (g), an agreement is enforceable under this subdivision if the court determines that the agreement at the time of signing made a fair and reasonable

disposition of the rights of the spouses.

(g) If, after considering all relevant facts and circumstances, the court finds that enforcement of the agreement pursuant to subdivision (f) would be unconscionable under the circumstances existing at the time enforcement is sought, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provisions, or limit the application of the unconscionable provisions to avoid an unconscionable result.

(h) Subdivision (b) of Section 5103 of the Civil Code does not apply if the agreement is enforceable under this section.

147. (a) Subject to subdivisions (c) and (d), a waiver, agreement, or property settlement made after December 31, 1984, is invalid insofar as it affects the rights listed in subdivision (a) of Section 141 unless it satisfies the requirements of this chapter.

(b) Nothing in this chapter affects the validity or effect of any waiver, agreement, or property settlement made prior to January 1, 1985, and the validity and effect of such waiver, agreement, or property settlement shall continue to be determined by the law applicable to the waiver, agreement, or settlement prior to January 1, 1985.

(c) Nothing in this chapter affects the validity or effect of any premarital property agreement, whether made prior to, on, or after January 1, 1985, insofar as the premarital property agreement affects the rights listed in subdivision (a) of Section 141, and the validity and effect of such premarital property agreement shall be determined by the law otherwise applicable to the premarital property agreement. Nothing in this subdivision limits the enforceability under this chapter of a waiver made under this chapter by a person intending to marry that is otherwise enforceable under this chapter.

(d) Nothing in this chapter limits any right one spouse otherwise has to revoke a consent or election to disposition of his or her half of the community or quasi-community property under the will of the other spouse.

CHAPTER 2. CONTRACTS CONCERNING WILL OR SUCCESSION

150. (a) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if made after December 31, 1984, can be established only by one of the following:

(1) Provisions of a will stating material provisions of the contract.

(2) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.

(3) A writing signed by the decedent evidencing the contract.

(b) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

(c) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if made on or before December 31, 1984, can be established only under the law applicable to the contract on December 31, 1984.

PART 4. ESTABLISHING AND REPORTING FACT OF DEATH

CHAPTER 1. PROCEEDINGS TO ESTABLISH DEATH

200. If title to or an interest in real or personal property is affected by the death of a person, another person who claims an interest in the property may commence proceedings pursuant to this chapter to establish the fact of the death.

201. (a) Proceedings under this chapter shall be commenced in the superior court of the county of which the decedent was a resident at the time of death or in the superior court of any county in which the property is located.

(b) Proceedings under this chapter shall be commenced by filing a petition that sets forth all of the following information:

(1) The jurisdictional facts.

(2) A particular description of the affected property and of the interest of the petitioner in the property.

202. If proceedings for the administration of the decedent's estate are pending, proceedings under this chapter may be combined with the administration proceedings in the following manner:

(a) The petition shall be filed in the administration proceedings by the person affected or by the personal representative.

(b) The petition shall be filed at any time before the filing of a petition for final distribution. The petition may be included in a petition for probate of the will of the decedent or for letters.

(c) The petition shall be filed without any additional fee.

203. (a) Except as provided in subdivision (b), notice of the hearing shall be given as provided in Section 1220.

(b) If the person who commenced the proceedings files an affidavit with the petition stating that the person has no reason to believe there is any opposition to, or contest of, the petition, the court may act ex parte.

204. (a) The petition and supporting affidavits may be received in evidence and acted upon by the court with the same force and effect as if the petitioner and affiants were personally present and testified to the facts set forth.

(b) The court may render judgment establishing the fact of the death. The judgment is prima facie evidence of the fact of the death. The presumption established by this subdivision is a presumption affecting the burden of producing evidence.

CHAPTER 2. RECORDING EVIDENCE OF DEATH

210. If title to real property is affected by the death of a person, any person may record in the county in which the property is located any of the following documents establishing the fact of the death:

(a) An affidavit of death executed by a person having knowledge

of the facts. The affidavit shall include a particular description of the real property and an attested or certified copy of a record of the death made and filed in a designated public office as required by law.

(b) A certified copy of a court order that determines the fact of death made pursuant to Chapter 1 (commencing with Section 200) or pursuant to another statute that provides for a determination of the fact of death.

211. (a) A document establishing the fact of death recorded pursuant to this chapter is subject to all statutory requirements for recorded documents.

(b) The county recorder shall index a document establishing the fact of death recorded pursuant to this chapter in the index of grantors and grantees. The index entry shall be for the grantor, and for the purpose of this index, the person whose death is established shall be deemed to be the grantor.

212. A document establishing the fact of the death of a person recorded pursuant to this chapter is prima facie evidence of the death insofar as the document identifies real property located in the county, title to which is affected by the death. The presumption established by this section is a presumption affecting the burden of producing evidence.

CHAPTER 3. REPORTING FACT OF DEATH

215. Where a deceased person has received or may have received health care 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, the estate attorney, or if there is no estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent shall give the Director of Health Services notice of the decedent's death not later than 90 days after the date of death. The notice shall include a copy of the decedent's death certificate. The notice shall be given as provided in Section 1215, addressed to the director at the Sacramento office of the director.

PART 5. SIMULTANEOUS DEATH

CHAPTER 1. GENERAL PROVISIONS

220. Except as otherwise provided in this chapter, if the title to property or the devolution of property depends upon priority of death and it cannot be established by clear and convincing evidence that one of the persons survived the other, the property of each person shall be administered or distributed, or otherwise dealt with, as if that person had survived the other.

221. (a) This chapter does not apply in any case where Section 103, 6146, 6211, or 6403 applies.

(b) This chapter does not apply in the case of a trust, deed, or

contract of insurance, or any other situation, where (1) provision is made dealing explicitly with simultaneous deaths or deaths in a common disaster or otherwise providing for distribution of property different from the provisions of this chapter or (2) provision is made requiring one person to survive another for a stated period in order to take property or providing for a presumption as to survivorship that results in a distribution of property different from that provided by this chapter.

(Amended by Stats. 1990, Ch. 710, Sec. 1. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

221. (a) This chapter does not apply in any case where Section 103, 6146, or 6403 applies.

(b) This chapter does not apply in the case of a trust, deed, or contract of insurance, or any other situation, where (1) provision is made dealing explicitly with simultaneous deaths or deaths in a common disaster or otherwise providing for distribution of property different from the provisions of this chapter or (2) provision is made requiring one person to survive another for a stated period in order to take property or providing for a presumption as to survivorship that results in a distribution of property different from that provided by this chapter.

222. (a) If property is so disposed of that the right of a beneficiary to succeed to any interest in the property is conditional upon surviving another person and it cannot be established by clear and convincing evidence that the beneficiary survived the other person, the beneficiary is deemed not to have survived the other person.

(b) If property is so disposed of that one of two or more beneficiaries would have been entitled to the property if he or she had survived the others, and it cannot be established by clear and convincing evidence that any beneficiary survived any other beneficiary, the property shall be divided into as many equal portions as there are beneficiaries and the portion of each beneficiary shall be administered or distributed, or otherwise dealt with, as if that beneficiary had survived the other beneficiaries.

223. (a) As used in this section, "joint tenants" includes owners of property held under circumstances that entitled one or more to the whole of the property on the death of the other or others.

(b) If property is held by two joint tenants and both of them have died and it cannot be established by clear and convincing evidence that one survived the other, the property held in joint tenancy shall be administered or distributed, or otherwise dealt with, one-half as if one joint tenant had survived and one-half as if the other joint tenant had survived.

(c) If property is held by more than two joint tenants and all of them have died and it cannot be established by clear and convincing evidence that any of them survived the others, the property held in joint tenancy shall be divided into as many portions as there are joint tenants and the share of each joint tenant shall be administered or distributed, or otherwise dealt with, as if that joint tenant had survived the other joint tenants.

224. If the insured and a beneficiary under a policy of life or accident insurance have died and it cannot be established by clear and convincing evidence that the beneficiary survived the insured, the proceeds of the policy shall be administered or distributed, or otherwise dealt with, as if the insured had survived the beneficiary, except if the policy is community or quasi-community property of the insured and the spouse of the insured and there is no alternative beneficiary except the estate or personal representative of the insured, the proceeds shall be distributed as community property under Section 103.

226. This chapter does not apply where a person the priority of whose death is in issue died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where none of the persons the priority of whose death is in issue died on or after January 1, 1985.

CHAPTER 2. PROCEEDINGS TO DETERMINE SURVIVAL

230. A petition may be filed under this chapter for any one or more of the following purposes:

(a) To determine for the purposes of Section 103, 220, 222, 223, 224, 6146, 6147, 6211, 6242, 6243, 6244, or 6403, or other provision of this code whether one person survived another.

(b) To determine for the purposes of Section 1389.4 of the Civil Code whether issue of an appointee survived the donee.

(c) To determine for the purposes of Section 24606 of the Education Code whether a person has survived in order to receive benefits payable under the system.

(d) To determine for the purposes of Section 21371 of the Government Code whether a person has survived in order to receive money payable under the system.

(e) To determine for the purposes of a case governed by former Sections 296 to 296.8, inclusive, repealed by Chapter 842 of the Statutes of 1983, whether persons have died other than simultaneously.

(Amended by Stats. 1990, Ch 710, Sec. 2. Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

230. A petition may be filed under this chapter for any one or more of the following purposes:

(a) To determine for the purposes of Section 103, 220, 222, 223, 224, 6146, 6147, 6242, 6243, 6244, or 6403, or other provision of this code whether one person survived another.

(b) To determine for the purposes of Section 1389 4 of the Civil Code whether issue of an appointee survived the donee

(c) To determine for the purposes of Section 24606 of the Education Code whether a person has survived in order to receive benefits payable under the system.

(d) To determine for the purposes of Section 21371 of the Government Code whether a person has survived in order to receive money payable under the system.

(e) To determine for the purposes of a case governed by former Sections 296 to 296 8, inclusive, repealed by Chapter 842 of the Statutes of 1983, whether persons have

died other than simultaneously.

231. A petition may be filed under this chapter by any of the following:

(a) The personal representative of any person the priority of whose death is in issue under the applicable provision referred to in Section 230.

(b) Any other person interested in the estate of any such person.

232. (a) The petition shall be filed in the estate proceeding in which the person filing the petition received his or her appointment or in the estate proceeding for the estate in which the person filing the petition claims an interest.

(b) The court that first acquires jurisdiction under this section has exclusive jurisdiction for the purposes of this chapter.

233. Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(a) The personal representative of each person the priority of whose death is in issue if there is a personal representative for the person.

(b) Each known devisee of each person the priority of whose death is in issue.

(c) Each known heir of each person the priority of whose death is in issue.

(d) All persons (or their attorneys if they have appeared by attorneys) who have requested special notice as provided in Section 1250 in the proceeding in which the petition is filed or who have given notice of appearance in person or by attorney in that proceeding.

234. If the court determines that the named persons are dead and that it has not been established by clear and convincing evidence that one person survived another, the court shall make an order to that effect. If the court determines that the named persons are dead and that there is clear and convincing evidence that one person survived another, the court shall make an order setting forth the order in which the persons died. The order, when it becomes final, is a binding determination of the facts set forth in the order and is conclusive as against the personal representatives of the deceased persons named in the order and against all persons claiming by, through, or under any of the deceased persons.

PART 6. DISTRIBUTION AMONG HEIRS OR BENEFICIARIES

CHAPTER 1. INTESTATE DISTRIBUTION SYSTEM

240. If a statute calls for property to be distributed or taken in the manner provided in this section, the property shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation who leave issue then living, each living member of the

nearest generation of issue then living receiving one share and the share of each deceased member of that generation who leaves issue then living being divided in the same manner among his or her then living issue.

241. Section 240 does not apply where the death of the decedent in the case of intestate succession or of the testator, settlor, or other transferor occurred before January 1, 1985, and the law applicable prior to January 1, 1985, shall continue to apply where the death occurred before January 1, 1985.

CHAPTER 2. DISTRIBUTION UNDER A WILL, TRUST, OR OTHER INSTRUMENT

245. (a) Where a will, trust, or other instrument calls for property to be distributed or taken "in the manner provided in Section 240 of the Probate Code," or where a will, trust, or other instrument that expresses no contrary intention provides for issue or descendants to take without specifying the manner, the property to be distributed shall be distributed in the manner provided in Section 240.

(b) Use of the following words without more, as applied to issue or descendants, is not an expression of contrary intention:

(1) "Per capita" when living members of the designated class are not all of the same generation.

(2) Contradictory wording, such as "per capita and per stirpes" or "equally and by right of representation."

246. (a) Where a will, trust, or other instrument calls for property to be distributed or taken "in the manner provided in Section 246 of the Probate Code," the property to be distributed shall be divided into as many equal shares as there are living children of the designated ancestor, if any, and deceased children who leave issue then living. Each living child of the designated ancestor is allocated one share, and the share of each deceased child who leaves issue then living is divided in the same manner.

(b) Unless the will, trust, or other instrument expressly provides otherwise, if an instrument executed on or after January 1, 1986, calls for property to be distributed or taken "per stirpes," "by representation," or "by right of representation," the property shall be distributed in the manner provided in subdivision (a).

(c) If a will, trust, or other instrument executed before January 1, 1986, calls for property to be distributed or taken "per stirpes," "by representation," or by "right of representation," the property shall be distributed in the manner provided in subdivision (a), absent a contrary intent of the transferor.

247. (a) Where a will, trust, or other instrument calls for property to be distributed or taken "in the manner provided in Section 247 of the Probate Code," the property to be distributed shall be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of

that generation who leave issue then living. Each living member of the nearest generation of issue then living is allocated one share, and the remaining shares, if any, are combined and then divided and allocated in the same manner among the remaining issue as if the issue already allocated a share and their descendants were then deceased.

(b) Unless the will, trust, or other instrument expressly provides otherwise, if an instrument executed on or after January 1, 1986, calls for property to be distributed or taken "per capita at each generation," the property shall be distributed in the manner provided in subdivision (a).

(c) If a will, trust, or other instrument executed before January 1, 1986, calls for property to be distributed or taken "per capita at each generation," the property shall be distributed in the manner provided in subdivision (a), absent a contrary intent of the transferor.

PART 7. EFFECT OF HOMICIDE

250. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under the will of the decedent, including any general or special power of appointment conferred by the will on the killer and any nomination of the killer as executor, trustee, guardian, or conservator made by the will.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent's quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(b) In the cases covered by subdivision (a):

(1) The estate of the decedent passes as if the killer had predeceased the decedent and Section 6147 does not apply.

(2) Property appointed by the will of the decedent to, or for the benefit of, the killer passes as if the killer had predeceased the decedent, and Section 1389.4 of the Civil Code does not apply.

(3) Provisions of the will of the decedent nominating the killer as executor, trustee, guardian, or conservator shall be interpreted as if the killer had predeceased the decedent.

251. A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This section applies to joint tenancies in real and personal property, joint and multiple-party accounts in financial institutions, and any other form of coownership with survivorship incidents.

252. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the

principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

253. In any case not described in Section 250, 251, or 252 in which one person feloniously and intentionally kills another, any acquisition of property, interest, or benefit by the killer as a result of the killing of the decedent shall be treated in accordance with the principles of this part.

254. (a) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this part.

(b) In the absence of a final judgment of conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this part. The burden of proof is on the party seeking to establish that the killing was felonious and intentional for the purposes of this part.

255. This part does not affect the rights of any person who, before rights under this part have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this part, but the killer is liable for the amount of the proceeds or the value of the property.

256. An insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this part, unless prior to payment it has received at its home office or principal address written notice of a claim under this part.

257. This part does not apply where the decedent was killed before January 1, 1985; and the law applicable prior to January 1, 1985, continues to apply where the decedent was killed before January 1, 1985.

PART 8. DISCLAIMER OF TESTAMENTARY AND OTHER INTERESTS

CHAPTER 1. DEFINITIONS

260. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

262. "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

263. (a) "Creator of the interest" means a person who establishes, declares, creates, or otherwise brings into existence an interest.

(b) "Creator of the interest" includes, but is not limited to, the following:

(1) With respect to an interest created by intestate succession, the person dying intestate.

(2) With respect to an interest created under a will, the testator.

(3) With respect to an interest created under a trust, the settlor.

(4) With respect to an interest created by succession to a disclaimed interest, the disclaimant of the disclaimed interest.

(5) With respect to an interest created by virtue of an election to take against a will, the testator.

(6) With respect to an interest created by creation of a power of appointment, the donor.

(7) With respect to an interest created by exercise or nonexercise of a power of appointment, the donee.

(8) With respect to an interest created by an inter vivos gift, the donor.

(9) With respect to an interest created by surviving the death of a depositor of a Totten trust account or P.O.D. account, the deceased depositor.

(10) With respect to an interest created under an insurance or annuity contract, the owner, the insured, or the annuitant.

(11) With respect to an interest created by surviving the death of another joint tenant, the deceased joint tenant.

(12) With respect to an interest created under an employee benefit plan, the employee or other owner of an interest in the plan.

(13) With respect to an interest created under an individual retirement account, annuity, or bond, the owner.

264. "Disclaimant" means a beneficiary who executes a disclaimer on his or her own behalf or a person who executes a disclaimer on behalf of a beneficiary.

265. "Disclaimer" means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.

266. "Employee benefit plan" includes, but is not limited to, any pension, retirement, death benefit, stock bonus, or profit-sharing plan, system, or trust.

267. (a) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, or any estate in any such property, or any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property.

(b) "Interest" includes, but is not limited to, an interest created in any of the following manners:

(1) By intestate succession.

(2) Under a will.

(3) Under a trust.

(4) By succession to a disclaimed interest.

(5) By virtue of an election to take against a will.

(6) By creation of a power of appointment.

(7) By exercise or nonexercise of a power of appointment.

(8) By an inter vivos gift, whether outright or in trust.

(9) By surviving the death of a depositor of a Totten trust account or P.O.D. account.

(10) Under an insurance or annuity contract.

(11) By surviving the death of another joint tenant.
(12) Under an employee benefit plan.
(13) Under an individual retirement account, annuity, or bond.
(14) Any other interest created by any testamentary or inter vivos instrument or by operation of law.

CHAPTER 2. GENERAL PROVISIONS

275. A beneficiary may disclaim any interest, in whole or in part, by filing a disclaimer as provided in this part.

276. A disclaimer on behalf of a conservatee shall be made by the conservator of the estate of the conservatee pursuant to a court order obtained under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4 authorizing or requiring the conservator to execute and file the disclaimer.

277. (a) A disclaimer on behalf of a minor shall be made by the guardian of the estate of the minor if one has been appointed or, if none has been appointed, by a guardian ad litem of the minor. A disclaimer by a guardian is not effective unless made pursuant to a court order obtained under this section.

(b) A disclaimer on behalf of a decedent shall be made by the personal representative of the decedent. Except as provided in Part 6 (commencing with Section 10400) of Division 7, a disclaimer by a guardian or personal representative is not effective unless made pursuant to a court order obtained under this section.

(c) A petition for an order authorizing or requiring a guardian or personal representative to execute and file a disclaimer shall be filed in the superior court in the county in which the estate of the minor or decedent is administered or, if there is no administration, the superior court in any county in which administration would be proper. The petition may be filed by the guardian, personal representative, or other interested person.

(d) The petition shall:
(1) Identify the creator of the interest.
(2) Describe the interest to be disclaimed.
(3) State the extent of the disclaimer.
(4) Identify the person or persons the petitioner believes would take the interest in the event of the disclaimer.

(e) Notice of the hearing on the petition shall be given as follows:

(1) If the petition is for an order authorizing or requiring the guardian of the estate of a minor to execute and file the disclaimer, notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 of Division 4 to all of the persons required to be given notice under that chapter.

(2) If the petition is for an order authorizing or requiring the personal representative of a decedent to execute and file the disclaimer, notice of the hearing on the petition shall be given as provided in Section 1220.

(3) If the petition is for an order authorizing or requiring a guardian ad litem of a minor to execute and file the disclaimer, notice of the hearing on the petition shall be given to the persons and in the manner that the court shall by order direct.

(f) After hearing, the court in its discretion may make an order authorizing or requiring the guardian or personal representative to execute and file the disclaimer if the court determines, taking into consideration all of the relevant circumstances, that the minor or decedent as a prudent person would disclaim the interest if he or she had the capacity to do so.

278. The disclaimer shall be in writing, shall be signed by the disclaimant, and shall:

(a) Identify the creator of the interest.

(b) Describe the interest to be disclaimed.

(c) State the disclaimer and the extent of the disclaimer.

279. (a) A disclaimer to be effective shall be filed within a reasonable time after the person able to disclaim acquires knowledge of the interest.

(b) In the case of any of the following interests, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after the death of the creator of the interest or within nine months after the interest becomes indefeasibly vested, whichever occurs later:

(1) An interest created under a will.

(2) An interest created by intestate succession.

(3) An interest created pursuant to the exercise or nonexercise of a testamentary power of appointment.

(4) An interest created by surviving the death of a depositor of a Totten trust account or P.O.D. account.

(5) An interest created under a life insurance or annuity contract.

(6) An interest created by surviving the death of another joint tenant.

(7) An interest created under an employee benefit plan.

(8) An interest created under an individual retirement account, annuity, or bond.

(c) In the case of an interest created by a living trust, an interest created by the exercise of a presently exercisable power of appointment, an outright inter vivos gift, a power of appointment, or an interest created or increased by succession to a disclaimed interest, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after whichever of the following times occurs latest:

(1) The time of the creation of the trust, the exercise of the power of appointment, the making of the gift, the creation of the power of appointment, or the disclaimer of the disclaimed property.

(2) The time the first knowledge of the interest is acquired by the person able to disclaim.

(3) The time the interest becomes indefeasibly vested.

(d) In case of an interest not described in subdivision (b) or (c),

a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within nine months after whichever of the following times occurs later:

(1) The time the first knowledge of the interest is acquired by the person able to disclaim.

(2) The time the interest becomes indefeasibly vested.

(e) In the case of a future estate, a disclaimer is conclusively presumed to have been filed within a reasonable time if it is filed within whichever of the following times occurs later:

(1) Nine months after the time the interest becomes an estate in possession.

(2) The time specified in subdivision (b), (c), or (d), whichever is applicable.

(f) If the disclaimer is not filed within the time provided in subdivision (b), (c), (d), or (e), the disclaimant has the burden of establishing that the disclaimer was filed within a reasonable time after the disclaimant acquired knowledge of the interest.

280. (a) A disclaimer shall be filed with any of the following:

(1) The superior court in the county in which the estate of the decedent is administered or, if there is no administration of the decedent's estate, the superior court in any county in which administration of the estate of the decedent would be proper.

(2) The trustee, personal representative, other fiduciary, or person responsible for distributing the interest to the beneficiary.

(3) Any other person having custody or possession of or legal title to the interest.

(4) The creator of the interest.

(b) If a disclaimer made pursuant to this part affects real property or an obligation secured by real property and the disclaimer is acknowledged and proved in like manner as a grant of real property, the disclaimer may be recorded in like manner and with like effect as a grant of real property, and all statutory provisions relating to the recordation or nonrecordation of conveyances of real property and to the effect thereof apply to the disclaimer with like effect, without regard to the date when the disclaimer was filed pursuant to subdivision (a). Failure to file a disclaimer pursuant to subdivision (a) which is recorded pursuant to this subdivision does not affect the validity of any transaction with respect to the real property or the obligation secured thereby, and the general laws on recording and its effect govern any such transaction.

281. A disclaimer, when effective, is irrevocable and binding upon the beneficiary and all persons claiming by, through, or under the beneficiary, including creditors of the beneficiary.

282. (a) Unless the creator of the interest provides for a specific disposition of the interest in the event of a disclaimer, the interest disclaimed shall descend, go, be distributed, or continue to be held (1) as to a present interest, as if the disclaimant had predeceased the creator of the interest or (2) as to a future interest, as if the disclaimant had died before the event determining that the taker of

the interest had become finally ascertained and the taker's interest indefeasibly vested. A disclaimer relates back for all purposes to the date of the death of the creator of the disclaimed interest or the determinative event, as the case may be.

(b) Notwithstanding subdivision (a), where the disclaimer is filed on or after January 1, 1985:

(1) The beneficiary is not treated as having predeceased the decedent for the purpose of determining the generation at which the division of the estate is to be made under Part 6 (commencing with Section 240) or other provision of a will, trust, or other instrument.

(2) The beneficiary of a disclaimed interest is not treated as having predeceased the decedent for the purpose of applying subdivision (d) of Section 6409 or subdivision (b) of Section 6410.

283. A disclaimer is not a fraudulent transfer by the beneficiary under Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code.

284. A person who could file a disclaimer under this part may instead file a written waiver of the right to disclaim. The waiver shall specify the interest to which the waiver applies. Upon being filed as provided in Section 280, the waiver is irrevocable and is binding upon the beneficiary and all persons claiming by, through, or under the beneficiary.

285. (a) A disclaimer may not be made after the beneficiary has accepted the interest sought to be disclaimed.

(b) For the purpose of this section, a beneficiary has accepted an interest if any of the following occurs before a disclaimer is filed with respect to that interest:

(1) The beneficiary, or someone acting on behalf of the beneficiary, makes a voluntary assignment, conveyance, encumbrance, pledge, or transfer of the interest or part thereof, or contracts to do so.

(2) The beneficiary, or someone acting on behalf of the beneficiary, executes a written waiver under Section 284 of the right to disclaim the interest.

(3) The beneficiary, or someone acting on behalf of the beneficiary, accepts the interest or part thereof or benefit thereunder.

(4) The interest or part thereof is sold at a judicial sale.

(c) An acceptance does not preclude a beneficiary from thereafter disclaiming all or part of an interest if both of the following requirements are met:

(1) The beneficiary became entitled to the interest because another person disclaimed an interest.

(2) The beneficiary or other person acting on behalf of the beneficiary at the time of the acceptance had no knowledge of the interest to which the beneficiary so became entitled.

(d) The acceptance by a joint tenant of the joint tenancy interest created when the joint tenancy is created is not an acceptance by the joint tenant of the interest created when the joint tenant survives the

death of another joint tenant.

286. The right to disclaim exists regardless of any limitation imposed on the interest of a beneficiary in the nature of an expressed or implied spendthrift provision or similar restriction.

287. An interest created before January 1, 1984, that has not been accepted may be disclaimed after December 31, 1983, in the manner provided in this part, but no interest that arose before January 1, 1984, in a person other than the beneficiary may be destroyed or diminished by any action of the disclaimant taken pursuant to this part.

288. This part does not limit or abridge any right a person may have under any other law to assign, convey, or release any property or interest, but after December 31, 1983, an interest that would otherwise be taken by a beneficiary may be declined, refused, renounced, or disclaimed only as provided in this part.

CHAPTER 3. DISCLAIMERS EFFECTIVE UNDER FEDERAL LAW

295. Notwithstanding any other provision of this part, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the beneficiary, then the disclaimer or transfer is effective as a disclaimer under this part.

PART 9. TRUST COMPANY AS FIDUCIARY

300. A trust company may be appointed to act as a personal representative, guardian or conservator of an estate, or trustee, in the same manner as an individual. A trust company may not be appointed guardian or conservator of the person of a ward or conservatee.

301. (a) A trust company appointed to act as a personal representative, or guardian or conservator of an estate, may not be required to give a bond.

(b) The liability of a trust company and the manner of its making of oaths and affidavits are governed by Article 3 (commencing with Section 1540) of Chapter 12 of Division 1 of, and Section 1587 of, the Financial Code.

PART 10. DELIVERY OF DECEDENT'S TANGIBLE PERSONAL PROPERTY

330. (a) Except as provided in subdivision (b), a public administrator, government official, law enforcement agency, the hospital or institution in which a decedent died, or the decedent's employer, may, without the need to wait 40 days after death, deliver the tangible personal property of the decedent in its possession,

including keys to the decedent's residence, to the decedent's surviving spouse, relative, or conservator or guardian of the estate acting in that capacity at the time of death.

(b) A person shall not deliver property pursuant to this section if the person knows or has reason to believe that there is a dispute over the right to possession of the property.

(c) A person that delivers property pursuant to this section shall require reasonable proof of the status and identity of the person to whom the property is delivered, and may rely on any document described in subdivision (d) of Section 13104 as proof of identity.

(d) A person that delivers property pursuant to this section shall, for a period of three years after the date of delivery of the property, keep a record of the property delivered and the status and identity of the person to whom the property is delivered.

(e) Delivery of property pursuant to this section does not determine ownership of the property or confer any greater rights in the property than the recipient would otherwise have and does not preclude later proceedings for administration of the decedent's estate. If proceedings for administration of the decedent's estate are commenced, the person holding the property shall deliver it to the personal representative on request by the personal representative.

(f) A person that delivers property pursuant to this section is not liable for loss or damage to the property caused by the person to whom the property is delivered.

PART 11. FIDUCIARIES' WARTIME SUBSTITUTION LAW

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title and Definitions

350. This part may be cited as the Fiduciaries' Wartime Substitution Law.

351. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

352. "Consultant" means a person, other than a trustee, designated in a trust to advise or direct the trustee concerning the trust, or whose consent or approval is required for a purchase, sale, exchange, or other transaction by the trustee, and includes a settlor who reserves the power of a consultant.

353. "Estate" means a trust estate, a decedent's estate, a guardianship or conservatorship estate, or other property that is the subject of a donative transfer.

354. "Interested person" means, in addition to the meaning given that term in Section 48, a person having a property right in or claim against a guardianship or conservatorship estate or other estate that may be affected by the proceeding.

355. "Original fiduciary" means a fiduciary who is replaced by a substitute fiduciary or who makes a delegation of power under this

part.

356. A fiduciary or consultant is engaged in war service for the purpose of this part in each of the following cases:

(a) Where the person is a member of the armed forces of the United States or like forces of any nation with which the United States is allied or associated in time of war, including all of the following:

(1) Members of the Army, Navy, Marine Corps, Air Force, and Coast Guard.

(2) Members of the Public Health Service detailed by proper authority for duty with the armed forces.

(3) Members of all other organizations or services recognized by the laws of the United States as a part of or auxiliary to the armed forces of the United States.

(b) Where the person has been accepted for and is awaiting induction into the armed forces, or is receiving training or education under government supervision preliminary to induction into any of these forces, in time of war.

(c) Where the person is engaged, outside the 50 states of the United States, in any work in connection with a governmental agency of the United States or with the American Red Cross or any other body with similar objects operating with the approval and sanction of the government of the United States or of any nation with which the United States is allied or associated in time of war.

(d) Where the person is engaged in time of war in service on any ship of United States registry.

(e) Where the person is interned or a prisoner of war in a foreign country or in the United States or any possession or dependency of the United States.

(f) Where the person is absent from the 50 states of the United States and, due to war conditions, is unable to return freely at his or her own volition.

(g) Where the person is engaged in any service in the United States or abroad arising out of or connected with a state of war that the court having jurisdiction of the estate finds prevents the person from giving proper attention to his or her duties.

Article 2. Scope of Part

360. This part applies to all fiduciaries and consultants, whether appointed or acting before, on, or after July 1, 1989.

361. This part does not apply to the extent an otherwise valid provision in an instrument provides a different or contrary rule or is otherwise inconsistent with this part.

Article 3. Procedural Provisions

365. Proceedings under this part are in the court having jurisdiction over the estate or, if none, any court in which jurisdiction

of the estate is proper.

366. Notice of a hearing under this part shall be mailed at least 15 days before the hearing to each fiduciary and consultant and to the following persons:

(a) In the case of a trust, to each known beneficiary, subject to the provisions of Chapter 2 (commencing with Section 15800) of Part 3 of Division 9.

(b) In the case of a decedent's estate, as provided in Section 1220 to both of the following:

(1) Each known heir whose interest in the estate would be affected by the proceedings.

(2) Each known devisee whose interest in the estate would be affected by the proceedings.

(c) In the case of a guardianship or conservatorship estate, as provided in Section 1460.

(d) In other cases, to any additional interested persons required by the court to receive notice.

CHAPTER 2. APPOINTMENT OF SUBSTITUTE FIDUCIARY

370. If a fiduciary is engaged in war service, on petition of the fiduciary, a cofiduciary, or an interested person, the court may do any one or more of the following:

(a) Appoint a substitute fiduciary. If there is a qualified and acting cofiduciary, the court is not required to appoint a substitute fiduciary but may vest in the cofiduciary the powers of the original fiduciary engaged in war service.

(b) Order a suspension of the powers and duties of the original fiduciary for the period the original fiduciary is engaged in war service and until further order of the court.

(c) Order an account by the original fiduciary.

371. A substitute fiduciary has all the powers, including discretionary powers, that the original fiduciary had, except powers that the court determines are purely personal to the original fiduciary, and is subject to the same duties as the original fiduciary.

372. Except as otherwise ordered by the court, a substitute fiduciary shall give a bond in the manner and to the extent provided by law for the original fiduciary.

373. After the expiration of an original fiduciary's war service, if the estate has not been closed, the original fiduciary, on petition, is entitled to reinstatement as fiduciary. On reinstatement, the substitute fiduciary may, in the discretion of the court, be removed and may be discharged on conditions prescribed by the court.

374. A substitute fiduciary or an original fiduciary reinstated under Section 373 is not liable for the acts or omissions of the predecessor fiduciary.

CHAPTER 3. DELEGATION OF POWERS

Article 1. Delegation by Fiduciary

380. (a) A fiduciary who is or will be engaged in war service may delegate the fiduciary's powers, including discretionary powers, to a fiduciary who is not engaged in war service. Delegation may be made for the period during which the original fiduciary is engaged in war service and not to exceed six months following the expiration of that period.

(b) Approval of the court, on petition of the original fiduciary, the delegate, or an interested person, is required for delegation.

381. The right of delegation does not exist to the extent the court determines that powers to be delegated are purely personal to the original fiduciary.

382. After the expiration of the original fiduciary's war service, the court may, on petition of the original fiduciary, authorize the original fiduciary to resume the exercise of the fiduciary functions, and the delegated powers cease.

383. The original fiduciary is not liable for the acts or omissions of the delegate.

Article 2. Delegation by Consultant

385. (a) A consultant who is or will be engaged in war service may delegate the powers of the consultant, including discretionary powers, to a coconsultant who is not engaged in war service, or to the trustee administering the trust. The procedure for delegation by a fiduciary governs delegation by a consultant.

(b) The right of delegation does not exist to the extent the court determines that powers to be delegated are purely personal to the consultant. These powers are suspended until their exercise is resumed pursuant to this article.

386. If a consultant who is engaged in war service does not delegate the consultant's powers, the court, on petition of the trustee or an interested person, may do either of the following:

(a) Suspend the consultant's powers for the period of the consultant's war service and not to exceed six months following the expiration of that period.

(b) Confer the powers, except discretionary powers that the court determines are purely personal to the consultant, on a coconsultant designated in the trust, the trustee, or any other qualified person.

387. If a consultant has delegated or the court has suspended the powers of the consultant, the court may, on petition by the consultant within six months following the expiration of the period of the consultant's war service, authorize the consultant to resume the exercise of the consultant's functions. All powers delegated to or conferred on other persons thereupon cease.

388. A consultant who delegates powers under this article is not

liable for the acts or omissions of the delegate.

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

400. (a) The Controller shall appoint at least one person in each county to act as a probate referee for the county.

(b) If there are fewer than three qualified applicants to serve in a county, the Controller may designate a probate referee from another county or make an interim appointment, to serve until the vacancy has been filled by a qualified applicant.

401. (a) Appointment shall be from among persons passing a qualification examination. A person who passes the examination is eligible for appointment for a period of five years from the date of the examination.

(b) Appointment shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation.

402. (a) The qualification examination for applicants for appointment to act as a probate referee shall be held at times and places within the state determined by the Controller.

(b) The Controller may contract with another agency to administer the qualification examination. Administration of the examination shall include:

(1) Development of standards for passage of the examination.

(2) Preparation of examination questions.

(3) Giving the examination.

(4) Scoring the examination.

(c) Each applicant shall pay a fee for taking the qualification examination. The agency administering the examination shall transmit to the Controller a list of candidates who have received a passing score in the examination. The list is a public record.

403. (a) The term of office of a probate referee is four years, expiring June 30. A person may be appointed to complete the unexpired term of office of a probate referee whose appointment is revoked or is otherwise terminated. For a period of five years from the date of expiration of the term of office, a person who had been appointed to act as a probate referee is eligible for reappointment.

(b) If the Controller increases the number of probate referees in a county, the Controller shall stagger the terms of the new appointees so that one-quarter, or as close to one-quarter as possible, of the terms of the probate referees in that county expire on June 30 of each succeeding year.

404. (a) The Controller shall establish and may amend standards of training, performance, and ethics of probate referees. The standards are a public record.

(b) The Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training,

performance, or ethics established under subdivision (a). The Controller may revoke an appointment under this subdivision without notice or a hearing, but the revocation is subject to review by writ of mandate in a court of competent jurisdiction.

405. Notwithstanding Section 404, the Controller may, at the Controller's pleasure, revoke the appointment of a person to act as a probate referee. Under this section, the Controller may revoke the appointment of not more than 10 percent of the probate referees in each county in any one calendar year, but may revoke the appointment of at least one probate referee in each county in any one calendar year.

406. (a) The authority of a person to act as a probate referee ceases immediately upon expiration of the person's term of office, revocation of the person's appointment, or other termination pursuant to law.

(b) Upon cessation of authority of a person to act as a probate referee, the Controller shall notify the superior court of the county for which the probate referee was appointed. Upon receipt of notice, or if it otherwise comes to the attention of the court that the authority of a person to act as a probate referee has ceased, the court shall reassign any estate for which the person had been designated as probate referee to another probate referee.

407. (a) As used in this section, "prohibited political activity" means directly or indirectly soliciting, receiving, or contributing, or being in any manner involved in soliciting, receiving, or contributing, any of the following:

(1) An assessment, subscription, or contribution to any party, incumbent, committee, or candidate exceeding two hundred dollars ($200) in any one calendar year for any partisan public office of this state.

(2) An assessment, subscription, contribution, or political service in any amount for any campaign for the office of Controller.

(b) Upon a person's appointment and thereafter in January of each year during the person's tenure as a probate referee, the person shall file with the Controller a verified statement indicating whether the person has engaged in prohibited political activity during the preceding two calendar years.

(c) The Controller may not appoint or reappoint as a probate referee a person who within the preceding two calendar years has engaged in prohibited political activity, and any such appointment or reappointment is void and shall be revoked. The Controller shall revoke the appointment of a person who, during the person's tenure as a probate referee, engages in prohibited political activity. However, all acts not otherwise invalid, performed by the person before revocation of the person's appointment, are valid.

(d) A person shall not engage in prohibited political activity during the time the person is an applicant for appointment or reappointment, or during the person's tenure as a probate referee. A violation of this subdivision is a misdemeanor.

(e) Subdivisions (a), (c), and (d) do not apply to any prohibited political activity that occurred before July 1, 1989, and the applicable law in effect before July 1, 1989, continues to apply. Subdivision (b) applies on July 1, 1989, to persons who apply for appointment on or after July 1, 1989. A person who applied for appointment or who was appointed before July 1, 1989, shall file the first statement required by subdivision (b) on or before July 1, 1989, and thereafter as prescribed in subdivision (b).

408. The appointment of a probate referee by the Controller before July 1, 1989, is not invalidated by the repeal of the law under which the appointment was made. Appointment of a probate referee before July 1, 1989, may be revoked under this chapter only if revocation would otherwise be proper under this chapter.

CHAPTER 2. POWERS OF PROBATE REFEREE

450. Upon designation by the court, the probate referee has all the powers of a referee of the superior court and all other powers provided in this chapter.

451. (a) For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, an interested person, or any other person the referee has reason to believe has knowledge of the property.

(b) A subpoena issued under subdivision (a) is subject to the provisions of Section 2020 of the Code of Civil Procedure governing deposition subpoenas.

452. (a) The probate referee may:

(1) Examine and take the testimony under oath of a person appearing before the referee.

(2) Require, and issue a subpoena to compel, the person to produce any document in the person's possession or control, concerning the value of any property in the estate.

(b) A subpoena issued under subdivision (a) is subject to the provisions of Section 2020 of the Code of Civil Procedure governing deposition subpoenas.

453. (a) On petition of a person required to appear before the probate referee pursuant to this chapter, the court may make a protective order to protect the person from annoyance, embarrassment, or oppression. The petitioner shall mail notice of the hearing on the petition to the probate referee and to the personal representative, guardian, conservator, or other fiduciary at least 15 days before the date set for the hearing. Any subpoena issued by the probate referee is stayed during the pendency of the petition.

(b) On petition of the probate referee, the court may make an order to show cause why a person who is required, but fails, to appear before the probate referee pursuant to this chapter, should not be compelled to do so. The probate referee shall mail notice of the

hearing on the petition to the person at least 15 days before the date set for the hearing.

PART 13. LITIGATION INVOLVING DECEDENT

CHAPTER 1. LIABILITY OF DECEDENT COVERED BY INSURANCE

550. (a) Subject to the provisions of this chapter, an action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued against the decedent's estate without the need to join as a party the decedent's personal representative or successor in interest.

(b) The remedy provided in this chapter is cumulative and may be pursued concurrently with other remedies.

551. Notwithstanding Section 353 of the Code of Civil Procedure, if the limitations period otherwise applicable to the action has not expired at the time of the decedent's death, an action under this chapter may be commenced within one year after the expiration of the limitations period otherwise applicable.

(Amended by Stats 1990, Ch 140, Sec. 3.1. Operative July 1, 1991, by Sec. 19 of chapter.)

[ORIGINAL SECTION]

551. If the limitations period otherwise applicable to the action has not expired at the time of the decedent's death, an action under this chapter may be commenced within one year after the expiration of the limitations period otherwise applicable.

552. (a) An action under this chapter shall name as the defendant, "Estate of (name of decedent), Deceased." Summons shall be served on a person designated in writing by the insurer or, if none, on the insurer. Further proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner as if the action were against the personal representative.

(b) On motion of an interested person, or on its own motion, the court in which the action is pending may, for good cause, order the appointment and substitution of a personal representative as the defendant.

(c) An action against the estate of the decedent under this chapter may be consolidated with an action against the personal representative.

553. The insurer may deny or otherwise contest its liability in an action under this chapter or by an independent action. Unless the personal representative is joined as a party, a judgment in the action under this chapter or in the independent action does not adjudicate rights by or against the estate.

554. (a) Except as provided in subdivision (b), either the damages sought in an action under this chapter shall be within the limits and coverage of the insurance, or recovery of damages outside the limits or coverage of the insurance shall be waived. A judgment in favor of the plaintiff in the action is enforceable only from the insurance coverage and not against property in the estate.

(b) Where the amount of damages sought in the action exceeds the coverage of the insurance, subdivision (a) does not apply if both of the following conditions are satisfied:

(1) The personal representative is joined as a party to the action.

(2) The plaintiff files a claim in compliance with Section 9390.

(Amended by Stats. 1990, Ch. 710, Sec. 3. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

554. (a) Except as provided in subdivision (b), either the damages sought in an action under this chapter shall be within the limits and coverage of the insurance, or recovery of damages outside the limits or coverage of the insurance shall be waived. A judgment in favor of the plaintiff in the action is enforceable only from the insurance coverage and not against property in the estate.

(b) Where the amount of damages sought in the action exceeds the coverage of the insurance, subdivision (a) does not apply if both of the following conditions are satisfied:

(1) The personal representative is joined as a party to the action.

(2) The plaintiff files a claim under Section 9390.

555. (a) This chapter does not apply to an action commenced before July 1, 1989.

(b) The applicable law in effect before July 1, 1989, continues to apply to an action commenced before July 1, 1989, notwithstanding its repeal by Chapter 1199 of the Statutes of 1988.

CHAPTER 2. SURVIVAL OF ACTIONS

573. (a) Except as provided in this section, no cause of action is lost by reason of the death of any person, but may be maintained by or against the person's personal representative.

(b) In an action brought under this section against a personal representative, all damages may be awarded which might have been recovered against the decedent had the decedent lived except damages awardable under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) Where a person having a cause of action dies before judgment, the damages recoverable by his or her personal representative are limited to the loss or damage the decedent sustained or incurred prior to death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived but not including any damages for pain, suffering, or disfigurement.

(d) This section applies where a loss or damage occurs simultaneously with or after the death of a person who would have been liable for the loss or damage if his or her death had not preceded or occurred simultaneously with the loss or damage.

(e) Nothing in this section shall be construed as affecting the assignability of causes of action.

PART 14. APPLICABILITY OF REPEALED OR AMENDED PROVISIONS RELATING TO COMPENSATION OF ESTATE ATTORNEY AND PERSONAL REPRESENTATIVE

900. (a) Notwithstanding their repeal, Sections 900, 901, 902, 903, 904, 910, and 911 of the former Probate Code (repealed by Chapter 79 of the Statutes of 1990), as those sections existed on June 30, 1991, continue to apply in any proceeding for the administration of a decedent's estate commenced before July 1, 1991.

(b) The following sections of this code do not apply in any proceeding for administration of a decedent's estate commenced before July 1, 1991:

(1) Section 7623
(2) Section 7662.
(3) Section 7666.
(4) Section 8547.
(5) Section 9651.
(6) Section 10900.
(7) Section 10954.
(8) Section 11000.
(9) Section 11003.
(10) Section 12205.

(c) The sections of the former Probate Code (repealed by Chapter 79 of the Statutes of 1990) having the same section numbers as those listed in subdivision (b), as those sections existed on June 30, 1991, continue to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1991.

(Amended by Stats. 1990, Ch. 710, Sec 3.5. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

900. (a) Notwithstanding their repeal, Sections 900, 901, 902, 903, 904, 910, and 911 of the former Probate Code (repealed by the act enacting this code), as those sections existed on December 31, 1990, continue to apply in any proceeding for the administration of a decedent's estate commenced before January 1, 1991.

(b) The following sections of this code do not apply in any proceeding for administration of a decedent's estate commenced before January 1, 1991:

(1) Section 7623.
(2) Section 7662.
(3) Section 7666
(4) Section 8547.
(5) Section 9651.
(6) Section 10900.
(7) Section 10954.
(8) Section 11000.
(9) Section 11003.
(10) Section 12205.

(c) The sections of the former Probate Code (repealed by the act enacting this code) having the same section numbers as those listed in subdivision (b), as those sections existed on December 31, 1990, continue to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1991.

DIVISION 3. GENERAL PROVISIONS OF A PROCEDURAL NATURE

PART 1. GENERAL PROVISIONS

CHAPTER 1. RULES OF PRACTICE

1000. Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions apply to, and constitute the rules of practice in, proceedings under this code.

1001. (a) The Judicial Council may provide by rule for the practice and procedure under this code. Unless disapproved by the Judicial Council, a court may provide by local rule for the practice and procedure under this code. Judicial Council and local court rules shall be consistent with the applicable statutes.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, and other documents required by this code. Any form prescribed by the Judicial Council is deemed to comply with this code.

1002. Unless it is otherwise provided by this code or by rules adopted by the Judicial Council, either the superior court or the court on appeal may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require.

1003. (a) The court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding under this code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(1) A minor.

(2) An incapacitated person.

(3) An unborn person.

(4) An unascertained person.

(5) A person whose identity or address is unknown.

(6) A designated class of persons who are not ascertained or are not in being.

(b) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(c) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from such other source as the court orders.

1004. If a proceeding under this code affects the title to or the right of possession of real property, notice of the pendency of the proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure.

CHAPTER 2. PETITIONS AND OTHER PAPERS

1020. Except as provided in Section 1023, a petition, objection, response, report, or account filed pursuant to this code shall be in writing, signed by all of the petitioners, objectors, or respondents or by all of the persons making the report or account, and filed with the court clerk.

1021. (a) All of the following shall be verified:

(1) A petition, report, or account filed pursuant to this code.

(2) An objection or response filed pursuant to this code to a petition, report, or account.

(b) Except as provided in Section 1023, the verification shall be made as follows:

(1) A petition shall be verified by the petitioner or, if there are two or more parties joining in the petition, by any of them.

(2) A report or account shall be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any of them.

(3) An objection or response shall be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any of them.

1022. An affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code.

1023. If a petitioner, objector, or respondent is absent from the county or for some other cause is unable to sign or verify a petition, objection, or response filed pursuant to this code, the person's attorney may sign or verify the petition, objection, or response unless the person is a fiduciary appointed in the proceeding.

CHAPTER 3. HEARINGS AND ORDERS

1040. This chapter governs the hearing of all matters under this code, except where the statute that provides for the hearing of the matter prescribes a different procedure.

1041. When a petition, report, account, or other matter that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

1042. A hearing under this code shall be on notice unless the statute that provides for the hearing dispenses with notice.

1043. (a) An interested person may appear and make a response or objection in writing at or before the hearing.

(b) An interested person may appear and make a response or objection orally at the hearing. The court in its discretion shall either hear and determine the response or objection at the hearing, or grant a continuance for the purpose of allowing a response or objection to be made in writing.

(c) A request for a continuance for the purpose of making a written response or objection shall not itself be considered as a

response or objection, nor shall the failure to make a response or objection during the time allowed be considered as a response or objection.

1044. The petitioner or other party affirming is the plaintiff and the party objecting or responding is the defendant.

1045. The court may continue or postpone any hearing, from time to time, in the interest of justice.

1046. The court shall hear and determine any matter at issue and any response or objection presented, consider evidence presented, and make appropriate orders.

1047. Except as otherwise provided in this code, an order made in a proceeding under this code need not recite the existence of facts, or the performance of acts, upon which jurisdiction depends, but need only contain the matters ordered.

1048. (a) Except as provided in subdivision (b), orders shall be either entered at length in the minute book of the court or signed by the judge and filed.

(b) An order for distribution shall be entered at length in a judgment book or other permanent record of the court.

1049. An order may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

1050. The judgment roll in a proceeding under this code consists of the following papers, where applicable:

(a) In all cases:

(1) The petition, application, report, or account that initiates a particular proceeding.

(2) Any order directing notice of the hearing to be given.

(3) Any notice of the hearing, and any order to show cause made in the proceeding, with the affidavits showing publication, posting, mailing, or personal delivery of the notice or order as may be required by law or court order.

(4) Any citation, in case no answer or written opposition is filed by a party entitled, by law or court order, to notice of the proceeding by citation, with the affidavit or proof of service and, if service of the citation is made by publication, the affidavit of publication and the order directing publication.

(5) Any finding of the court or referee in the proceeding.

(6) The order or statement of decision made in the proceeding.

(7) Any letters (as defined in Section 52).

(b) If an answer, demurrer, written opposition, or counter petition is filed in a proceeding:

(1) Pleadings and papers in the nature of pleadings.

(2) Any orders striking out a pleading in whole or in part.

(3) Any order made on demurrer, or relating to a change of parties, in the proceeding.

(4) The verdict of the jury, if any.

(c) If the proceeding is for the probate of a will, the will.

(d) If the proceeding is a contest of a will, for the revocation of

the probate of a will, or for a preliminary or final distribution of the estate under a will:

(1) The will.

(2) The order admitting the will to probate.

(e) If the proceeding is for the settlement of the final account of a personal representative or for the final distribution of an estate, the affidavit showing publication of notice to creditors.

PART 2. NOTICES AND CITATIONS

CHAPTER 1. GENERAL NOTICE PROVISIONS

1200. (a) Except as otherwise provided in this code, this part governs notice required or permitted under this code.

(b) This part does not apply to notice under a particular provision to the extent that the particular provision is inconsistent with this part.

(c) This part does not apply to the giving of a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1991. The applicable law in effect before July 1, 1991, continues to apply to the giving of that notice, notwithstanding its repeal.

1201. If a person is required to give notice, the person required to give the notice need not give the notice to himself or herself or to any other person who joins in the petition.

1202. Where the court determines that the notice otherwise required is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given.

1203. (a) Subject to subdivision (b), unless the particular provision governing the notice of hearing otherwise provides, the court may, for good cause, shorten the time for giving a notice of hearing.

(b) Unless the particular provision governing the publication of notice of hearing otherwise provides, the court may not shorten the time for publication of notice of hearing.

1204. A person, including a guardian ad litem, guardian, conservator, trustee, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

1205. If a hearing is continued or postponed, no further notice of the continued or postponed hearing is required unless ordered by the court.

1206. (a) Subject to subdivision (b), where notice is required to be given to known heirs or known devisees, notice shall be given to the following persons:

(1) If the estate is an intestate estate, to the heirs named in the petition for letters of administration and to any additional heirs who become known to the person giving the notice prior to the giving of

the notice.

(2) If the estate is a testate estate, to the devisees named in the petition for probate of the will and to any additional devisees who become known to the person giving the notice prior to the giving of the notice.

(b) Notice need not be given to a person under subdivision (a) if the person's interest has been satisfied pursuant to court order or as evidenced by the person's written receipt.

1207. (a) Subject to subdivision (b), where notice is required to be given to a decedent's beneficiaries, devisees, or heirs, notice need not be given to a person who, because of a possible parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent, may be (1) an heir of the decedent or (2) a member of a class to which a devise is made.

(b) Subdivision (a) does not apply where the person required to give the notice has actual knowledge of facts that a person would reasonably believe give rise under Section 6408 to the parent-child relationship between the stepchild and the stepparent or between the foster child and the foster parent.

1208. (a) Except as provided in subdivision (b), if notice is required to be given to a trust or trustee, notice to trust beneficiaries is not required.

(b) Subject to subdivision (c), where the personal representative and the trustee, or the person named as trustee, are the same person, notice shall be given to (1) each person who, under the terms of the trust, would be presently entitled to any payment if the trust were in effect, or (2) if there are no such persons, to each person who, under the terms of the trust, would be entitled to any distribution if the trust were terminated at the time the notice is required to be given.

(c) Notice to trust beneficiaries is not required under subdivision (b) where the trust has more than one trustee and notice is given to a cotrustee who is not a personal representative.

1209. (a) Where notice is required to be given to the State of California, the notice shall be given to the Attorney General.

(b) Where notice is required to be given to the Attorney General, the notice shall be mailed to the Attorney General at the office of the Attorney General at Sacramento, California.

1210. If an interested person has a guardian or conservator of the estate who resides in this state, personal service on the guardian or conservator of any process, notice, or court order concerning a decedent's estate is equivalent to service on the ward or conservatee, and it is the duty of the guardian or conservator to attend to the interests of the ward or conservatee in the matter. The guardian or conservator may appear for the ward or conservatee and waive any process, notice, or order to show cause that a person not under legal disability might waive.

1211. If a notice is required by this code and no other type of notice is prescribed by law, by the Judicial Council, or by the court

or judge, the notice shall be in substantially the following form:

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE (CITY AND) COUNTY OF _____

Estate of _____ No. _____

NOTICE OF HEARING

(If to be published, describe purport or character of the notice to be given.)

Notice is hereby given that (name of petitioner and representative capacity, if any) has filed herein a (nature of petition, application, report, or account), reference to which is made for further particulars, and that the time and place of hearing the same has been set for _____ (date) ____, at _____.m., in the courtroom (of Department No. _____, if any) of said court, at (the courthouse, or state other location of the court), in the City of _____, California.

Dated _____

_____, Clerk
By _____, Deputy Clerk

1212. Unless the court dispenses with the notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.

(Added by Stats 1990, Ch. 710, Sec. 4. Operative July 1, 1991, by Sec. 48 of chapter.)

CHAPTER 2. MAILING IN GENERAL

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, the notice or other paper shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail.

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) Subject to Section 1212, the notice or other paper shall be addressed to the person at the person's place of business or place of

residence.

(e) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

(Amended by Stats. 1990, Ch. 710, Sec. 5. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, the notice or other paper shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) In proceedings under this code concerning the administration of a decedent's estate, the notice or other paper shall be addressed to the person at the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

(e) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

1216. (a) If a notice or other paper is required or permitted to be mailed to a person, it may be delivered personally to that person. Personal delivery as provided in this section satisfies a provision that requires or permits a notice or other paper to be mailed.

(b) Personal delivery pursuant to this section is complete when the notice or other paper is delivered personally to the person who is to receive it.

1217. If a notice or other paper is required to be served or otherwise given and no other manner of giving the notice or other paper is specified by statute, the notice or other paper shall be mailed or personally delivered as provided in this chapter.

CHAPTER 3. MAILING NOTICE OF HEARING

1220. (a) When notice of hearing is required to be given as provided in this section:

(1) At least 15 days before the time set for the hearing, the petititoner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(2) Unless the statute requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following:

(A) The personal representative.

(B) All persons who have given notice of appearance in the estate proceeding in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney.

(3) Subject to Section 1212, the notice shall be addressed to the person required to be given notice at the person's place of business or place of residence.

(b) Subject to subdivision (c), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 6 (commencing with Section 1250).

(c) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

(Amended by Stats. 1990, Ch. 710, Sec. 6. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

1220. (a) When notice of hearing is required to be given as provided in this section:

(1) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(2) Unless the statute requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following·

(A) The personal representative

(B) All persons who have given notice of appearance in the estate proceeding in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney

(3) The notice shall be addressed to the person required to be given notice at the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.

(b) Subject to subdivision (c), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 6 (commencing with Section 1250).

(c) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section

1221. Where notice of hearing is required but no other period or manner is prescribed by statute, unless the period or manner of giving the notice is ordered by the court or judge, the notice of hearing shall be given for the period and in the manner provided in Section 1220.

CHAPTER 4. POSTING NOTICE OF HEARING

1230. Where notice of hearing is required to be posted as provided in this section:

(a) At least 15 days before the time set for the hearing, the court clerk shall cause a notice of the time and place of the hearing to be posted at the courthouse of the county where the proceedings are pending. If court is held at a place other than the county seat, the notice may be posted either at the courthouse of the county where the proceedings are pending or at the building where the court is held.

(b) The posted notice of hearing shall state all of the following:

(1) The name of the estate.

(2) The name of the petitioner.

(3) The nature of the petition, referring to the petition for further particulars.

(4) The time and place of the hearing of the petition.

CHAPTER 5. CITATIONS

1240. Where use of a citation is authorized or required by statute, a citation may be issued by the court clerk on the application of any party, without a court order, except in cases where an order is expressly required by law.

1241. The citation shall be directed to the person to be cited, signed by the court clerk, and issued under the seal of the court. The citation shall contain the title of the proceeding, a brief statement of the nature of the proceeding, and a direction that the person cited appear at a time and place specified.

1242. The citation shall be served on the person cited in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure. Except as otherwise provided by statute, the citation shall be served at least five days before its return day.

CHAPTER 6. REQUEST FOR SPECIAL NOTICE

1250. (a) At any time after the issuance of letters in a proceeding under this code for the administration of a decedent's estate, any person interested in the estate, whether as devisee, heir, creditor, beneficiary under a trust, or as otherwise interested, may in person or by attorney, file with the court clerk a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) Special notice may be requested of one or more of the following matters:

(1) Petitions filed in the administration proceeding.

(2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals.

(3) Objections to an appraisal.

(4) Accounts of a personal representative.

(5) Reports of status of administration.

(d) Special notice may be requested of any matter in subdivision (c) by describing it, or of all the matters in subdivision (c) by referring generally to "the matters described in subdivision (c) of Section 1250 of the Probate Code" or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the personal representative or to the attorney for the personal representative. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

1251. A request for special notice under this chapter may be modified or withdrawn in the same manner as provided for the

making of the initial request.

1252. (a) Unless the court makes an order dispensing with the notice, if a request has been made pursuant to Section 1250 for special notice of a hearing, the person filing the petition, report, account, or other paper shall give written notice of the filing, together with a copy of the petition, report, account, or other paper, and the time and place set for the hearing, by mail to the person named in the request at the address set forth in the request, at least 15 days before the time set for the hearing.

(b) If a request has been made pursuant to Section 1250 for special notice of the filing of an inventory and appraisal of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisal or other paper shall be mailed not later than 15 days after the inventory and appraisal or other paper is filed with the court.

CHAPTER 7. PROOF OF GIVING NOTICE

1260. (a) If notice of a hearing is required, proof of giving notice of the hearing shall be made to the satisfaction of the court at or before the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order.

(c) The finding described in subdivision (b), when the order becomes final, is conclusive on all persons.

1261. Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

1262. Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

1263. Proof of posting may be made by the affidavit of the person who posted the notice.

1264. Proof of notice by personal delivery may be made by the affidavit of the person making the delivery showing the time and place of delivery and the name of the person to whom delivery was made.

1265. Proof of notice, however given, may be made by evidence presented at the hearing.

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

1400. The portion of this division consisting of Part 1 (commencing with Section 1400), Part 2 (commencing with Section

1500), Part 3 (commencing with Section 1800), and Part 4 (commencing with Section 2100) may be cited as the Guardianship-Conservatorship Law.

1401. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

1403. "Absentee" means either of the following:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

1418. "Court," when used in connection with matters in the guardianship or conservatorship proceeding, means the court in which such proceeding is pending.

1419. "Court investigator" means the person referred to in Section 1454.

1420. "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term includes mental retardation, cerebral palsy, epilepsy, and autism. This term also includes handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but does not include other handicapping conditions that are solely physical in nature.

1424. "Interested person" includes, but is not limited to:

(a) Any interested state, local, or federal entity or agency.

(b) Any interested public officer or employee of this state or of a local public entity of this state or of the federal government.

1430. "Petition" includes an application or request in the nature of a petition.

1431. "Proceedings to establish a limited conservatorship" include proceedings to modify or revoke the powers or duties of a limited conservator.

1440. "Secretary concerned" has the same meaning as provided in United States Code, Title 37, Section 101.

1446. "Single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts or assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

CHAPTER 2. GENERAL PROVISIONS

1452. Except as otherwise specifically provided in this division, there is no right to trial by jury in proceedings under this division.

1453. A motion for a new trial may be made only in cases in which, under the provisions of this division, a right to jury trial is expressly granted, whether or not the case was tried by a jury.

1454. (a) The court shall appoint a court investigator when one is required for the purposes of a proceeding under this division. The person appointed as the court investigator shall be an officer or special appointee of the court with no personal or other beneficial interest in the proceeding.

(b) The person appointed as the court investigator shall have the following qualifications:

(1) The training or experience, or both, necessary (i) to make the investigations required under this division, (ii) to communicate with, assess, and deal with persons who are or may be the subject of proceedings under this division, and (iii) to perform the other duties required of a court investigator.

(2) A demonstrated sufficient knowledge of law so as to be able to inform conservatees and proposed conservatees of the nature and effect of a conservatorship proceeding and of their rights, to answer their questions, and to inform conservators concerning their powers and duties.

CHAPTER 3. NOTICES

1460. (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) Subject to subdivision (e), the petitioner (which includes for the purposes of this section a person filing a petition, report, or account) shall cause the notice of hearing to be mailed to each of the following persons:

(1) The guardian or conservator.

(2) The ward if 14 years of age or older or the conservatee.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse.

(4) Any interested person who has appeared in the particular matter to which the hearing relates.

(c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section 1230 if the posting is required by subdivision (c) of Section 2543 (sales).

(d) Except as provided in subdivision (e), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(e) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Notice of the time and place of hearing on the petition, report, or account, and a copy of the petition, report, or account, shall be mailed to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following conditions exist:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in, or on leave from, a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, report, or account is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2212, 2403, 2421, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592, or 2620; Chapter 9.5 (commencing with Section 2670) of Part 4; Section 3080 or 3088; or Chapter 3 (commencing with Section 3100) of Part 6. Notice under this section is not required in the case of an account pursuant to Section 2620 if the total guardianship or conservatorship assets are less than one thousand five hundred dollars ($1,500) and the gross annual income, exclusive of any public assistance income, is less than six thousand dollars ($6,000), and the ward or conservatee is not a patient in, or on leave or on outpatient status from, a state hospital at the time of the filing of the petition.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

1461.4. (a) The petitioner shall mail or personally serve a notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled at least 30 days before the day of the hearing on a petition for appointment in any

case in which all of the following conditions exist:

(1) The proposed ward or conservatee has developmental disabilities.

(2) The proposed guardian or conservator is not the natural parent of the proposed ward or conservatee.

(3) The proposed guardian or conservator is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

(4) The proposed guardian or conservator is not a public entity.

(b) The regional center shall file a written report and recommendation with the court regarding the suitability of the petitioners to meet the needs of the proposed ward or conservatee in any case described in subdivision (a).

1461.5. Notice of the time and place of hearing on a petition, report, or account, and a notice of the filing of an inventory, together with a copy of the petition, report, inventory, or account, shall be mailed to the office of the Veterans Administration having jurisdiction over the area in which the court is located at least 15 days before the hearing, or within 15 days after the inventory is filed, if both of the following conditions exist:

(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:

(1) Money received from the Veterans Administration.

(2) Revenue or profit from such money or from property acquired wholly or in part from such money.

(3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 1874, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; Chapter 9.5 (commencing with Section 2670) of Part 4; Section 3080 or 3088; or Chapter 3 (commencing with Section 3100) of Part 6.

1461.7. Unless the court for good cause dispenses with such notice, notice of the time and place of the hearing on a petition, report, or account, together with a copy of the petition, report, or account, shall be given to the same persons who are required to be given notice under Section 2581 for the period and in the manner provided in this chapter if both of the following conditions exist:

(a) A conservator of the estate has been appointed under Article 5 (commencing with Section 1845) of Chapter 1 of Part 3 for a person who is missing and whose whereabouts is unknown.

(b) The petition, report, or account is filed in the conservatorship proceeding under any one or more of the following provisions:

(1) Section 1861 or 2423.

(2) Article 7 (commencing with Section 2540) of Chapter 6 of Part 4.

(3) Section 2570, 2571, 2580, 2592, or 2620.

(4) Chapter 8 (commencing with Section 2640) of Part 4.
(5) Chapter 9.5 (commencing with Section 2670) of Part 4.
(6) Chapter 3 (commencing with Section 3100) of Part 6.

1467. If service is made by mail pursuant to this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date a written acknowledgment of receipt is executed.

1469. Where a provision of this division applies the provisions of this code applicable to personal representatives to proceedings under this division, a reference to Section 1220 in the provisions applicable to personal representatives shall be deemed to be a reference to this chapter.

CHAPTER 4. APPOINTMENT OF LEGAL COUNSEL

1470. (a) The court may appoint private legal counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines such person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.

(b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel.

(c) The court shall order the sum fixed under subdivision (b) to be paid:

(1) If the person for whom legal counsel is appointed is an adult, from the estate of such person.

(2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in such proportions as the court deems just.

(d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and the opportunity to be heard on whether the order would be just under the circumstances of the particular case.

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:

(1) A proceeding to establish a conservatorship or to appoint a proposed conservator.
(2) A proceeding to terminate the conservatorship.
(3) A proceeding to remove the conservator.
(4) A proceeding for a court order affecting the legal capacity of

the conservatee.

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for such legal service if he or she is able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

1472. (a) If a person is furnished legal counsel under Section 1471:

(1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of such sum.

(2) If the court determines that the person has the ability to pay all or a portion of such sum, the court shall order the conservator of the estate or, if none, the person to pay in such installments and in such manner as the court determines to be reasonable and compatible with the person's financial ability.

(3) In a proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community property, the court may order payment out of the proceeds of the transaction.

(4) If a conservator is not appointed for the person furnished legal counsel, the order for payment may be enforced in the same manner as a money judgment.

(b) If the court determines that a person furnished private counsel under Section 1471 lacks the ability to pay all or a portion of the sum determined under paragraph (1) of subdivision (a), the county shall pay such sum to the private counsel to the extent the court determines the person is unable to pay.

(c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if private counsel has been appointed to perform the duties of the

public defender and the county has compensated such counsel. In the case of other court-appointed counsel, the payment shall be made to such counsel.

CHAPTER 5. TRANSITIONAL PROVISIONS

1488. If before January 1, 1981, an adult has in a signed writing nominated a person to serve as guardian if a guardian is in the future appointed for such adult, such nomination shall be deemed to be a nomination of a conservator. This section applies whether or not the signed writing was executed in the same manner as a witnessed will so long as the person signing the writing had at the time the writing was signed sufficient capacity to form an intelligent preference.

1489. If, before January 1, 1981, a parent or other person has in a signed writing appointed a person to serve as the guardian of the person or estate or both of a minor, or as the guardian of the property the minor receives from or by designation of the person making the appointment, such appointment shall be deemed to be a nomination of a guardian if the requirements of Section 1500 or 1501 are satisfied and, in such case, shall be given the same effect it would have under Section 1500 or 1501, as the case may be, if made on or after January 1, 1981. This section applies whether or not the signed writing is a will or deed so long as the person signing the writing had at the time the writing was signed sufficient capacity to form an intelligent preference.

1490. When used in any statute of this state with reference to an adult or to the person of a married minor, "guardian" means the conservator of that adult or the conservator of the person in case of the married minor.

PART 2. GUARDIANSHIP

CHAPTER 1. ESTABLISHMENT OF GUARDIANSHIP

Article 1. Nomination of Guardian

1500. Subject to Section 1502, a parent may nominate a guardian of the person or estate, or both, of a minor child in either of the following cases:

(a) Where the other parent nominates, or consents in writing to the nomination of, the same guardian for the same child.

(b) Where, at the time the petition for appointment of the guardian is filed, either (1) the other parent is dead or lacks legal capacity to consent to the nomination or (2) the consent of the other parent would not be required for an adoption of the child.

1501. Subject to Section 1502, a parent or any other person may nominate a guardian for property that a minor receives from or by designation of the nominator (whether before, at the time of, or after the nomination) including, but not limited to, property received by

the minor by virtue of a gift, deed, trust, will, succession, insurance, or benefits of any kind.

1502. (a) A nomination of a guardian under this article may be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition for the appointment of the guardian is filed.

(b) The nomination of a guardian under this article is effective when made except that a writing nominating a guardian under this article may provide that the nomination becomes effective only upon the occurrence of such specified condition or conditions as are stated in the writing, including but not limited to such conditions as the subsequent legal incapacity or death of the person making the nomination.

(c) Unless the writing making the nomination expressly otherwise provides, a nomination made under this article remains effective notwithstanding the subsequent legal incapacity or death of the person making the nomination.

Article 2. Appointment of Guardian Generally

1510. (a) A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a petition for the appointment of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that such appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.

(f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose such pending proceeding.

(g) If the petitioners have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(h) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition.

1511. (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in such manner as may be authorized by the court, on all of the following persons:

(1) The proposed ward if 14 years of age or older.

(2) The person having legal custody of the proposed ward.

(3) The parents of the proposed ward.

(4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

(c) Notice shall be given by mail sent to their addresses stated in the petition, or in such manner as may be authorized by the court, to all of the following:

(1) The spouse named in the petition.

(2) The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of such notice to any one or more or all of such relatives.

(3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

(d) If notice is required by Section 1461 or Section 1542 to be given to the Director of Mental Health or the Director of Developmental Services or the Director of Social Services, notice shall be mailed as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(f) Unless the court orders otherwise, notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section; or

(2) Has not been given notice as required by this section because such person cannot with reasonable diligence be given the notice or because the giving of notice to such person would be contrary to the interest of justice.

1512. Within 10 days after the petitioner in the guardianship proceeding becomes aware of any proceeding not disclosed in the guardianship petition affecting the custody of the proposed ward (including any adoption, juvenile court, marriage dissolution, domestic relations, or other similar proceeding affecting the proposed ward), the petitioner shall amend the guardianship petition to disclose the other proceeding.

1513. (a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator shall make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this

requirement for cases involving relative guardians.

(b) The report shall be read and considered by the court prior to ruling on the petition for guardianship, and 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.

(c) If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.

(d) The report required by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The county clerk shall make provisions for the limitation of the report exclusively to persons entitled to its receipt.

(e) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

1513.1. (a) Except as provided in Section 6102 of the Government Code, each county shall annually assess (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward, and (2) the guardian, proposed guardian, or the estate of the proposed ward, for county expenses for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator incurred pursuant to Section 1513. A county may waive any or all of an assessment against the guardianship on the basis of hardship.

(b) Any amount chargeable as state-mandated local costs incurred by a county for the cost of the investigation or review pursuant to Section 1513 shall be reduced by any assessments actually collected pursuant to subdivision (a) during that fiscal year.

(Amended by Stats. 1990, Ch. 1208, Sec. 1. Effective September 24, 1990)

[ORIGINAL SECTION]

1513.1. (a) Promptly following the close of each fiscal year, the Controller shall determine the statewide average cost per investigation or review by the court investigator, probation officer, or domestic relations investigator incurred by each county pursuant to Section 1513 during that fiscal year.

(b) Except as provided in Section 6102 of the Government Code, each county shall annually assess (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward, and (2) the guardian, proposed guardian, or the estate of the proposed ward, for county expenses for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator incurred pursuant to Section 1513 at a rate to be determined by the Controller pursuant to subdivision (a). A county may waive any or all of an assessment against the guardianship on the basis of hardship

(c) Any amount chargeable as state-mandated local costs incurred by a county for the cost of the investigation or review pursuant to Section 1513 shall be reduced by any assessments actually collected pursuant to subdivision (b) during that fiscal year.

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) In appointing a guardian of the person, the court is governed by the provisions of Section 4600 of the Civil Code, relating to custody of a minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

1515. Notwithstanding any other provision of this part, no guardian of the person may be appointed for a minor who is married or whose marriage has been dissolved. This section does not apply in the case of a minor whose marriage has been adjudged a nullity.

1516. (a) In each case involving a petition for guardianship of the person, the petitioner shall mail a notice of the hearing and a copy of the petition, at least 15 days prior to the hearing, to the local agency designated by the board of supervisors to investigate guardianships for the court. The local social services agency providing child protection services shall screen the name of the guardian for prior referrals of neglect or abuse of minors. The results of this screening shall be provided to the court.

(b) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

1517. This part does not apply to guardianships resulting from the selection and implementation of a permanent plan pursuant to Section 366.25 or 366.26 of the Welfare and Institutions Code. For those minors, the applicable sections of the Welfare and Institutions Code and Division Ia (commencing with Rule 1400) of Title Four of the California Rules of Court specify the exclusive procedures for establishing, modifying, and terminating legal guardianships. If no specific provision of the Welfare and Institutions Code or the California Rules of Court is applicable, the provisions applicable to

the administration of estates under Part 4 (commencing with Section 2100) govern so far as they are applicable to like situations.

(Added by Stats. 1990, Ch. 1530, Sec 1.)

Article 3. Nonrelative Guardianships

1540. This article does not apply in any of the following cases:

(a) Where the petition is for guardianship of the estate exclusively.

(b) Where the proposed guardian is a relative of the proposed ward.

(c) Where the Director of Developmental Services is appointed guardian pursuant to Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(d) Where the director of the department designated by the board of supervisors to provide social services is appointed guardian.

(e) Where the public guardian is appointed guardian.

(f) Where the guardianship results from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

1541. In addition to the other required contents of the petition for appointment of a guardian, the petition shall include both of the following:

(a) A statement by the proposed guardian that, upon request by an agency referred to in Section 1543 for information relating to the investigation referred to in that section, the proposed guardian will promptly submit the information required.

(b) A disclosure of any petition for adoption by the proposed guardian of the minor who is the subject of the guardianship petition regardless of when or where filed.

(c) A statement whether or not the home of the proposed guardian is licensed as a foster family home.

1542. In each case involving a petition for guardianship of the person, the petitioner shall mail a notice of the hearing and a copy of the petition, at least 15 days prior to the hearing, to the Director of Social Services at the director's office in Sacramento and to the local agency designated by the board of supervisors to investigate guardianships for the court.

1543. (a) If the petition as filed or as amended states that an adoption petition has been filed, a report with respect to the suitability of the proposed guardian for guardianship shall be filed with the court by the agency investigating the adoption. In other cases, the local agency designated by the board of supervisors to provide public social services shall file a report with the court with respect to the proposed guardian of the same character required to be made with regard to an applicant for foster family home licensure.

(b) The report filed with the court pursuant to this section is confidential. The report may be considered by the court and shall be made available only to the persons who have been served in the

proceeding and the persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of counsel for all such persons who are present at the hearing or, if such person is present at the hearing but is not represented by counsel, upon consent of such person.

CHAPTER 2. TERMINATION

1600. (a) A guardianship of the person or estate or both terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates upon the adoption or marriage of the ward.

1601. Upon petition of the guardian, a parent, or the ward, the court may make an order terminating the guardianship if the court determines that it is no longer necessary that the ward have a guardian or that it is in the ward's best interest to terminate the guardianship. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

PART 3. CONSERVATORSHIP

CHAPTER 1. ESTABLISHMENT OF CONSERVATORSHIP

Article 1. Persons for Whom Conservator May Be Appointed

1800. It is the intent of the Legislature in enacting this chapter 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 in order 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 interests 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.

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.

1801. Subject to Section 1800.3:

(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter, except as provided for such person as described in subdivision (b) or (c) of Section 1828.5.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for such person as described in subdivision (b) or (c) of Section 1828.5. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

1802. Subject to Section 1800.3, a conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment.

1803. A conservator of the estate may be appointed for a person who is an absentee as defined in Section 1403.

1804. Subject to Section 1800.3, a conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown.

Article 2. Order of Preference for Appointment of Conservator

1810. If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. The court shall appoint the nominee as conservator unless the court finds that the appointment

of the nominee is not in the best interests of the proposed conservatee.

1811. (a) The spouse or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) The spouse or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed and such nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse or parent, except that a nomination by the spouse becomes void upon dissolution or an adjudication of nullity of their marriage.

1812. (a) Subject to Sections 1810 and 1813, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order:

(1) The spouse of the proposed conservatee or the person nominated by the spouse pursuant to Section 1811.

(2) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(3) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(4) A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no such person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in such class.

1813. The spouse of an absentee as defined in Section 1403 may not be appointed as conservator of the estate of the absentee unless the spouse alleges in the petition for appointment as conservator, and the court finds, that the spouse has not commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Article 3. Establishment of Conservatorship

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

(1) The proposed conservatee.

(2) The spouse of the proposed conservatee.

(3) A relative of the proposed conservatee.

(4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(5) Any other interested person or friend of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the age of majority. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the age of majority, whether or not the guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

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 categories 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 categories 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 to other persons if it would serve the interests of the conservatee. The county clerk shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(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 a person other than the proposed conservatee, the petition shall state whether or not the petitioner is 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 inspected by those persons who have been given notice of the petition and who request an opportunity to inspect 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 objections to the plan are submitted to the court within 30 days after the 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 Article 7.5 (commencing with Section 416) of Part 1 of Division 1 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.

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d). The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, notice shall be mailed to the regional center that is required to prepare an assessment pursuant to Section 1827.5.

(f) If the petition is for the appointment of a limited conservator, the notice or notices required by this section shall be accompanied by a copy of the petition.

(g) The court shall order that notice be given to the regional center identified in Section 1827.5.

(Amended by Stats. 1990, Ch. 1598, Sec. 1)

[ORIGINAL SECTION]

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons.

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If notice is required to be given to the director of the regional center for the developmentally disabled, pursuant to Section 1461.4, notice shall be mailed as so required.

(f) If the petition is for the appointment of a limited conservator, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

1823. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate or both.

(2) Such adjudication may affect or transfer to the conservator the proposed conservatee's right to contract, in whole or in part, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee

and will answer questions concerning the explanation.

(5) The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if unable to retain legal counsel.

(7) The proposed conservatee has the right to a jury trial if desired.

1824. The citation and a copy of the petition shall be served on the proposed conservatee at least 15 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

1825. (a) The proposed conservatee shall be produced at the hearing except in the following cases:

(1) Where the proposed conservatee is out of the state when served and is not the petitioner.

(2) Where the proposed conservatee is unable to attend the hearing by reason of medical inability.

(3) Where the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

(b) If the proposed conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(c) Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

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 has 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 is 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 has discretion at any other time to release the report, if it would serve the interests of the conservatee. The county clerk shall provide 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.

1827. The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded.

1827.5. (a) In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed limited conservatee.

(b) In the case of any proceeding to establish a general conservatorship for a person with developmental disabilities, the regional center, with the consent of the proposed conservatee, may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional center shall submit its findings and recommendations to the court. The report shall include a description of the proposed conservatee's specific areas, nature, and degree of disability. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed conservatee, and is not a

public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioner to meet the needs of the proposed conservatee.

(c) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed conservatee.

(2) The attorney, if any, for the proposed conservatee.

(3) If the petitioner is not the proposed conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

(d) The report referred to in subdivisions (a) and (b) shall be confidential and shall be made available only to parties listed in subdivision (c) unless the court, in its discretion, determines that the release of the report would serve the interests of the conservatee who is developmentally disabled. The county clerk shall make provision for the limitation of the report exclusively to persons entitled to its receipt.

(Amended by Stats. 1990, Ch 1598, Sec. 4.)

[AS AMENDED BY STATS. 1990, CH. 1208, SEC. 3. EFFECTIVE SEPTEMBER 24, 1990.]

1827.5. (a) In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed limited conservatee.

(b) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed limited conservatee.

(2) The attorney, if any, for the proposed limited conservatee.

(3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

(c) The report referred to in subdivision (a) shall be confidential and shall be made available only to parties listed in subdivision (b) unless the court, in its discretion, determines that the release of the report would serve the interests of the limited conservatee. The county clerk shall make provision for the limitation of the report exclusively to persons entitled to its receipt.

[ORIGINAL SECTION]

1827.5. (a) In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings

and recommendations to the court. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center are not binding upon the court. In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed limited conservatee.

(b) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed limited conservatee.

(2) The attorney, if any, for the proposed limited conservatee.

(3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The identity of the proposed conservator.

(5) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order.

(6) The proposed conservatee has the right to oppose the proceeding, 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.

(b) After the court so informs the proposed conservatee and prior to the establishment of the conservatorship, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

(1) The establishment of the conservatorship.

(2) The appointment of the proposed conservator.

(3) Any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

(c) This section does not apply where both of the following conditions are satisfied:

(1) The proposed conservatee is absent from the hearing and is

not required to attend the hearing under the provisions of subdivision (a) of Section 1825.

(2) Any showing required by Section 1825 has been made.

1828.5. (a) At the hearing on the petition for appointment of a limited conservator for an allegedly developmentally disabled adult, the court shall do each of the following:

(1) Inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled.

(2) Evaluate the extent of the impairment of his or her adaptive behavior.

(3) Ascertain his or her capacity to care for himself or herself and his or her property.

(4) Inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator.

(5) If a report by the regional center, in accordance with Section 1827.5, has not been filed in court because the proposed limited conservatee withheld his or her consent to assessment by the regional center, the court shall determine the reason for withholding such consent.

(b) If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as a reasonably prudent person, the court shall dismiss the petition for appointment of a limited conservator.

(c) If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint a limited conservator for the person or the estate or the person and the estate.

(d) If the court finds that the proposed limited conservatee lacks the capacity to perform all of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint either a conservator or a limited conservator for the person or the estate, or the person and the estate.

(e) The court shall define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so.

(f) Prior to the appointment of a limited conservator for the person or estate or person and estate of a developmentally disabled adult, the court shall inform the proposed limited conservatee of the nature and purpose of the limited conservatorship proceeding, that the appointment of a limited conservator for his or her person or estate or person and estate will result in the transfer of certain rights set forth in the petition and the effect of such transfer, the identity of the person who has been nominated as his or her limited conservator, that he or she has a right to oppose such proceeding, and that he or she has a right to have the matter tried by jury. After

communicating such information to the person and prior to the appointment of a limited conservator, the court shall consult the person to determine his or her opinion concerning the appointment.

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

1830. (a) The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

(1) The conservator.

(2) The conservatee's attorney, if any.

(3) The court investigator, if any.

(b) In the case of a limited conservator for a developmentally disabled adult, any order the court may make shall include the findings of the court specified in Section 1828.5. The order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties may not exceed the powers and duties applicable to a conservator under this code. The order shall also specify the following:

(1) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them.

(2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage.

(3) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee.

(4) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary.

(5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the property specified in this subdivision by the limited conservator which the court shall specifically and expressly grant.

1831. 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.

(Added by Stats 1990, Ch. 1208, Sec. 4. Effective September 24, 1990)

1835. (a) Every county, either through the appropriate court or the office of the public conservator, shall provide all private conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities under this division.

(b) The information to be provided shall include, but need not be limited to, the following:

(1) The rights, duties, limitations, and responsibilities of a conservator.

(2) The rights of a conservatee.

(3) How to assess the needs of the conservatee.

(4) How to use community-based services to meet the needs of the conservatee.

(5) How to ensure that the conservatee is provided with the least restrictive possible environment.

(6) The court procedures and processes relevant to conservatorships.

(7) The procedures for inventory and appraisal, and the filing of accounts.

(c) An information package shall be developed by the Judicial Council, after consultation with the following organizations or individuals:

(1) The California State Association of Public Administrators, Public Guardians, and Public Conservators, or other comparable organizations.

(2) The State Bar.

(3) Individuals or organizations, approved by the Judicial Council, who represent court investigators, specialists with experience in performing assessments and coordinating community-based services, and legal services programs for the elderly.

(d) The failure of any court, public guardian, public officer, or public agency, or any employee or agent thereof, to provide information to a conservator as required by this section does not:

(1) Relieve the conservator of any of the conservator's duties as required by this division.

(2) Make the court, public guardian, public officer, or public agency, or the employee or agent thereof, liable, in either a personal or official capacity, for damages to a conservatee, conservator, the conservatorship of a person or an estate, or any other person or entity.

(e) The information package shall be made available to individual counties. The Judicial Council shall periodically update the information package when changes in the law warrant revision. The revisions shall be provided to individual counties.

(f) To cover the costs of printing and mailing, a county may charge each private conservator a fee for providing the written information required by this section, not to exceed ten dollars ($10).

Article 4. Special Provisions Applicable Where Proposed Conservatee Is an Absentee

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403) shall be appointed as provided in Article 3 (commencing with Section 1820).

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822 or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

1843. No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

1844. (a) An official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

Article 5. Special Provisions Applicable Where Proposed Conservatee Is a Missing Person

1845. (a) Except as otherwise provided in this article, a conservator of the estate of a person who is missing and whose whereabouts is unknown shall be appointed as provided in Article 3 (commencing with Section 1820).

(b) This article does not apply where the proposed conservatee is an absentee as defined in Section 1403.

1846. In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition shall state all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state.

(b) The time and circumstance of the person's disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(c) The last known residence of the missing person.

(d) A description of any search or inquiry made concerning the whereabouts of the missing person.

(e) A description of the estate of the proposed conservatee which requires attention, supervision, and care.

1847. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is a person who is missing and whose whereabouts is unknown:

(a) A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition shall be mailed at least 15 days before the hearing to the proposed conservatee at the last known address of the proposed conservatee.

(b) Notice of the time and place of the hearing shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proposed conservatee was last known to reside if the proposed conservatee's last known address is in this state.

(c) Pursuant to Section 1202, the court may require that further or additional notice of the hearing be given.

1848. In a proceeding to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required:

(a) Issuance of a citation to the proposed conservatee pursuant to Section 1823.

(b) Service of a citation and petition pursuant to Section 1824.

(c) Production of the proposed conservatee at the hearing pursuant to Section 1825.

(d) Performance of the duties of the court investigator pursuant to Section 1826.

(e) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

1849. A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state.

(b) The proposed conservatee remains missing and his or her whereabouts remains unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

1849.5. (a) A petition may be filed under this article regardless of when the proposed conservatee became missing or how long the proposed conservatee has been missing.

(b) If a trustee was appointed pursuant to former Section 262, repealed by Chapter 201 of the Statutes of 1983, the provisions of former Sections 260 to 272, inclusive, repealed by Chapter 201 of the Statutes of 1983, continue to apply to the case after December 31, 1983, unless, upon a petition filed under this article after December 31, 1983, the trustee is replaced by a conservator.

CHAPTER 2. PERIODIC REVIEW OF CONSERVATORSHIP

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

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 theterms 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.

(e) 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 proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report, if it would serve the interest of the conservatee. The county clerk shall make

provisions for the limitation of the report exclusively to persons entitled to its receipt.

(Amended by Stats. 1990, Ch. 1208, Sec. 5. Effective September 24, 1990.)

[ORIGINAL SECTION]

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.

1851.5. (a) 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. 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.

(b) 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 (a).

(Amended by Stats. 1990, Ch 1208, Sec. 6 Effective September 24, 1990.)

[ORIGINAL SECTION]

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 that 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 17561 and 17565 of the Government 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).

1852. If the conservatee wishes to petition the court for termination of the conservatorship or for removal of the existing conservator or for the making, modification, or revocation of a court order under Chapter 4 (commencing with Section 1870) or for restoration of the right to register to vote, or if, based on information contained in the court investigator's report or obtained from any other source, the court determines that a trial or hearing for termination of the conservatorship or removal of the existing conservator is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to file the petition and represent the conservatee at the trial or hearing and, if such appointment is made, Section 1472 applies.

1853. (a) If the court investigator is unable to locate the conservatee, the court shall order the court investigator to serve notice upon the conservator of the person, or upon the conservator of the estate if there is no conservator of the person, in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as is ordered by the court, to make the conservatee available for the purposes of Section 1851 to the court investigator within 15 days of the receipt of such notice or to show cause why the conservatorship should not be terminated.

(b) If the conservatee is not made available within the time prescribed, unless good cause is shown for not doing so, the court shall make such a finding and shall enter judgment terminating the conservatorship and, in case of a conservatorship of the estate, shall order the conservator to file an account and to surrender the estate to the person legally entitled thereto. At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(c) Termination of the conservatorship under this section does not preclude institution of new proceedings for the appointment of a conservator. Nothing in this section limits the power of a court to appoint a temporary conservator under Chapter 3 (commencing with Section 2250) of Part 4.

CHAPTER 3. TERMINATION

1860. (a) A conservatorship continues until terminated by the death of the conservatee or by order of the court.

(b) If a conservatorship is established for the person of a married minor, the conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity.

(c) This section does not apply to limited conservatorships.

1860.5. (a) A limited conservatorship continues until the authority of the conservator is terminated by one of the following:

(1) The death of the limited conservator.

(2) The death of the limited conservatee.

(3) By an order appointing a conservator of the former limited conservatee.

(4) By an order of the court stating that the limited conservatorship is no longer necessary for the limited conservatee and terminating the limited conservatorship.

(b) A petition for the termination of a limited conservatorship may be filed by any of the following:

(1) The limited conservator.

(2) The limited conservatee.

(3) Any relative or friend of the limited conservatee.

(c) The petition shall state facts showing that the limited conservatorship is no longer required.

(d) The petition shall be set for hearing and notice thereof shall be given to the persons in the same manner as provided for a petition for the appointment of a limited conservator. The limited conservator in such case, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with notice.

(e) The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If it is determined that the limited conservatorship is no longer required, the limited conservatorship shall cease. If the petition alleges and if it is determined that the limited conservatee is able to properly care for himself or herself and for his or her property, the court shall make such finding and enter judgment accordingly. The limited conservator may at the hearing, or thereafter on further notice and hearing, be discharged and his or her bond exonerated upon the settlement and approval of the final account by the court.

1861. (a) A petition for the termination of the conservatorship

may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse or any interested person or relative or friend of the conservatee.

(b) The petition shall state facts showing that the conservatorship is no longer required.

1862. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded. The conservator, the conservatee, or the spouse or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.

(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make such a finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

1864. (a) In the case of the conservatorship of an absentee as defined in Section 1403, the petition to terminate the conservatorship may also be filed by any officer or agency of this state or of the United States or the authorized delegate thereof.

(b) If the petition states and the court determines that the absentee has returned to the controllable jurisdiction of the military department or civilian department or agency concerned, or is deceased, as determined under 37 United States Code, Section 556, or 5 United States Code, Section 5566, as the case may be, the court shall order the conservatorship terminated. An official written report or record of such military department or civilian department or agency that the absentee has returned to such controllable jurisdiction or is deceased shall be received as evidence of such fact.

1865. If the conservatee has been disqualified from voting pursuant to Section 707.5 or 707.6 of the Elections Code, upon termination of the conservatorship, the court shall notify the county clerk of the county of residence of the former conservatee that the former conservatee's right to register to vote is restored.

CHAPTER 4. LEGAL CAPACITY OF CONSERVATEE

Article 1. Capacity to Bind or Obligate Conservatorship Estate

1870. As used in this article, unless the context otherwise requires, "transaction" includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right.

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

(a) The right to control an allowance provided under Section 2421.

(b) The right to control wages or salary to the extent provided in Section 2601.

(c) The right to make a will.

(d) The right to enter into transactions to the extent reasonable to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee.

1872. (a) Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.

(b) Except as otherwise provided in the order of the court appointing a limited conservator, the appointment does not limit the legal capacity of the limited conservatee to enter into transactions or types of transactions.

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may by order authorize the conservatee, subject to Section 1876, to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include such limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent

person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

1874. (a) After a conservator has been appointed, a petition requesting an order under Section 1873 may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse or any relative or friend of the conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

1875. A transaction that affects real property of the conservatorship estate, entered into by a purchaser or encumbrancer in good faith and for a valuable consideration and without knowledge of the establishment of the conservatorship, is not affected by any provision of this article or any order made under this article unless a notice of the establishment of the conservatorship or temporary conservatorship has been recorded prior to the transaction in the county in which the property is located.

(Amended by Stats. 1990, Ch. 1208, Sec 7 Effective September 24, 1990.)

[ORIGINAL SECTION]

1875. A transaction that affects real property of the conservatorship estate, entered into by a person acting in good faith and for a valuable consideration and without knowledge of the establishment of the conservatorship, is not affected by any provision of this article or any order made under this article unless a notice of the establishment of the conservatorship has been recorded prior to the transaction in the county in which the property is located.

1876. The provisions of this article relating to the legal capacity of a conservatee to bind or obligate the conservatorship estate, and the provisions of any order of the court broadening such capacity, do not displace but are supplemented by general principles of law and equity relating to transactions including, but not limited to, capacity to contract, joinder or consent requirements, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause.

Article 2. Capacity to Give Informed Consent for Medical Treatment

1880. If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this section, the letters shall include a statement that the conservator has the powers specified in Section 2355.

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.

1891. (a) A petition may be filed under this article requesting that the court make an order under Section 1880 or that the court modify or revoke an order made under Section 1880. The petition shall state facts showing that the order requested is appropriate.

(b) The petition may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse or any relative or friend of the conservatee.

(c) 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 conservatee within the second degree.

1892. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

1893. The conservatee shall be produced at the hearing except in the following cases:

(a) Where the conservatee is out of state when served and is not the petitioner.

(b) Where the conservatee is unable to attend the hearing by reason of medical inability established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of the legal capacity of the conservatee. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(c) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (1) is not willing to attend the hearing and (2) does not wish to contest the petition, and the court makes an order that the conservatee need not attend the hearing.

1894. If the petition alleges that the conservatee is not willing to attend the hearing or upon receipt of an affidavit or certificate attesting to the medical inability of the conservatee to attend the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the contents of the petition, of the nature, purpose, and effect of the proceeding, and of the right of the conservatee to oppose the petition, attend the hearing, and be represented by legal counsel.

(c) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.

(d) Determine whether the conservatee wishes to contest the petition.

(e) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.

(f) If the conservatee has not retained counsel, determine whether the conservatee desires the court to appoint legal counsel.

(g) 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 conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel.

(h) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning both (1) representation by legal counsel and (2) whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.

1895. (a) The conservatee, the spouse or any relative or friend of

the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition.

(b) Except where the conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Section 1893 and any showing required by Section 1893 has been made, the court shall, prior to granting the petition, inform the conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The nature and effect on the conservatee's basic rights of the order requested.

(3) The conservatee has the right to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court informs the conservatee of the matters listed in subdivision (b) and prior to granting the petition, the court shall consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition.

1896. (a) If the court determines that the order requested in the petition is proper, the court shall make the order.

(b) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

1897. An order of the court under Section 1880 continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship is terminated.

1898. An order of the court under Section 1880 may be modified or revoked upon a petition made, noticed, and heard by the court in the manner provided in this article.

Article 3. Capacity of Conservatee to Marry

1900. The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry.

1901. (a) The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, at the time the order is made.

(b) A petition for an order under this section may be filed by the conservator of the person or estate or both, the conservatee, any relative or friend of the conservatee, or any interested person.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

CHAPTER 5. DISQUALIFICATION FROM VOTING

1910. If the court determines the conservatee is not capable of completing an affidavit of voter registration in accordance with Section 500 of the Elections Code, the court shall by order disqualify the conservatee from voting pursuant to Section 707.5 or 707.6 of the Elections Code.

CHAPTER 6. STERILIZATION

1950. The Legislature recognizes that the right to exercise choice over matters of procreation is fundamental and may not be denied to an individual on the basis of disability. This chapter is enacted for the benefit of those persons with developmental disabilities who, despite those disabilities, are capable of engaging in sexual activity yet who, because of those disabilities, are unable to give the informed, voluntary consent necessary to their fully exercising the right to procreative choice, which includes the right to choose sterilization.

However, the Legislature further recognizes that the power to sterilize is subject to abuse and, historically, has been abused. It is the intent of the Legislature that no individual shall be sterilized solely by reason of a developmental disability and that no individual who knowingly opposes sterilization be sterilized involuntarily. It is further the intent of the Legislature that this chapter shall be applied in accord with the overall intent of Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code that persons with developmental disabilities be provided with those services needed to enable them to live more normal, independent, and productive lives, including assistance and training that might obviate the need for sterilization.

1951. (a) No person who has the ability to consent to his or her sterilization shall be sterilized pursuant to this chapter.

(b) For the purposes of this chapter, the following terms have the meanings given:

(1) "Consent to sterilization" means making a voluntary decision to undergo sterilization after being fully informed about, and after fully understanding the nature and consequences of, sterilization.

(2) "Voluntary" means performed while competent to make the decision, and as a matter of free choice and will and not in response to coercion, duress, or undue influence.

(3) "Fully understanding the nature and consequences of sterilization," includes, but is not limited to, the ability to understand each of the following:

(A) That the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any publicly funded program benefits to which the individual might be otherwise entitled.

(B) Available alternative methods of family planning and birth control.

(C) That the sterilization procedure is considered to be irreversible.

(D) The specific sterilization procedure to be performed.

(E) The discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used.

(F) The benefits or advantages that may be expected as a result of the sterilization.

(G) The approximate length of the hospital stay.

(H) The approximate length of time for recovery.

(c) The court shall appoint a facilitator or interpreter if such a person's assistance would enable the person named in the petition to understand any of these factors.

1952. The conservator of an adult, or any person authorized to file a petition for the appointment of a conservator under paragraphs (2) to (5), inclusive, of subdivision (a) of Section 1820, may file a petition under this chapter for appointment of a limited conservator authorized to consent to the sterilization of an adult with a developmental disability. The content of the petition under this chapter shall conform to the provisions of Section 1821 and in addition allege that the person for whom sterilization is proposed has a developmental disability as defined in Section 1420 and shall allege specific reasons why court-authorized sterilization is deemed necessary. A petition under this chapter shall be considered separately from any contemporaneous petition for appointment of a conservator under this division.

1953. At least 90 days before the hearing on the petition under this chapter, notice of the time and place of the hearing and a copy of the petition shall be served on the person named in the petition and, if the petitioner is not the conservator of the person, on the conservator, if any. Service shall be made in the manner provided in Section 415.10 or Section 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

1954. In any proceeding under this chapter, if the person named in the petition for court authorization to consent to sterilization has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the individual for whom sterilization is proposed. Counsel shall undertake the representation with the presumption that the individual opposes the petition.

1954.5. (a) The court shall appoint a facilitator for the person named in the petition, who shall assist the person named in the petition to do all of the following:

(1) Understand the nature of the proceedings.

(2) Understand the evaluation process required by Section 1955.

(3) Communicate his or her views.

(4) Participate as fully as possible in the proceedings.

(b) All of the following factors shall be considered by the court in appointing a facilitator:

(1) The preference of the person named in the petition.

(2) The proposed facilitator's personal knowledge of the person named in the petition.

(3) The proposed facilitator's ability to communicate with the person named in the petition, when that person is nonverbal, has limited verbal skills, or relies on alternative modes of communication.

(4) The proposed facilitator's knowledge of the developmental disabilities service system.

(c) The petitioner may not be appointed as the facilitator.

1955. (a) The court shall request the director of the appropriate regional center for the developmentally disabled to coordinate an investigation and prepare and file a written report thereon. The appropriate regional center for purposes of this section is (1) the regional center of which the person named in the petition is a client, (2) if the individual named in the petition is not a client of any regional center, the regional center responsible for the area in which the individual is then living, or (3) such other regional center as may be in the best interests of the individual. The report shall be based upon comprehensive medical, psychological, and sociosexual evaluations of the individual conducted pursuant to subdivisions (b) and (c), and shall address, but shall not be limited to, each of the factors listed in Section 1958. A copy of the report shall be provided to each of the parties at least 15 days prior to the hearing.

(b) Prior to the hearing on the issue of sterilization, the person who is proposed to be sterilized shall be personally examined by two physicians, one of whom shall be a surgeon competent to perform the procedure, and one psychologist or clinical social worker, each of whom has been mutually agreed to by the petitioner and counsel for the person named in the petition or, if agreement is not reached, appointed by the court from a panel of qualified professionals. At the request of counsel for the person named in the petition, the court shall appoint one additional psychologist, clinical social worker, or physician named by counsel. Any psychologist or clinical social worker and, to the extent feasible, any physicians conducting an examination shall have had experience with persons who have developmental disabilities. To the extent feasible, each of the examiners shall also have knowledge and experience relating to sociosexual skills and behavior. The examinations shall be at county expense subject to Section 1963.

(c) The examiners shall consider all available alternatives to sterilization and shall recommend sterilization only if no suitable alternative is available. Each examiner shall prepare a written, comprehensive report containing all relevant aspects of the person's medical, psychological, family, and sociosexual conditions. Each examiner shall address those factors specified in Section 1958 related to his or her particular area of expertise. In considering the factors

in subdivision (a) of, and paragraph (1) of subdivision (d) of, Section 1958, each examiner shall include information regarding the intensity, extent, and recentness of the person's education and training, if any, regarding human sexuality, including birth control methods and parenting skills, and in addition, shall consider whether the individual would benefit from training provided by persons competent in education and training of persons with comparable intellectual impairments. If an examiner recommends against sterilization, the examiner shall set forth in his or her report available alternatives, including, as warranted, recommendations for sex education, parent training, or training in the use of alternative methods of contraception. Copies of each report shall be furnished at least 30 days prior to the hearing on the petition to the person or persons who filed the petition, the conservator, if any, and counsel for the person proposed to be sterilized, the regional center responsible for the investigation and report required under this section, and such other persons as the court may direct. The court may receive these reports in evidence.

(d) The contents of the reports prepared pursuant to this section shall be confidential. Upon judgment in the action or the proceeding becoming final, the court shall order the contents of the reports sealed.

(e) Regional centers for the developmentally disabled shall compile and maintain lists of persons competent to perform the examinations required by this section. These lists shall be provided to the court. If the person named in the petition resides at a state hospital or other residential care facility, no person conducting an examination pursuant to subdivision (b) shall be an employee of the facility.

(f) Any party to the proceedings has the right to submit additional reports from qualified experts.

(g) Any person who has written a report received in evidence may be subpoenaed and questioned by any party to the proceedings or by the court and when so called is subject to all rules of evidence including those of legal objections as to the qualification of expert witnesses.

(h) No regional center or person acting in his or her capacity as a regional center employee may file a petition under Section 1952.

1956. The person to whom the petition applies shall be present at the hearing except for reason of medical inability. Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of the instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

1957. To the greatest extent possible, the court shall elicit and take into account the views of the individual for whom sterilization is proposed in determining whether sterilization is to be authorized.

1958. The court may authorize the conservator of a person proposed to be sterilized to consent to the sterilization of that person

only if the court finds that the petitioner has established all of the following beyond a reasonable doubt:

(a) The person named in the petition is incapable of giving consent to sterilization, as defined in Section 1951, and the incapacity is in all likelihood permanent.

(b) Based on reasonable medical evidence, the individual is fertile and capable of procreation.

(c) The individual is capable of engaging in, and is likely to engage in sexual activity at the present or in the near future under circumstances likely to result in pregnancy.

(d) Either of the following:

(1) The nature and extent of the individual's disability as determined by empirical evidence and not solely on the basis of any standardized test, renders him or her permanently incapable of caring for a child, even with appropriate training and reasonable assistance.

(2) Due to a medical condition, pregnancy or childbirth would pose a substantially elevated risk to the life of the individual to such a degree that, in the absence of other appropriate methods of contraception, sterilization would be deemed medically necessary for an otherwise nondisabled woman under similar circumstances.

(e) All less invasive contraceptive methods including supervision are unworkable even with training and assistance, inapplicable, or medically contraindicated. Isolation and segregation shall not be considered as less invasive means of contraception.

(f) The proposed method of sterilization entails the least invasion of the body of the individual.

(g) The current state of scientific and medical knowledge does not suggest either (1) that a reversible sterilization procedure or other less drastic contraceptive method will shortly be available, or (2) that science is on the threshold of an advance in the treatment of the individual's disability.

(h) The person named in the petition has not made a knowing objection to his or her sterilization. For purposes of this subdivision, an individual may be found to have knowingly objected to his or her sterilization notwithstanding his or her inability to give consent to sterilization as defined in Section 1951. In the case of persons who are nonverbal, have limited verbal ability to communicate, or who rely on alternative modes of communication, the court shall ensure that adequate effort has been made to elicit the actual views of the individual by the facilitator appointed pursuant to Section 1954.5, or by any other person with experience in communicating with developmentally disabled persons who communicate using similar means.

1959. The fact that, due to the nature or severity of his or her disability, a person for whom an authorization to consent to sterilization is sought may be vulnerable to sexual conduct by others that would be deemed unlawful, shall not be considered by the court in determining whether sterilization is to be authorized under this

chapter.

1960. If the person named in the petition already has a conservator, the court may authorize that person to consent to sterilization or may appoint another person as limited conservator under the provisions of this chapter. The court shall ensure that the person or agency designated as conservator under this chapter is capable of adequately representing and safeguarding the interests of the conservatee.

1961. A sterilization procedure authorized under this chapter shall not include hysterectomy or castration. However, if the report prepared under Section 1955 indicates that hysterectomy or castration is a medically necessary treatment, regardless of the need for sterilization, the court shall proceed pursuant to Section 2357.

1962. (a) Any court order granting a petition under this chapter shall be accompanied by a written statement of decision pursuant to Section 632 of the Code of Civil Procedure detailing the factual and legal bases for the court's determination on each of the findings required under Section 1958.

(b) When a judgment authorizing the conservator of a person to consent to the sterilization is rendered, an appeal is automatically taken by the person proposed to be sterilized without any action by that person, or by his or her counsel. The Judicial Council shall provide by rule for notice of and procedure for the appeal. The appeal shall have precedence over other cases in the court in which the appeal is pending.

1963. (a) At the conclusion of the hearing, the court, after inquiring into financial ability, may make an order based upon their ability that any one or more of the following persons pay court costs and fees in whole or in part as in the opinion of the court is proper and in any installments and manner which is both reasonable and compatible with ability to pay:

(1) The person to whom the petition applies.

(2) The petitioner.

(3) Any person liable for the support and maintenance of the person to whom the petition applies.

(b) An order under subdivision (a) may be enforced in the same manner as a money judgment.

(c) For the purposes of this section, court costs and fees include the costs of any examination or investigation ordered by the court, expert witnesses' fees, and the costs and fees of the court-appointed public defender or private counsel representing the person to whom the petition applies.

(d) Any fees and costs not ordered to be paid by persons under subdivision (a) are a charge against and paid out of the treasury of the county on order of the court.

1964. An order of the court authorizing a conservator to consent to sterilization which is upheld on appeal automatically expires in one year from the final determination on appeal unless earlier terminated by the court. A conservatorship established for the sole

purpose of authorizing a conservator to consent to sterilization under this chapter shall automatically terminate upon completion of the sterilization procedure or upon expiration of the court's order authorizing the conservator to consent to sterilization, whichever occurs first. If, upon the expiration of the court's order under this chapter, the person named as conservator determines that the conservatorship is still required for the purpose of this chapter, he or she may petition the court for reappointment as conservator for a succeeding six-month period upon a showing of good cause as to why any sterilization authorized by the court has not been completed.

1965. Any court order made pursuant to this chapter granting authority to consent to sterilization shall be stayed pending a final determination on appeal.

1966. After the filing of a first petition for sterilization pursuant to this chapter and a determination by the court that any one or more of the conditions required in Section 1958 has not been proven beyond a reasonable doubt, and that therefore authorization for the proposed sterilization should not be given by the court, a subsequent petition may be filed only on the showing of a material change in circumstances.

1967. (a) The sterilization of a person in accordance with this chapter does not render the petitioner or any person participating in the conservatorship proceedings or sterilization liable, either civilly or criminally, except for any injury caused by negligent or willful misconduct in the performance of the sterilization.

(b) Notwithstanding the provisions of subdivision (a), any individual who petitions for authorization to consent to sterilization knowing that the person to whom the petition relates is capable of giving consent to sterilization as defined in Section 1951 is guilty of a misdemeanor, and may be civilly liable to the person concerning whom sterilization was sought.

1968. This chapter does not prohibit medical treatment or surgery required for other medical reasons and in which sterilization is an unavoidable or medically probable consequence, but is not the object of the treatment or surgery.

1969. Nothing in this chapter shall infringe on the right of persons with developmental disabilities who are capable of giving consent to sterilization to give that consent without the necessity of a court order or substitute decisionmaker.

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

CHAPTER 1. GENERAL PROVISIONS

2100. Guardianships and conservatorships are governed by Division 3 (commencing with Section 1000), except to the extent otherwise expressly provided by statute, and by this division. If no specific provision of this division is applicable, the provisions

applicable to administration of estates of decedents govern so far as they are applicable to like situations.

2101. The relationship of guardian and ward and of conservator and conservatee is a fiduciary relationship.

2102. A guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office.

2103. (a) When a judgment or order made pursuant to this division becomes final, it releases the guardian or conservator and the sureties from all claims of the ward or conservatee and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, "order" includes an order settling an account of the guardian or conservator, whether an intermediate or final account.

(b) This section does not apply where the judgment or order is obtained by fraud or conspiracy or by misrepresentation contained in the petition or account or in the judgment or order as to any material fact. For the purposes of this subdivision, misrepresentation includes, but is not limited to, the omission of a material fact.

2104. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, if all of the following requirements are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.

(3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) The petition for appointment of a nonprofit charitable corporation described in this section as a guardian or conservator shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(c) If a nonprofit charitable corporation described in this section is appointed as a guardian or conservator:

(1) The corporation's compensation as guardian or conservator shall be allowed only for services actually rendered and shall not be based on the value of the estate.

(2) Any fee allowed for an attorney for such corporation shall be for services actually rendered and shall not be based on the value of the estate.

2105. (a) The court, in its discretion, may appoint for a ward or

conservatee:

(1) Two or more joint guardians or conservators of the person.

(2) Two or more joint guardians or conservators of the estate.

(3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed, each shall qualify in the same manner as a sole guardian or conservator.

(c) Subject to subdivisions (d) and (e):

(1) Where there are two guardians or conservators, both must concur to exercise a power.

(2) Where there are more than two guardians or conservators, a majority must concur to exercise a power.

(d) If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(e) Where joint guardians or conservators have been appointed and one or more are (1) absent from the state and unable to act, or (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

2105.5. (a) Except as provided in subdivision (b), where there is more than one guardian or conservator of the estate, one guardian or conservator is not liable for a breach of fiduciary duty committed by another guardian or conservator.

(b) Where there is more than one guardian or conservator of the estate, one guardian or conservator is liable for a breach of fiduciary duty committed by another guardian or conservator of the same estate under any of the following circumstances:

(1) Where the guardian or conservator participates in a breach of fiduciary duty committed by the other guardian or conservator.

(2) Where the guardian or conservator improperly delegates the administration of the estate to the other guardian or conservator.

(3) Where the guardian or conservator approves, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other guardian or conservator.

(4) Where the guardian or conservator negligently enables the other guardian or conservator to commit a breach of fiduciary duty.

(5) Where the guardian or conservator knows or has information from which the guardian or conservator reasonably should have known of the breach of fiduciary duty by the other guardian or conservator and fails to take reasonable steps to compel the other guardian or conservator to redress the breach.

(c) The liability of a guardian or conservator for a breach of fiduciary duty committed by another guardian or conservator that occurred before July 1, 1988, is governed by prior law and not by this section.

2106. (a) The court, in its discretion, may appoint one guardian

or conservator for several wards or conservatees.

(b) The appointment of one guardian or conservator for several wards or conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard with respect to the newly proposed ward or conservatee in the same manner as an initial petition for appointment of a guardian or conservator.

2107. (a) Unless limited by court order, a guardian or conservator of the person of a nonresident has the same powers and duties as a guardian or conservator of the person of a resident while the nonresident is in this state.

(b) A guardian or conservator of the estate of a nonresident has, with respect to the property of the nonresident within this state, the same powers and duties as a guardian or conservator of the estate of a resident. The responsibility of such a guardian or conservator with regard to inventory, accounting, and disposal of the estate is confined to the property that comes into the hands of the guardian or conservator in this state.

2108. (a) Except to the extent the court for good cause determines otherwise, if a guardian of the person is nominated as provided in Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 and is appointed by the court, the guardian shall be granted in the order of appointment, to the extent provided in the nomination, the same authority with respect to the person of the ward as a parent having legal custody of a child and may exercise such authority without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as if such authority were exercised by a parent having legal custody of a child.

(b) Except to the extent the court for good cause determines otherwise and subject to Sections 2593, 2594, and 2595, if a guardian of the estate is nominated under Section 1500 or a guardian for property is nominated under Section 1501 and the guardian is appointed by the court, the guardian shall be granted in the order of appointment, to the extent provided in the nomination, the right to exercise any one or more of the powers listed in Section 2591 without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as if such authority were granted by order of the court under Section 2590. In the case of a guardian nominated under Section 1501, such additional authority shall be limited to the property covered by the nomination.

(c) The terms of any order made under this section shall be included in the letters.

2109. (a) Subject to Section 2108, a guardian appointed under subdivision (d) of Section 1514 for particular property upon a nomination made under Section 1501 has, with respect to that property, the same powers and duties as a guardian of the estate. The responsibility of such a guardian with regard to inventory, accounting, and disposal of the estate is confined to the property covered by the nomination.

(b) When a guardian is appointed under subdivision (d) of Section 1514 for particular property upon a nomination made under Section 1501 and there is a guardian of the estate appointed under any other provision of Part 2 (commencing with Section 1500):

(1) The guardian appointed for the property covered by the nomination manages and controls that property and the guardian of the estate manages and controls the balance of the guardianship estate.

(2) Either guardian may petition under Section 2403 to the court in which the guardianship of the estate proceeding is pending for instructions concerning how the duties that are imposed by law upon the guardian of the estate are to be allocated between the two guardians.

2110. Unless otherwise provided in the instrument or in this division, a guardian or conservator is not personally liable on an instrument, including but not limited to a note, mortgage, deed of trust, or other contract, properly entered into in the guardian's or conservator's fiduciary capacity in the course of the guardianship or conservatorship unless the guardian or conservator fails to reveal the guardian's or conservator's representative capacity or identify the guardianship or conservatorship estate in the instrument.

2111. (a) As used in this section, "transaction" means any of the following:

(1) A conveyance or lease of real property of the guardianship or conservatorship estate.

(2) The creation of a mortgage or deed of trust on real property of the guardianship or conservatorship estate.

(3) A transfer of personal property of the guardianship or conservatorship estate.

(4) The creation of a security interest or other lien in personal property of the guardianship or conservatorship estate.

(b) Whenever the court authorizes or directs a transaction, the transaction shall be carried out by the guardian or conservator of the estate in accordance with the terms of the order.

(c) A conveyance, lease, or mortgage of, or deed of trust on, real property executed by a guardian or conservator shall set forth therein that it is made by authority of the order authorizing or directing the transaction and shall give the date of the order. A certified copy of the order shall be recorded in the office of the county recorder in each county in which any portion of the real property is located.

(d) A transaction carried out by a guardian or conservator in accordance with an order authorizing or directing the transaction has the same effect as if the ward or conservatee had carried out the transaction while having legal capacity to do so.

2112. With respect to a guardianship or conservatorship proceedings to which Title 25 of the United States Code (Indians) applies, the provisions of this division are subject to the provisions of Title 25 and, to the extent inconsistent with Title 25, are superseded

by that title.

CHAPTER 2. JURISDICTION AND VENUE

Article 1. Jurisdiction and Venue

2200. The superior court has jurisdiction of guardianship and conservatorship proceedings.

2201. The proper county for the commencement of a guardianship or conservatorship proceeding for a resident of this state is either of the following:

(a) The county in which the proposed ward or proposed conservatee resides.

(b) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

2202. (a) The proper county for the commencement of a proceeding for the guardianship or conservatorship of the person of a nonresident of this state is either of the following:

(1) The county in which the proposed ward or conservatee is temporarily living.

(2) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

(b) The proper county for the commencement of a proceeding for the guardianship or conservatorship of the estate for a nonresident of this state is any of the following:

(1) The county in which the proposed ward or proposed conservatee is temporarily living.

(2) Any county in which the proposed ward or proposed conservatee has property.

(3) Such other county as may be in the best interests of the proposed ward or proposed conservatee.

2203. (a) If proceedings for the guardianship or conservatorship of the estate are commenced in more than one county, the guardianship or conservatorship of the estate first granted, including a temporary guardianship or conservatorship of the estate, governs and extends to all the property of the ward or conservatee within this state and the other proceeding shall be dismissed.

(b) If proceedings for the guardianship or conservatorship of the person are commenced in more than one county, the guardianship or conservatorship of the person first granted, including a temporary guardianship or conservatorship of the person, governs and the other proceeding shall be dismissed.

(c) If a proceeding for the guardianship or conservatorship of the person is commenced in one county and a proceeding for the guardianship or conservatorship of the estate is commenced in a different county, the court first granting the guardianship or conservatorship, whether of the person or of the estate, may find that it is in the best interests of the ward or conservatee that the guardianship or conservatorship of both the person and the estate be

maintained in that county or in such other county as the court shall determine. Thereupon, the guardianship or conservatorship proceeding in the court of the county found by the court to be in the best interests of the ward or conservatee shall govern and shall extend to all property of the ward or conservatee within this state, and the other proceeding shall be dismissed.

Article 2. Change of Venue

2210. As used in this article:

(a) "Guardian or conservator" includes a proposed guardian or proposed conservator.

(b) "Ward or conservatee" includes a proposed ward or proposed conservatee.

2211. The court in which a guardianship or conservatorship proceeding is pending may, upon petition therefor, transfer the proceeding to another county within this state.

2212. The petition for transfer may be filed only by one or more of the following:

(a) The guardian or conservator.

(b) The ward or conservatee.

(c) The spouse of the ward or conservatee.

(d) A relative or friend of the ward or conservatee.

(e) Any other interested person.

2213. The petition for transfer shall set forth all of the following:

(a) The county to which the proceeding is to be transferred.

(b) The name and address of the ward or conservatee.

(c) A brief description of the character, value, and location of the property of the ward or conservatee.

(d) The reasons for the transfer.

(e) The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward or conservatee within the second degree.

(f) The name and address of the guardian or conservator if other than the petitioner.

2214. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to all persons required to be listed in the petition at least 15 days before the date set for the hearing.

2215. (a) Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition:

(1) Any person required to be listed in the petition.

(2) Any creditor of the ward or conservatee or of the estate.

(3) Any other interested person.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it

shall make an order transferring the proceeding to the other county.

2216. (a) Upon the order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal. The clerk of the court to which the proceeding is transferred is entitled to such fees as are payable on the filing of a like original proceeding.

CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee, and to the parent or parents if the proposed ward is a minor. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

(e) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(f) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

2251. A temporary guardian or temporary conservator shall be issued letters of temporary guardianship or conservatorship upon taking the oath and filing the bond as in the case of a guardian or conservator. The letters shall indicate the termination date of the temporary appointment.

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only those powers and duties of a guardian or conservator that are necessary to provide for the temporary care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Unless the court otherwise orders:

(1) A temporary guardian of the person has the powers and duties specified in Section 2353 (medical treatment).

(2) A temporary conservator of the person has the powers and duties specified in Section 2354 (medical treatment).

(c) The temporary guardian or temporary conservator has such additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require.

(d) The terms of any order made under subdivision (b) or (c) shall be included in the letters of temporary guardianship or conservatorship.

(e) A temporary conservator is not permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the specific approval of the court. Such approval may be granted only if the conservatee has been served with notice of the hearing, such notice to be personally delivered to the temporary conservatee unless the court for good cause otherwise orders, and only if the court finds that the conservatee will be unable to return to the residence and exercise dominion over it and that such action is necessary to avert irreparable harm to the conservatee. The temporary conservator is not permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding that such action is necessary to avert irreparable harm to the conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that the real property is vacant, that it cannot reasonably be rented, and that it is impossible or impractical to obtain fire or liability insurance on the property.

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided prior to the commencement of the proceedings, such power shall be requested of the court in writing, unless such change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been

established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if such change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(b) If the court so directs, the court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, 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 conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is

likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent such harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

(h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

2254. (a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without court authorization if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservator determines in good faith based upon medical advice that the case is an emergency case in which removal from the place of residence is

required (1) to provide medical treatment needed to alleviate severe pain or (2) to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

(b) No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator shall file a written request pursuant to Section 2253 for authorization to fix the residence of the temporary conservatee at a place other than the temporary conservatee's previous place of residence.

(c) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal.

(d) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care.

2255. (a) Except as provided in subdivision (b), an inventory and appraisal of the estate shall be filed by the temporary guardian or temporary conservator of the estate as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian or temporary conservator of the estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within 90 days after the appointment of the temporary guardian or temporary conservator.

2256. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator of the estate shall present his or her account to the court for settlement and allowance within 90 days after the appointment of a guardian or conservator of the estate or within such other time as the court may fix.

(b) If the temporary guardian or temporary conservator of the estate is appointed guardian or conservator of the estate, the guardian or conservator may account for the administration as temporary guardian or temporary conservator in his or her first regular account.

(c) Accounts are subject to Sections 2621 to 2626, inclusive, Sections 2630 to 2633, inclusive, and Sections 2640 to 2642, inclusive.

2257. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate (except for the rendering of the account) at the earliest of the following times:

(1) The time the temporary guardian or conservator acquires notice that a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court

may for good cause order that the time for the termination of the powers of the temporary guardian or temporary conservator be extended pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal therefrom or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

2258. A temporary guardian or temporary conservator is subject to the provisions of this division governing the suspension, removal, resignation, and discharge of a guardian or conservator.

CHAPTER 4. OATH, LETTERS, AND BOND

Article 1. Requirement of Oath and Bond

2300. Before the appointment of a guardian or conservator is effective, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law, which oath shall be attached to or endorsed upon the letters.

(b) File the required bond if a bond is required.

Article 2. Letters

2310. The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance of letters by the clerk of the court.

2311. Except as otherwise required by the order of appointment, the letters of guardianship or conservatorship shall be in substantially the same form as letters of administration.

2312. Before letters may be issued, a copy of the order of the court appointing the guardian or conservator shall be mailed to the ward if 14 years of age or older or to the conservatee.

Article 3. Bonds of Guardians and Conservators

2320. (a) Except as otherwise provided by statute, every person appointed as guardian or conservator shall, before letters are issued, give a bond approved by the court.

(b) The bond shall be for the benefit of the ward or conservatee and all persons interested in the guardianship or conservatorship estate and shall be conditioned upon the faithful execution of the duties of the office according to law by the guardian or conservator.

(c) Except as otherwise provided by statute, unless the court increases or decreases the amount upon a showing of good cause, the amount of a bond given by an admitted surety insurer shall be the sum of the following:

(1) The value of the personal property of the estate.

(2) The probable annual gross income of all of the property of the

estate.

(3) The sum of the probable annual gross payments from the following:

(A) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(B) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(C) Any other public entitlements of the ward or conservatee.

(d) If the bond is given by personal sureties, the amount of the bond shall be twice the amount required for a bond given by an admitted surety insurer.

(e) The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this article, except to the extent inconsistent with this article.

2321. In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed or may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

2322. One appointed only as guardian of the person or conservator of the person need not file a bond unless required by the court.

2323. (a) The court may dispense with the requirement of a bond if it appears likely that the estate will satisfy the conditions of subdivision (b) of Section 2628 for its duration.

(b) If at any time it appears that the estate does not satisfy the conditions of subdivision (b) of Section 2628, the court may require the filing of a bond.

2324. If the person making the nomination has waived the filing of the bond, a guardian nominated under Section 1500 or 1501 need not file a bond unless required by the court.

2325. The surety on the bond of a nonprofit charitable corporation described in Section 2104 shall be an admitted surety insurer.

2326. (a) If joint guardians or conservators are appointed, the court may order that separate bonds or a joint bond or a combination thereof be furnished.

(b) If a joint bond is furnished, the liability on the bond is joint and several.

2327. If the proceeding involves more than one ward or conservatee, the court may order separate bonds or a single bond or a combination thereof.

2328. (a) In any proceeding to determine the amount of the bond of the guardian or conservator (whether at the time of appointment or subsequently), if the estate includes property which has been or will be deposited with a trust company or financial

institution pursuant to Sections 2453 to 2456, inclusive, upon the condition that the property, including any earnings thereon, will not be withdrawn except on authorization of the court, the court, in its discretion, with or without notice, may so order and may do either of the following:

(1) Exclude the property deposited in determining the amount of the required bond or reduce the amount of the bond to be required in respect to the property deposited to such an amount as the court determines is reasonable.

(2) If a bond has already been furnished or the amount fixed, reduce the amount to such an amount as the court determines is reasonable.

(b) The petitioner for letters, or the proposed guardian or conservator in advance of appointment of a guardian or conservator, may do any one or more of the following:

(1) Deliver personal property in the person's possession to a trust company.

(2) Deliver money in the person's possession for deposit in an insured account in a financial institution in this state.

(3) Allow a trust company to retain personal property already in its possession.

(4) Allow a financial institution in this state to retain money already invested in an insured account in a financial institution.

(c) In the cases described in subdivision (b), the petitioner or proposed guardian or conservator shall obtain and file with the court a written receipt including the agreement of the trust company or financial institution that the property deposited, including any earnings thereon, shall not be allowed to be withdrawn except upon authorization of the court.

(d) In receiving and retaining property on deposit pursuant to subdivisions (b) and (c), the trust company or financial institution is protected to the same extent as though it received the property on deposit from a person to whom letters had been issued.

2329. (a) If a guardian or conservator moves the court for reduction in the amount of the bond, the motion shall include an affidavit setting forth the condition of the estate.

(b) Except upon a showing of good cause, the amount of the bond shall not be reduced below the amount determined pursuant to Section 2320.

(c) Nothing in this section limits the authority of the court to reduce the amount of the bond with or without notice under Section 2328.

2330. Upon the confirmation of the sale of any real property of the estate, or upon the authorization of the borrowing of money secured by a mortgage or deed of trust on real property of the estate, the guardian or conservator shall furnish such additional bond as is required by the court in order to make the sum of the bonds furnished by the guardian or conservator equal to the amount determined pursuant to Section 2320, taking into account the

proceeds of the sale or mortgage or deed of trust.

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) No action may be maintained against the sureties on the bond unless commenced within four years from the discharge or removal of the guardian or conservator or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(Amended by Stats. 1990, Ch. 710, Sec. 7. Operative July 1, 1991, by Sec 48 of chapter.)

[ORIGINAL SECTION]

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) Except as provided in subdivision (c), no action may be maintained against the sureties on the bond unless commenced within four years from the discharge or removal of the guardian or conservator or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(c) If at the time of the discharge or removal of the guardian or conservator or when the order of surcharge becomes final any person entitled to bring the action is under any legal disability to sue, such person may commence the action within four years after the disability is removed.

2334. Where a petition is filed requesting an order that a guardian or conservator be required to give a bond where no bond was originally required, or an objection is made to the sufficiency of the bond, and the petition or affidavit supporting the objection alleges facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate, the court, by order, may suspend the powers of the guardian or conservator until the matter can be heard and determined.

2335. A guardian or conservator who applies for a substitution and release of a surety shall file an account with the application. The court shall not order a substitution unless the account is approved.

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) 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.

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 any person who is the conservator for only one conservatee not related to the conservator by blood or marriage to comply with this article, and in that case, references in this article to a "private professional conservator" includes those persons.

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 for which the private professional conservator 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 its 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. 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 dispensed with by the court 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 made available to the court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the conservator, but shall otherwise be kept confidential.

2343. The county clerk shall charge each private professional conservator an annual filing fee which does not exceed the average per-conservator annual cost in complying with this article. This fee shall also include the cost of submitting the fingerprint card to the Department of Justice.

CHAPTER 5. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

2350. As used in this chapter:

(a) "Conservator" means the conservator of the person.

(b) "Guardian" means the guardian of the person.

2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating either of the following:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on such petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2351.5. (a) Subject to subdivision (b):

(1) The limited conservator has the care, custody, and control of the limited conservatee.

(2) The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) A limited conservator does not have any of the following powers or controls over the limited conservatee unless such powers

or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his or her own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

(c) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (b). The petition shall state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of such powers is discretionary with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (b) are granted or eliminated, new letters of limited conservatorship shall be issued reflecting the change in the limited conservator's powers.

2352. (a) The guardian or conservator may fix the residence of the ward or conservatee at either of the following:

(1) Any place within this state without the permission of the court. In fixing the residence, the guardian or conservator shall select the least restrictive appropriate setting which is available and necessary to meet the needs of the ward or conservatee, and which is in the best interests of the ward or conservatee. In making a determination of the appropriate level of care for wards or conservatees, guardians or conservators may utilize the statewide nursing home preadmission screening program or a comparable assessment by a community-based case management organization.

(2) A place not within this state if permission of the court is first obtained.

(b) An order under paragraph (2) of subdivision (a) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or such longer or shorter period as is specified in the order.

(c) The guardian or conservator shall promptly mail to the court notice of all changes in the residence of the ward or conservatee.

(d) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence.

2353. (a) Subject to subdivision (b), the guardian has the same right as a parent having legal custody of a child to give consent to medical treatment performed upon the ward and to require the ward to receive medical treatment.

(b) Except as provided in subdivision (c), if the ward is 14 years of age or older, no surgery may be performed upon the ward without either (1) the consent of both the ward and the guardian or (2) a court order obtained pursuant to Section 2357 specifically authorizing such treatment.

(c) The guardian may consent to surgery to be performed upon the ward, and may require the ward to receive the surgery, in any case where the guardian determines in good faith based upon medical advice that the case is an emergency case in which the ward faces loss of life or serious bodily injury if the surgery is not performed. In such a case, the consent of the guardian alone is sufficient and no person is liable because the surgery is performed upon the ward without the ward's consent.

(d) Nothing in this section requires the consent of the guardian for medical or surgical treatment for the ward in any case where the ward alone may consent to such treatment under other provisions of law.

2354. (a) If the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment, the conservatee may consent to his or her medical treatment. The conservator may also give consent to the medical treatment, but the consent of the conservator is not required if the conservatee has the capacity to give informed consent to the medical treatment, and the consent of the conservator alone is not sufficient under this subdivision if the conservatee objects to the medical treatment.

(b) The conservator may require the conservatee to receive medical treatment, whether or not the conservatee consents to the treatment, if a court order specifically authorizing the medical treatment has been obtained pursuant to Section 2357.

(c) The conservator may consent to medical treatment to be performed upon the conservatee, and may require the conservatee to receive the medical treatment, in any case where the conservator determines in good faith based upon medical advice that the case is

an emergency case in which the medical treatment is required because (1) the treatment is required for the alleviation of severe pain or (2) the conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death. In such a case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.

2355. (a) If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment, the conservator has the exclusive authority to give consent for such medical treatment to be performed on the conservatee as the conservator in good faith based on medical advice determines to be necessary and the conservator may require the conservatee to receive such medical treatment, whether or not the conservatee objects. In any such case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.

(b) If prior to the establishment of the conservatorship the conservatee was an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the treatment required by the conservator under the provisions of this section shall be by an accredited practitioner of that religion.

2356. (a) No ward or conservatee may be placed in a mental health treatment facility under this division against the will of the ward or conservatee. Involuntary civil placement of a ward or conservatee in a mental health treatment facility may be obtained only pursuant to Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Nothing in this subdivision precludes the placing of a ward in a state hospital under Section 6000 of the Welfare and Institutions Code upon application of the guardian as provided in that section. The Director of Mental Health shall adopt and issue regulations defining "mental health treatment facility" for the purposes of this subdivision.

(b) No experimental drug as defined in Section 26668 of the Health and Safety Code may be prescribed for or administered to a ward or conservatee under this division. Such an experimental drug may be prescribed for or administered to a ward or conservatee only as provided in Article 4 (commencing with Section 26668) of Chapter 6 of Division 21 of the Health and Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under this division. Convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No minor may be sterilized under this division.

(e) This chapter is subject to any of the following instruments if valid and effective:

(1) A directive of the conservatee under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

(2) A power of attorney for health care, whether or not a durable power of attorney.

(Amended by Stats. 1990, Ch. 710, Sec. 8. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

2356. (a) No ward or conservatee may be placed in a mental health treatment facility under this division against the will of the ward or conservatee. Involuntary civil mental health treatment for a ward or conservatee may be obtained only pursuant to Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Nothing in this subdivision precludes the placing of a ward in a state hospital under Section 6000 of the Welfare and Institutions Code upon application of the guardian as provided in that section The Director of Mental Health shall adopt and issue regulations defining "mental health treatment facility" for the purposes of this subdivision.

(b) No experimental drug as defined in Section 26668 of the Health and Safety Code may be prescribed for or administered to a ward or conservatee under this division Such an experimental drug may be prescribed for or administered to a ward or conservatee only as provided in Article 4 (commencing with Section 26668) of Chapter 6 of Division 21 of the Health and Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under this division. Convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No minor may be sterilized under this division

(e) This chapter is subject to any of the following instruments if valid and effective:

(1) A directive of the conservatee under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

(2) A power of attorney for health care, whether or not a durable power of attorney.

2357. (a) As used in this section:

(1) "Guardian or conservator" includes a temporary guardian of the person or a temporary conservator of the person.

(2) "Ward or conservatee" includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to such medical treatment, the guardian or conservator may petition the court under this section for an order authorizing such medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to such medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(d) Upon the filing of the petition, the court shall notify the attorney of record for the ward or conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if that appointment is made, Section 1472 applies.

(e) The hearing on the petition may be held pursuant to an order of the court prescribing the notice to be given of the hearing. The order shall specify the period of notice of the hearing and the period so fixed shall take into account (1) the existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court and (2) the desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(f) A copy of the notice of hearing or of the order prescribing notice of hearing, and a copy of the petition, shall be personally served or mailed, as prescribed in the order, on all of the following:

(1) The ward or conservatee.

(2) The attorney of record for the ward or conservatee, if any, or the attorney appointed by the court to represent the ward or conservatee at the hearing.

(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the ward or conservatee and any known relatives of the ward or conservatee within the second degree.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or

conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(Amended by Stats. 1990, Ch. 710, Sec. 9. Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

2357. (a) As used in this section:

(1) "Guardian or conservator" includes a temporary guardian of the person or a temporary conservator of the person.

(2) "Ward or conservatee" includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to such medical treatment, the guardian or conservator may petition the court under this section for an order authorizing such medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to such medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment

(2) The recommended course of medical treatment which is considered to be medically appropriate

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment

(5) The medically available alternatives, if any, to the course of treatment recommended

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(d) Upon the filing of the petition, the court shall notify the attorney of record for the ward or conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if such appointment is made, Section 1472 applies

(e) The hearing on the petition may be held pursuant to an order of the court prescribing the notice to be given of the hearing The order shall specify the period of notice of the hearing and the period so fixed shall take into account (1) the existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court and (2) the desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(f) A copy of the notice of hearing or of the order prescribing notice of hearing, and a copy of the petition, shall be personally served or mailed, as prescribed in the order, on all of the following:

(1) The ward or conservatee.

(2) The attorney of record for the ward or conservatee, if any, or the attorney appointed by the court to represent the ward or conservatee at the hearing.

(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the ward or conservatee and any known relatives of the ward or conservatee within the second degree.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1

2358. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the ward or conservatee. Any such conditions shall be included in the letters. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

2359. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE

Article 1. Definitions and General Provisions

2400. As used in this chapter:

(a) "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator.

(b) "Guardian" means the guardian of the estate.

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

2401.3. (a) If the guardian or conservator breaches a fiduciary duty, the guardian or conservator is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the estate resulting from the breach of duty, with interest.

(2) Any profit made by the guardian or conservator through the breach of duty, with interest.

(3) Any profit that would have accrued to the estate if the loss of profit is the result of the breach of duty.

(b) If the guardian or conservator has acted reasonably and in good faith under the circumstances as known to the guardian or conservator, the court, in its discretion, may excuse the guardian or conservator in whole or in part from liability under subdivision (a) if it would be equitable to do so.

2401.5. If the guardian or conservator is liable for interest pursuant to Section 2401.3, the guardian or conservator is liable for the greater of the following amounts:

(a) The amount of interest that accrues at the legal rate on judgments.

(b) The amount of interest actually received.

2401.7. The provisions of Sections 2401.3 and 2401.5 for liability of a guardian or conservator for breach of a fiduciary duty do not prevent resort to any other remedy available against the guardian or conservator under the statutory or common law.

2402. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care and custody of the property of the ward or conservatee. Any such conditions shall be included in the letters. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

2403. (a) Upon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care,

protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2404. (a) If the guardian or conservator fails, neglects, or refuses to furnish comfortable and suitable support, maintenance, or education for the ward or conservatee as required by this division, or to pay a debt, expense, or charge lawfully due and payable by the ward or conservatee or the estate as provided in this division, the court shall, upon petition or upon its own motion, order the guardian or conservator to do so from the estate.

(b) The petition may be filed by the ward or conservatee or by the creditor or any other interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2405. If there is a dispute relating to the estate between the guardian or conservator and a third person, the guardian or conservator, or the limited conservator to the extent specifically and expressly provided in the order appointing the limited conservator, may do either of the following:

(a) Enter into an agreement in writing with the third person to refer the dispute to a temporary judge designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The decision of the temporary judge is subject to Section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision and is as valid and effective as if rendered by a judge of the court in an action against the guardian or conservator or the third person commenced by ordinary process.

(b) Enter into an agreement in writing with the third person that a judge of the court, pursuant to the agreement and with the written consent of the judge, both filed with the clerk within the time for bringing an independent action on the matter in dispute, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

2406. If there is a dispute relating to the estate between the guardian or conservator and a third person, the guardian or conservator may enter into an agreement in writing with the third person to submit the dispute to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. The agreement is not effective unless it has first been approved by the court and a copy of the approved agreement is filed with the court.

2407. This chapter applies to property owned by husband and wife as community property only to the extent authorized by Part 6

(commencing with Section 3000).

2408. Nothing in this chapter limits or restricts any authority granted to a guardian or conservator pursuant to Article 11 (commencing with Section 2590) to administer the estate under that article.

Article 2. Support and Maintenance of Ward or Conservatee and Dependents

2420. (a) Subject to Section 2422, the guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of a ward or conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) and of those legally entitled to support, maintenance, or education from the ward or conservatee, taking into account the value of the estate and the condition of life of the persons required to be furnished such support, maintenance, or education.

(b) If the income from the estate is insufficient for the purpose described in subdivision (a), the guardian or conservator may sell or give a security interest in or other lien on any personal property of the estate, or sell or mortgage or give a deed of trust on any real property of the estate, as provided in this part.

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) satisfies the standard set out in that subdivision, and the payments are supported by proper vouchers or other proof satisfactory to the court, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

(d) Nothing in this section requires the guardian or conservator to obtain court authorization before making the payments authorized by this section, but nothing in this section dispenses with the need to obtain any court authorization otherwise required for a particular transaction.

(e) Nothing in this section precludes the guardian or conservator from seeking court authorization or instructions or approval and confirmation pursuant to Section 2403.

2421. (a) Upon petition of the guardian or conservator or the ward or conservatee, the court may authorize the guardian or conservator to pay to the ward or conservatee out of the estate a reasonable allowance for the personal use of the ward or conservatee. The allowance shall be in such amount as the court may determine to be for the best interests of the ward or conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The guardian or conservator is not required to account for

such allowance other than to establish that it has been paid to the ward or conservatee. The funds so paid are subject to the sole control of the ward or conservatee.

2422. (a) Upon petition of the guardian or conservator, the ward or conservatee, or any other interested person, the court may for good cause order the ward or conservatee to be wholly or partially supported, maintained, or educated out of the estate notwithstanding the existence of a third party legally obligated to provide such support, maintenance, or education. Such order may be made for a limited period of time. If not so limited, it continues in effect until modified or revoked.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2423. (a) Upon petition of the conservator, the conservatee, the spouse of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate or any part of such surplus income (not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee) to the spouse of the conservatee and to such relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. The court in ordering payments under this section may impose conditions if the court determines that the conservatee would have imposed such conditions if the conservatee had the capacity to act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and suitable support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee.

(2) The circumstances and condition of life to which the conservatee and the spouse and such relatives have been accustomed.

(3) The amount which the conservatee would in the judgment of the court have allowed the spouse and such relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Article 3. Payment of Debts and Expenses

2430. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income

of the estate:

(1) The debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2431 to the extent required by that section.

(2) The debts incurred by the ward or conservatee during the guardianship or conservatorship to provide the necessaries of life to the ward or conservatee, and to the spouse and minor children of the ward or conservatee, to the extent the debt is reasonable. The guardian or conservator may deduct the amount of any payments for such debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debt incurred by the conservatee during the conservatorship only if the debt satisfies the requirements of any order made under Chapter 4 (commencing with Section 1870) of Part 3.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization is required for payment of compensation to any of the following:

(i) The guardian or conservator of the person or estate or both.

(ii) An attorney for the guardian or conservator of the person or estate or both.

(iii) An attorney for the ward or conservatee.

(iv) An attorney for the estate.

(v) The public guardian for the costs and fee under Section 2902.

(b) The payments provided for by paragraph (3) of subdivision (a) are not required to be made to the extent such payments would impair the ability to provide necessaries of life to the conservatee and the spouse and minor children of the conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

2431. (a) Subject to subdivision (d), the guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a wage claim should be paid under this section.

(b) The guardian or conservator shall promptly pay wage claims for work done or services rendered for the ward or conservatee within 30 days prior to the date the petition for appointment of the guardian or conservator was filed. The payments made pursuant to this subdivision shall not exceed nine hundred dollars ($900) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to nine hundred dollars ($900), the money available shall be distributed among such claimants in proportion to the amount of their respective claims.

(c) After the payments referred to in subdivision (b) have been made, the guardian or conservator shall pay wage claims for work done or services rendered for the ward or conservatee within 90 days prior to the date the petition for appointment of the guardian or

conservator was filed, excluding the claims described in subdivision (b). The payments made pursuant to this subdivision shall not exceed one thousand one hundred dollars ($1,100) to each claimant. If there is insufficient money to pay all the claims described in this subdivision up to one thousand one hundred dollars ($1,100), the money available shall be distributed among such claimants in proportion to the amounts of their respective claims.

(d) The guardian or conservator may require sworn claims to be presented. If there is reasonable cause to believe that the claim is not valid, the guardian or conservator may refuse to pay the claim in whole or in part but shall pay any part thereof that is not disputed without prejudice to the claimant's rights as to the balance of the claim. The guardian or conservator shall withhold sufficient money to cover the disputed portion until the claimant has had a reasonable opportunity to establish the validity of the claim by bringing an action, either in the claimant's own name or through an assignee, against the guardian or conservator.

(e) If the guardian or conservator neglects or refuses to pay all or any portion of a claim which is not in dispute, the court shall order the guardian or conservator to do so upon the informal application of any wage claimant or the assignee or legal representative of such claimant.

Article 4. Estate Management Powers Generally

2450. (a) Unless this article specifically provides a proceeding to obtain court authorization or requires court authorization, the powers and duties set forth in this article may be exercised or performed by the guardian or conservator without court authorization, instruction, approval, or confirmation. Nothing in this subdivision precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(b) Upon petition of the ward or conservatee, a creditor, or any other interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a) as to a particular power or duty or as to particular powers or duties. Notice of the hearing on a petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2451. The guardian or conservator may collect debts and benefits due to the ward or conservatee and the estate.

2452. (a) The guardian or conservator may endorse and cash or deposit any checks, warrants, or drafts payable to the ward or conservatee which constitute property of the estate.

(b) If it appears likely that the estate will satisfy the conditions of subdivision (b) of Section 2628, the court may order that the guardian or conservator be the designated payee for public assistance payments received pursuant to Part 3 (commencing with

Section 11000) or Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code.

2453. The guardian or conservator may deposit money belonging to the estate in an insured account in a financial institution in this state. Unless otherwise provided by court order, the money deposited under this section may be withdrawn without order of court.

2453.5. (a) Subject to subdivision (b), where a trust company is a guardian or conservator and in the exercise of reasonable judgment deposits money of the estate in an account in any department of the corporation or association of which it is a part, it is chargeable with interest thereon at the rate of interest prevailing among banks of the locality on such deposits.

(b) Where it is to the advantage of the estate, the amount of cash that is reasonably necessary for orderly administration of the estate may be deposited in a checking account that does not bear interest which is maintained in a department of the corporation or association of which the trust company is a party.

2454. The guardian or conservator may deposit personal property of the estate with a trust company for safekeeping. Unless otherwise provided by court order, the personal property may be withdrawn without order of court.

2455. (a) A trust company serving as guardian or conservator may deposit securities that constitute all or part of the estate in a securities depository as provided in Section 775 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 2328 or Section 2454, the trust company may deposit the securities in a securities depository as provided in Section 775 of the Financial Code.

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

2456. (a) Upon application of the guardian or conservator, the court may, with or without notice, order that money or other personal property be deposited pursuant to Section 2453 or 2454, and be subject to withdrawal only upon authorization of the court.

(b) The guardian or conservator shall deliver a copy of the court order to the financial institution or trust company at the time the deposit is made.

(c) No financial institution or trust company accepting a deposit pursuant to Section 2453 or 2454 is on notice of the existence of an order that the money or other property is subject to withdrawal only upon authorization of the court unless it has actual notice of the order.

2457. The guardian or conservator may maintain in good condition and repair the home or other dwelling of either or both of the following:

(a) The ward or conservatee.

(b) The persons legally entitled to such maintenance and repair

from the ward or conservatee.

2458. With respect to a share of stock of a domestic or foreign corporation held in the estate, a membership in a nonprofit corporation held in the estate, or other property held in the estate, a guardian or conservator may do any one or more of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to the share, membership, or other property.

(b) Waive notice of a meeting or give consent to the holding of a meeting.

(c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

2459. (a) The guardian or conservator may obtain, continue, renew, modify, terminate, or otherwise deal in any of the following for the purpose of providing protection to the ward or conservatee or a person legally entitled to support from the ward or conservatee:

(1) Medical, hospital, and other health care policies, plans, or benefits.

(2) Disability policies, plans, or benefits.

(b) The conservator may continue in force any of the following in which the conservatee, or a person legally entitled to support, maintenance, or education from the conservatee, has or will have an interest:

(1) Life insurance policies, plans, or benefits.

(2) Annuity policies, plans, or benefits.

(3) Mutual fund and other dividend reinvestment plans.

(4) Retirement, profit-sharing, and employee welfare plans or benefits.

(c) The right to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights, or to take similar actions under any of the policies, plans, or benefits described in subdivision (b) may be exercised by the conservator only after authorization or direction by order of the court. To obtain such an order, the conservator or other interested person shall petition under Article 10 (commencing with Section 2580).

(d) Notwithstanding subdivision (c), unless the court otherwise orders, the conservator without authorization of the court may borrow on the loan value of an insurance policy to pay the current premiums to keep the policy in force if the conservatee followed that practice prior to the establishment of the conservatorship.

(e) The guardian may give the consent provided in Section 10112 of the Insurance Code without authorization of the court, but the guardian may use funds of the guardianship estate to effect or maintain in force a contract entered into by the ward under Section 10112 of the Insurance Code only after authorization by order of the court. To obtain such an order, the guardian, the ward, or any other interested person shall file a petition showing that it is in the best interest of the ward or of the guardianship estate to do so. Notice of the hearing on the petition shall be given for the period and in the

manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Nothing in this section limits the power of the guardian or conservator to make investments as otherwise authorized by this division.

2460. The guardian or conservator may insure:

(a) Property of the estate against loss or damage.

(b) The ward or conservatee, the guardian or conservator, and all or any part of the estate against liability to third persons.

2461. (a) The guardian or conservator may prepare, execute, and file tax returns for the ward or conservatee and for the estate and may exercise options and elections and claim exemptions for the ward or conservatee and for the estate under the applicable tax laws.

(b) Notwithstanding Section 2502, the guardian or conservator may pay, contest, and compromise taxes, penalties, and assessments upon the property of the estate and income and other taxes payable or claimed to be payable by the ward or conservatee or the estate.

2462. Subject to Section 2463, unless another person is appointed for that purpose, the guardian or conservator may:

(a) Commence and maintain actions and proceedings for the benefit of the ward or conservatee or the estate.

(b) Defend actions and proceedings against the ward or conservatee, the guardian or conservator, or the estate.

(c) File a petition commencing a case under Title 11 of the United States Code (Bankruptcy) on behalf of the ward or conservatee.

2463. (a) The guardian or conservator may bring an action against the other cotenants for partition of any property in which the ward or conservatee has an undivided interest if the court has first made an order authorizing the guardian or conservator to do so. The court may make such an order ex parte on a petition filed by the guardian or conservator.

(b) The guardian or conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled, if the court has made an order under Article 5 (commencing with Section 2500) authorizing the guardian or conservator to do so.

(c) If the ward or conservatee, or the guardian or conservator as such, is made a defendant in a partition action, the guardian or conservator may defend the action without authorization of the court.

2464. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the guardian or conservator may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the ward or conservatee.

(b) To obtain an order under this section, the guardian or conservator shall file a petition showing the advantage to the estate of accepting the deed. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The court shall make an order under this section only if the advantage to the estate of accepting the deed is shown by clear and convincing evidence.

2465. The guardian or conservator may dispose of or abandon valueless property.

2466. The guardian or conservator may advance the guardian's or conservator's own funds for the benefit of the ward or conservatee or the estate and may reimburse the advance out of the income and principal of the estate first available. With court authorization or approval, interest on the amount advanced may be allowed at the legal rate payable on judgments.

2467. (a) The guardian or conservator continues to have the duty of custody and conservation of the estate after the death of the ward or conservatee pending the delivery thereof to the personal representative of the ward's or conservatee's estate or other disposition according to law.

(b) The guardian or conservator has such powers as are granted to a guardian or conservator under this division as are necessary for the performance of the duty imposed by subdivision (a).

Article 5. Compromise of Claims and Actions; Extension, Renewal, or Modification of Obligations

2500. (a) Unless this article or some other applicable statute requires court authorization or approval, if it is to the advantage of the estate, the guardian or conservator may do any of the following without court authorization, instruction, approval, or confirmation:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the ward or conservatee, the guardian or conservator, or the estate, including the giving of a covenant not to sue.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the ward or conservatee or the estate.

(b) Nothing in this section precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(c) Upon petition of the ward or conservatee, a creditor, or any interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a). Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2501. (a) Except as provided in subdivision (b), court approval

is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property.

(2) An interest in real property or a lien or encumbrance on real property.

(3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the guardian or conservator without prior court approval may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed five thousand dollars ($5,000) a month and the term does not exceed two years.

(2) Where the lease is from month to month, regardless of the amount of the rental.

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

(Amended by Stats. 1990, Ch. 710, Sec 10. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

2501. (a) Except as provided in subdivision (b), court approval is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property

(2) An interest in real property or a lien or encumbrance on real property.

(3) An option to purchase real property or an interest in real property

(b) If it is to the advantage of the estate, the guardian or conservator without court approval may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed two years.

(2) Where the lease is from month to month, regardless of the amount of the rental

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised

2502. Court approval is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars ($25,000).

2503. Court approval is required for any of the following:

(a) A compromise or settlement of a claim by the ward or conservatee against the guardian or conservator or against the attorney for the guardian or conservator, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the guardian or conservator, or of the attorney for the guardian or conservator, owing to or running in favor of the

ward or conservatee or the estate.

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including but not limited to the spouse or parent of the ward or the spouse, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

2506. Where approval of the court in which the guardianship or conservatorship proceeding is pending is required under this article, the guardian or conservator shall file a petition with the court showing the advantage of the compromise, settlement, extension, renewal, or modification to the ward or conservatee and the estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2507. Notwithstanding Sections 2500 to 2506, inclusive:

(a) Whenever another statute requires, provides a procedure for, or dispenses with court approval of a compromise, settlement, extension, renewal, or modification, the provisions of that statute govern any case to which that statute applies.

(b) Whenever another statute provides that a compromise or settlement of an administrative proceeding is not valid unless approved in such proceeding, the approval is governed by that statute, and approval in the guardianship or conservatorship

proceeding is not required.

Article 6. Conveyance or Transfer of Property Claimed to Belong to Ward or Conservatee or Other Person

2520. (a) The guardian or conservator or any claimant may file a petition requesting that the court make an order under this article in any of the following cases:

(1) Where the conservatee is bound by a contract in writing to convey real property or to transfer personal property, executed by the conservatee while competent or executed by the conservatee's predecessor in interest, and the contract is one that can be specifically enforced.

(2) Where the ward has succeeded to the interest of a person bound by a contract in writing to convey real property or to transfer personal property, and the contract is one that can be specifically enforced.

(3) Where the guardian or conservator or the ward or conservatee is in possession of, or holds title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(4) Where the ward or conservatee has a claim to real or personal property title to or possession of which is held by another.

(b) The petition shall set forth facts upon which the claim is based.

2521. (a) At least 30 days prior to the day of the hearing, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on all of the following persons:

(1) The guardian or conservator.

(2) The ward or conservatee.

(3) Each person claiming an interest in, or having title to or possession of, the property.

(b) Except for those persons given notice pursuant to subdivision (a), notice of the hearing also shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The court may not shorten the time for giving the notice of hearing under this section.

2522. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of these purposes.

2524. Any person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if such objection be established, the court shall not grant the petition.

2525. (a) Except as provided in subdivision (b), if a civil action

is pending with respect to the subject matter of a petition filed pursuant to this article and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action.

(b) The court need not abate the petition if the court determines that the civil action was filed for the purpose of delay.

2526. The court shall not grant a petition under this article if the court determines that the matter should be determined by a civil action.

2527. Except as provided in Sections 2524, 2525, and 2526, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the guardian or conservator or other person having title to or possession of the property to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

2528. (a) The guardian or conservator or other person ordered to execute a conveyance or transfer under Section 2527 shall execute the conveyance or transfer according to the terms of the order.

(b) After entry of an order that the guardian or conservator or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

Article 7. Sales

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.

2541. The guardian or conservator may sell real or personal property of the estate in any of the following cases:

(a) Where the income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the

ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) or of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) Where the sale is necessary to pay the debts referred to in Sections 2430 and 2431.

(c) Where the sale is for the advantage, benefit, and best interest of (1) the ward or conservatee, (2) the estate, or (3) the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee.

2542. (a) All sales shall be for cash or for part cash and part deferred payments. Except as otherwise provided in Sections 2544 and 2545, the terms of sale are subject to the approval of the court.

(b) If real property is sold for part deferred payments, the guardian or conservator shall take the note of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure payment of the note. The mortgage or deed of trust shall be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve.

(c) If real or personal property of the estate sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the sale, the note and deed of trust or mortgage may be made to the ward or conservatee and the other owner or owners.

2543. (a) If estate property is required or permitted to be sold, the guardian or conservator may:

(1) Use discretion as to which property to sell first.

(2) Sell the entire interest of the estate in the property or any lesser interest therein.

(3) Sell the property either at public auction or private sale.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative, other than the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7.

(c) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) Where posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) Where posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) In any case where posting of notice is ordered by the court.

2544. (a) Except as specifically limited by order of the court, subject to Section 2541, the guardian or conservator may sell securities without authorization, confirmation, or direction of the court if any of the following conditions is satisfied:

(1) The securities are to be sold on an established stock or bond exchange.

(2) The securities to be sold are securities designated as a national market system security on an interdealer quotation system or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(b) Section 2543 does not apply to sales under this section.

2545. (a) Subject to subdivisions (b) and (c) and to Section 2541, the guardian or conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed five thousand dollars ($5,000).

(c) A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made under this section only if:

(1) In the case of a guardianship, the ward is under the age of 14 or, if 14 years of age or over, consents to the sale or exchange.

(2) In the case of a conservatorship, the conservatee either (i) consents to the sale or exchange or (ii) the conservatee does not have legal capacity to give such consent.

(d) Failure of the guardian or conservator to observe the limitations of subdivision (b) or (c) does not invalidate the title of, or impose any liability upon, a third person who acts in good faith and without actual notice of the lack of authority of the guardian or conservator.

(e) Subdivision (b) of Section 2543 does not apply to sales under this section.

2547. The guardian or conservator shall apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, shall be managed as the other property of the estate.

2548. No action for the recovery of any property sold by a guardian or conservator may be maintained by the ward or conservatee or by any person claiming under the ward or conservatee unless commenced within the later of the following times:

(a) Three years after the termination of the guardianship or conservatorship.

(b) When a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years

after the removal thereof.

Article 8. Notes, Mortgages, Leases, Conveyances, and Exchanges

2550. Except as otherwise provided by statute, a guardian or conservator may borrow money, give security, lease, convey, or exchange property of the estate, or engage in any other transaction under this article only after authorization by order of the court. Such an order may be obtained in the manner provided in this article.

2551. (a) In any case described in Section 2541 or Section 2552, the guardian or conservator, after authorization by order of the court, may borrow money upon a note, either unsecured or to be secured by a security interest or other lien on the personal property of the estate or any part thereof or to be secured by a mortgage or deed of trust on the real property of the estate or any part thereof. The guardian or conservator shall apply the money to the purpose specified in the order.

(b) To obtain an order under this section, the guardian or conservator, the ward or conservatee, or any other interested person may file a petition with the court. The petition shall state the purpose for which the order is sought, the necessity for or advantage to accrue from the order, the amount of money proposed to be borrowed, the rate of interest to be paid, the length of time the note is to run, and a general description of the property proposed to be mortgaged or subjected to a deed of trust or other lien. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The court may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary. If the required showing is made, the court may make an order authorizing the transaction.

The court in its order may do any one or more of the following:

(1) Order that the amount specified in the petition, or a lesser amount, be borrowed.

(2) Prescribe the maximum rate of interest and the period of the loan.

(3) Require that the interest and the whole or any part of the principal be paid from time to time out of the estate or any part thereof.

(4) Require that the personal property used as security or any buildings on real property to be mortgaged or subjected to the deed of trust be insured for the further security of the lender and that the premiums be paid out of the estate.

(5) Specify the purpose for which the money to be borrowed is to be applied.

(6) Prescribe such other terms and conditions concerning the transaction as the court determines to be to the advantage of the estate.

(d) The note and the mortgage or deed of trust, if any, shall be signed by the guardian or conservator.

(e) Jurisdiction of the court to administer the estate of the ward or conservatee is effectual to vest the court with jurisdiction to make the order for the note and for the security interest, lien, mortgage, or deed of trust. This jurisdiction shall conclusively inure to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns. No omission, error, or irregularity in the proceedings shall impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given pursuant to an order under this section.

(f) Upon any foreclosure or sale under a security interest, lien, mortgage, or deed of trust described in subdivision (a), if the proceeds of the sale of the encumbered property are insufficient to pay the note, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency may be had or allowed against the ward or conservatee or the estate.

2552. (a) The guardian or conservator may give a security interest or other lien upon the personal property of the estate or any part thereof or a mortgage or deed of trust upon the real property of the estate or any part thereof, after authorization by order of the court as provided in Section 2551, for any of the following purposes:

(1) To pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on property of the estate.

(2) To improve, use, operate, or preserve the property proposed to be mortgaged or subjected to a deed of trust, or some part thereof.

(b) If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, upon a showing that it would be to the advantage of the estate to borrow money to improve, use, operate, or preserve the property jointly with the owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the guardian or conservator, after authorization by order of the court as provided in Section 2551, may join with the owners of the other interests in the borrowing of money and the execution of a joint and several note and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note. The note may be for such sum as is required for the purpose.

(c) No omission, error, or irregularity in the proceedings under this section shall impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given pursuant to an order made under this section.

2552.5. For the purpose of this article, if a lease gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

2553. (a) Except as provided in Section 2555, leases may be

executed by the guardian or conservator with respect to the property of the estate only after authorization by order of the court.

(b) To obtain an order under this section, the guardian or conservator or any interested person may file a petition with the court. The petition shall state (1) a general description of the property proposed to be leased, (2) the term, rental, and general conditions of the proposed lease, and (3) the advantage to the estate to accrue from giving the lease. If the lease is proposed to be for a term longer than 10 years, the petition shall also state facts showing the need for the longer lease and its advantage to the estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) At the hearing, the court shall entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms. If the court is satisfied that it will be to the advantage of the estate, the court shall make an order authorizing the guardian or conservator to make the lease to the person and on the terms and conditions stated in the order. The court shall not make an order authorizing the guardian or conservator to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the guardian or conservator.

(d) Jurisdiction of the court to administer the estate of the ward or conservatee is effectual to vest the court with jurisdiction to make the order for the lease. This jurisdiction shall conclusively inure to the benefit of the lessee and the lessee's heirs and assigns. No omission, error, or irregularity in the proceedings shall impair or invalidate the proceedings or the lease made pursuant to an order made under this article.

2554. (a) An order authorizing the execution of a lease shall set forth the minimum rental or royalty or both and the period of the lease, which shall be for such time as the court may authorize.

(b) The order may authorize other terms and conditions, including, with respect to a lease for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, any one or more of the following:

(1) A provision for the payment of rental and royalty to a depositary.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for a community oil lease or pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the ward or conservatee less than the entire ownership in the property, the order may authorize the lease to provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by such lease.

(d) If the lease is for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, the court may authorize that the lease be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances or geothermal energy are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

2555. If it is to the advantage of the estate, the guardian or conservator may lease, as lessor, real property of the estate without authorization of the court in either of the following cases:

(a) Where the rental does not exceed five thousand dollars ($5,000) a month and the term does not exceed two years.

(b) Where the lease is from month to month, regardless of the amount of the rental.

(Amended by Stats. 1990, Ch. 710, Sec. 11 Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

2555. If it is to the advantage of the estate, the guardian or conservator may lease, as lessor, real property of the estate without authorization of the court in either of the following cases.

(a) Where the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed two years

(b) Where the lease is from month to month, regardless of the amount of the rental

2556. (a) If it is for the advantage, benefit, and best interests of the estate and those interested therein, the guardian or conservator, after authorization by order of the court, may do any of the following either with or without consideration:

(1) Dedicate or convey real property of the estate for any purpose to any of the following:

(A) This state or any public entity in this state.

(B) The United States or any agency or instrumentality of the United States.

(2) Dedicate or convey an easement over any real property of the estate to any person for any purpose.

(3) Convey, release, or relinquish to this state or any public entity in this state any access rights to any street, highway, or freeway from

any real property of the estate.

(4) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under paragraph (1), (2), or (3) by the owner of property subject to the lien.

(b) To obtain an order under this section, the guardian or conservator or any other interested person shall file a petition with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2557. (a) Whenever it is for the advantage, benefit, and best interests of the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee, the guardian or conservator, after authorization by order of the court, may exchange any property of the estate for other property upon such terms and conditions as may be prescribed by the court. The terms and conditions prescribed by the court may include the payment or receipt of part cash by the guardian or conservator.

(b) To obtain an order under this section, the guardian or conservator or any interested person shall file a petition containing all of the following:

(1) A description of the property.

(2) The terms and conditions of the proposed exchange.

(3) A showing that the proposed exchange is for the advantage, benefit, and best interests of the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee.

(c) Except as provided in subdivision (d), notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) If the petition is for authorization to exchange stocks, bonds, or other securities as defined in Section 10200 for different stocks, bonds, or other securities, the court, upon a showing of good cause, may order that the notice be given for a shorter period or be dispensed with.

(e) After authorization by order of the court, the guardian or conservator may execute the conveyance or transfer to the person with whom the exchange is made to effectuate the exchange.

(f) No omission, error, or irregularity in the proceedings under this section shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this section.

Article 9. Investments and Purchase of Property

2570. (a) The guardian or conservator, after authorization by order of the court, may invest the proceeds of sales and any other money of the estate as provided in the order.

(b) To obtain an order of the court authorizing a transaction under subdivision (a) of this section, the guardian or conservator, the ward or conservatee, or any other interested person may file a

petition with the court.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. The court may order that the notice be dispensed with.

(d) The court may require such proof of the fairness and feasibility of the transaction as the court determines is necessary.

(e) If the required showing is made, the court may make an order authorizing the transaction and may prescribe in the order the terms and conditions upon which the transaction shall be made.

2571. When authorized by order of the court under Section 2570, the guardian or conservator may purchase:

(a) Real property in this state as a home for the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee.

(b) Real property as a home for those legally entitled to support and maintenance from the ward or conservatee if such purchase is for the advantage, benefit, and best interest of the ward or conservatee and of those legally entitled to support and maintenance from the ward or conservatee.

2572. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

2573. An order authorizing investment in bonds issued by any state or of any city, county, city and county, political subdivision, public corporation, district, or special district of any state may authorize the guardian or conservator to select from among bonds issued by any such issuer, without specifying any particular issuer or issue of bonds, if the type of issuer is designated in general terms and the order specifies as to such bonds a minimum quality rating as shown in a recognized investment service, a minimum interest coupon rate, a minimum yield to maturity, and the date of maturity within a five-year range.

2574. (a) Subject to subdivision (b), the guardian or conservator, without authorization of the court, may invest funds of the estate pursuant to this section in:

(1) Direct obligations of the United States, or of the State of California, maturing not later than five years from the date of making the investment.

(2) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date.

(3) Securities listed on an established stock or bond exchange in

the United States which are purchased on such exchange.

(4) Eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

(5) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(6) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short-term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

(b) In making and retaining investments made under this section, the guardian or conservator shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

(c) Nothing in this section limits the authority of the guardian or conservator to seek court authorization for any investment, or to make other investments with court authorization, as provided in this division.

Article 10. Substituted Judgment

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such purposes, and to such charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life.

(6) Exercising options of the conservatee to purchase or exchange securities or other property.

(7) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(10) Exercising the right of the conservatee (i) to revoke a revocable trust or (ii) to surrender the right to revoke a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust (i) evidences an intent to reserve the right of revocation exclusively to the conservatee, (ii) provides expressly that a conservator may not revoke the trust, or (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.

(11) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

2581. Notice of the hearing of the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) or Part 1 to all of the following:

(a) The persons required to be given notice under Chapter 3 (commencing with Section 1460) of Part 1.

(b) The persons required to be named in a petition for the appointment of a conservator.

(c) So far as is known to the petitioner, beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice.

(d) So far as is known to the petitioner, the persons who, if the conservatee were to die immediately, would be the conservatee's heirs under the laws of intestate succession unless the court for good cause dispenses with such notice.

(e) Such other persons as the court may order.

2582. The court may make an order authorizing or requiring the proposed action under this article only if the court determines all of

the following:

(a) The conservatee either (1) is not opposed to the proposed action or (2) if opposed to the proposed action, lacks legal capacity for the proposed action.

(b) Either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the conservatee and for the support of those legally entitled to support, maintenance, and education from the conservatee, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the conservatee and those legally entitled to support, maintenance, and education from the conservatee.

2583. In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, including but not limited to:

(a) Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.

(b) The past donative declarations, practices, and conduct of the conservatee.

(c) The traits of the conservatee.

(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

(e) The wishes of the conservatee.

(f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).

(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective devisees or heirs of the conservatee, and the prospective donees.

(h) The value, liquidity, and productiveness of the estate.

(i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

(j) Changes of tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.

(k) The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

2584. After hearing, the court, in its discretion, may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or

take other action as provided in the court's order.

2585. Nothing in this article imposes any duty on the conservator to propose any action under this article, and the conservator is not liable for failure to propose any action under this article.

2586. (a) As used in this section, "estate plan of the conservatee" includes but is not limited to the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer-client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver such document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person. If such disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

Article 11. Independent Exercise of Powers

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to such requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity.

2591. The powers referred to in Section 2590 are:

(a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.

(b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(c) The power to grant and take options.

(d) The power to sell at public or private sale real or personal property of the estate.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(*l*) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

(q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

2592. (a) The guardian or conservator may apply by petition for an order under Section 2590.

(b) The application for the order may be included in the petition for the appointment of the guardian or conservator. In such case, the notice of hearing on the petition shall include a statement that the petition includes an application for the grant of one or more powers under this article and shall list the specific power or powers applied for.

(c) If the application for the order is made by petition filed after the filing of the petition for the appointment of the guardian or conservator, notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2593. (a) The court, on its own motion or on petition of any interested person, when it appears to be for the best interests of the ward or conservatee or the estate, may withdraw any or all of the powers previously granted pursuant to this article or may impose restrictions, conditions, and limitations on the exercise of such powers by the guardian or conservator.

(b) Notice of the hearing on a petition under this section shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2594. (a) When a power or powers are granted pursuant to this article, the letters of guardianship or conservatorship shall state the power or powers so granted and the restrictions, conditions, or limitations, if any, prescribed in the order and shall refer to this article.

(b) When a power or powers are granted by a subsequent order, new letters shall be issued in the form described in subdivision (a).

(c) If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters shall be issued accordingly.

2595. (a) The grant of a power or powers pursuant to this article does not affect the right of the guardian or conservator to petition the court as provided in Section 2403 or to petition the court under other provisions of this code, as to a particular transaction or matter, in the same manner as if the power or powers had not been granted pursuant to this article.

(b) Where authority exists under other provisions of law, either general or specific, for the guardian or conservator to do any act or to enter into any transaction described in Section 2591, the guardian or conservator may proceed under such other provisions of law and is not required to obtain authority under this article.

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means (1) the conservator of the estate or (2) the limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator.

(b) "Guardian" means the guardian of the estate.

2601. (a) Unless otherwise ordered by the court, if the ward or conservatee is employed at any time during the continuance of the guardianship or conservatorship:

(1) The wages or salaries for such employment are not a part of the estate and the guardian or conservator is not accountable for such wages or salaries.

(2) The wages or salaries for such employment shall be paid to the ward or conservatee and are subject to his or her control to the same extent as if the guardianship or conservatorship did not exist.

(b) Any court order referred to in subdivision (a) is binding upon the employer only after notice of the order has been received by the employer.

Article 2. Inventory and Appraisal of Estate

2610. (a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets that a personal representative could appraise under Section 8901.

(d) If a conservatorship is initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) and no sale of the estate will occur:

(1) The inventory and appraisal required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.

2611. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the guardian or conservator shall mail a copy of the inventory and appraisal filed under Section 2610 to the director of the appropriate department at the director's office in Sacramento not later than 15 days after the inventory and appraisal is filed with the court. Compliance with this section is not required if an unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with respect to the ward or conservatee.

2612. If a timely request is made, the clerk of court shall mail a copy of the inventory and appraisal filed under Section 2610 to the county assessor.

2613. Whenever any property of the ward or conservatee is discovered that was not included in the inventory, or whenever any other property is received by the ward or conservatee or by the guardian or conservator on behalf of the ward or conservatee (other than by the actions of the guardian or conservator in the investment and management of the estate), the guardian or conservator shall file a supplemental inventory and appraisal for that property and like proceedings shall be followed with respect thereto as in the case of an original inventory, but the appraisal shall be made as of the date the property was so discovered or received.

2614. (a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) Notice of the hearing, together with a copy of the objections, shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the time set for the hearing.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

2614.5. (a) If the guardian or conservator fails to file an inventory and appraisal within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any interested person, the court shall order the guardian or conservator to file the inventory and appraisal within such time as the order prescribes or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisal as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto.

(c) The procedure provided in this section is optional and does not preclude the use of any other remedy or sanction when an inventory and appraisal is not timely filed.

2615. If a guardian or conservator fails to file any inventory required by this article within the time prescribed by law or by court order, the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, directly resulting from the failure timely to file the inventory. Damages awarded pursuant to this section are a personal liability of the guardian or conservator and a liability on the bond, if any.

Article 2.5. Examination Concerning Assets of Estate

2616. (a) A petition may be filed under this article by any one or more of the following:

(1) The guardian or conservator.

(2) The ward or conservatee.

(3) A creditor or other interested person, including persons having only an expectancy or prospective interest in the estate.

(b) Upon the filing of a petition under this article, the court may order that a citation be issued to a person to answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations made in the petition:

(1) The person has wrongfully taken, concealed, or disposed of property of the ward or conservatee.

(2) The person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the ward or conservatee to property.

(B) An instrument in writing belonging to the ward or conservatee.

(3) The person asserts a claim against the ward or conservatee or the estate.

(4) The estate asserts a claim against the person.

(c) If the citation requires the person to appear before the court, the court and the petitioner may examine the person under oath upon the matters recited in the petition.

(d) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

2617. Interrogatories may be put to a person cited to answer interrogatories under Section 2616. The interrogatories and answers shall be in writing. The answers shall be signed under penalty of perjury by the person cited. The interrogatories and answers shall be filed with the court.

2618. (a) At an examination, witnesses may be produced and examined on either side.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses, including reasonable attorney's fees, shall be charged against the petitioner or allowed out of the estate, in the discretion of the court.

2619. (a) On petition of the guardian or conservator, the court may issue a citation to a person who has possession or control of property in the estate of the ward or conservatee to appear before the court and make an account under oath of the property and the person's actions with respect to the property.

(b) Disobedience of a citation issued pursuant to this section may

be punished as a contempt of the court issuing the citation.

2619.5. A person who in bad faith has wrongfully taken, concealed, or disposed of property in the estate of the ward or conservatee is liable for twice the value of the property, recoverable in an action by the guardian or conservator for the benefit of the estate.

Article 3. Accounts

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance.

(b) The account shall state the period covered by the account and contain a summary showing all of the following:

(1) If the first account, the amount of the inventory and appraisal; if a subsequent account, the amount chargeable from the prior account.

(2) The amount of any supplemental inventory and appraisal filed within the period covered by the account.

(3) The amount of cash receipts, excluding amounts reported under paragraph (4).

(4) The gains on sales or other increases in assets, if any.

(5) The amount of cash disbursements, excluding amounts reported under paragraph (6).

(6) The losses on sales or other decreases in assets, if any.

(7) The amount of property on hand.

(c) The account shall contain itemized schedules showing receipts, disbursements, transactions, and balance of property on hand.

(d) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) Descriptions of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedules.

(2) Explanations of any unusual items appearing in the account.

(3) Any additional information required by the court.

(e) The petition requesting approval of the account may include additional requests for authorization, instruction, approval, or confirmation authorized by this division, including, but not limited to, a request for any order authorized under Chapter 8 (commencing with Section 2640).

(f) When an account is filed by or on behalf of two or more joint guardians or conservators, the court, in its discretion, may settle and allow the account upon the verification of any of them.

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.

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.

2621. Notice of the hearing on the account of the guardian or conservator shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If notice is required to be given to the Director of Mental Health or the Director of Developmental Services under Section 1461, the account shall not be settled or allowed unless notice has been given as provided in Section 1461.

2622. The ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any creditor or other interested person may file written objections to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

2623. The guardian or conservator shall be allowed all of the following:

(a) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).

(b) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(c) All reasonable disbursements made before appointment as guardian or conservator.

(d) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship but prior to the discharge of the guardian or conservator by the court.

(e) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

2624. In each account, the guardian or conservator shall show that, during the period covered by the account, all cash has been kept invested in interest bearing accounts or investments authorized by law except for such amounts of cash as are reasonably necessary for the orderly administration of the estate.

2625. Any sale or purchase of property or other transaction not previously authorized, approved, or confirmed by the court is subject to review by the court upon the next succeeding account of the guardian or conservator occurring after the transaction. Upon such account and review, the court may hold the guardian or conservator liable for any violation of duties in connection with the sale, purchase, or other transaction. Nothing in this section shall be construed to affect the validity of any sale or purchase or other transaction.

2626. If it appears upon the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements which are approved by the court, the court, upon settlement of the account, shall order the proceeding terminated and the guardian or conservator forthwith discharged unless the court determines that there is reason to continue the proceeding.

2627. (a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release which is valid if obtained fairly and without undue influence.

(b) Except as otherwise provided by this code, a guardian is not entitled to a discharge until one year after the ward has attained majority.

2628. (a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(b) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this article so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than five thousand dollars ($5,000).

(2) The income of the estate for each month of the accounting

period, exclusive of public benefit payments, was less than three hundred dollars ($300).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(c) Notwithstanding that the court has made an order under subdivision (b), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this article or the court on its own motion may make such an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(d) For any accounting period during which all of the conditions of subdivision (b) are not satisfied, the guardian or conservator shall present the account as otherwise required by this article.

2629. (a) Subject to the provisions of this section, if the guardian or conservator does not file a required account, the court shall compel the account by punishment for contempt.

(b) A citation shall be issued, served, and returned, requiring a guardian or conservator who does not file a required account to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be removed from office.

(c) If the guardian or conservator does not appear and file a required account after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

Article 4. Accounts on Termination of Relationship

2630. The termination of the relationship of guardian and ward or conservator and conservatee by the death of either, by the ward attaining majority, by the determination of the court that the guardianship or conservatorship is no longer necessary, by the removal or resignation of the guardian or conservator, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian or conservator or for any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts or upon the termination of the relationship.

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the disposition of the remains of the deceased ward or conservatee, and for unpaid court-approved attorney's fees, and may pay the unpaid expenses of the guardianship or conservatorship accruing before or after the death of the ward or conservatee, in full or in part, to the extent reasonable, from any personal property of the deceased ward or conservatee which is under the control of the guardian or conservator.

(b) If after payment of expenses under subdivision (a), the total market value of the remaining estate of the decedent does not exceed the amount determined under Section 13100, the guardian or conservator may petition the court for an order permitting the guardian or conservator to liquidate the decedent's estate. The guardian or conservator may petition even though there is a will of the decedent in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the petition need be given. If the order is granted, the guardian or conservator may sell personal property of the decedent, withdraw money of the decedent in an account in a financial institution, and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and a person having possession or control shall pay or deliver the money or property to the guardian or conservator.

(c) When a claim for expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it shall be presented to the court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(d) After payment of expenses, the guardian or conservator may transfer any remaining property as provided in Division 8 (commencing with Section 13000). For this purpose, the value of the property of the deceased ward or conservatee shall be determined after the deduction of the expenses so paid.

2632. (a) As used in this section:

(1) "Incapacitated" means lack of capacity to serve as guardian or conservator.

(2) "Legal representative" means the personal representative of a deceased guardian or conservator or the conservator of the estate of an incapacitated guardian or conservator.

(b) If a guardian or conservator dies or becomes incapacitated and a legal representative is appointed for the deceased or incapacitated guardian or conservator, the legal representative shall, not later than 60 days after appointment unless the court extends the time, file an account of the administration of the deceased or incapacitated guardian or conservator.

(c) If a guardian or conservator dies or becomes incapacitated and no legal representative is appointed for the deceased or incapacitated guardian or conservator, or if the guardian or conservator absconds, the court may compel the attorney for the deceased, incapacitated, or absconding guardian or conservator or the attorney of record in the guardianship or conservatorship proceeding to file an account of the administration of the deceased, incapacitated, or absconding guardian or conservator.

(d) The legal representative or attorney shall exercise reasonable diligence in preparing an account under this section. Verification of the account may be made on information and belief. The court shall

settle the account as in other cases. The court shall allow reasonable compensation to the legal representative or the attorney for preparing the account. The amount allowed shall be a charge against the estate that was being administered by the deceased, incapacitated, or absconding guardian or conservator. Legal services for which compensation shall be allowed to the attorney under this subdivision include those services rendered by any paralegal performing the services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

2633. Subject to Section 2630, where the guardianship or conservatorship terminates before the inventory of the estate has been filed, the court, in its discretion and upon such notice as the court may require, may make an order that the guardian or conservator need not file the inventory and appraisal and that the guardian or conservator shall file an account covering only those assets of the estate of which the guardian or conservator has possession or control.

CHAPTER 8. COMPENSATION OF GUARDIAN, CONSERVATOR, AND ATTORNEY

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered in that capacity to that time.

(2) The guardian or conservator of the person for services rendered in that capacity to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) such compensation requested in the petition as the court determines is just and reasonable to the guardian or conservator of the estate for services rendered in that capacity or to the guardian or conservator of the person for services rendered in that capacity, or to both, and (2) such compensation requested in the petition as the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation so allowed shall thereupon be charged to the estate. Legal services for which the attorney may apply to the court for compensation include those services rendered by any paralegal performing the legal services under the direction and supervision of

an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time in such capacity.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed shall thereupon be charged against the estate.

2642. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, an attorney who has rendered legal services to the guardian or conservator of the person or estate or both, including services rendered under Section 2632, may petition the court for an order fixing and allowing compensation for such services rendered to that time. Legal services for which the attorney may petition the court for an order fixing and allowing compensation under this subdivision include those services rendered by any paralegal performing the legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged against the estate.

2643. (a) On petition by the guardian or conservator of the person or estate or both, the court may by order authorize periodic payments on account to any one or more of the following persons for the services rendered by such person during the period covered by each payment:

(1) The guardian of the person.

(2) The guardian of the estate.

(3) The conservator of the person.

(4) The conservator of the estate.

(5) The attorney for the guardian or conservator of the person or estate or both.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The petition shall describe the services to be rendered on a periodic basis and the reason why authority to make periodic payments is requested. In fixing the amount of the periodic payment, the court shall take into account the services to be rendered on a periodic basis and the reasonable value of such services. The guardian or conservator of the estate may make the periodic payments authorized by the order only if the services described in the petition are actually rendered. The payments made pursuant to the order are subject to review by the court upon the next

succeeding account of the guardian or conservator of the estate to determine that the services were actually rendered and that the amount paid on account was not unreasonable, and the court shall make an appropriate order if the court determines that the amount paid on account was either excessive or inadequate in view of the services actually rendered.

2644. (a) Where it is to the advantage, benefit, and best interest of the ward or conservatee or the estate, the guardian or conservator of the estate may contract with an attorney for a contingent fee for the attorney's services in representing the ward or conservatee or the estate in connection with a matter that is of a type that is customarily the subject of a contingent fee contract, but such a contract is valid only if (1) the contract is made pursuant to an order of the court authorizing the guardian or conservator to execute the contract or (2) the contract is approved by order of the court.

(b) To obtain an order under this section, the guardian or conservator shall file a petition with the court showing the advantage, benefit, and best interest to the ward or conservatee or the estate of the contingent fee contract. A copy of the contingent fee contract shall be attached to the petition.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) As used in this section, "court" includes either of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) Where the contract is in connection with a matter in litigation, the court in which the litigation is pending.

CHAPTER 9. REMOVAL OR RESIGNATION

Article 1. Removal of Guardian or Conservator

2650. A guardian or conservator may be removed for any of the following causes:

(a) Failure to use ordinary care and diligence in the management of the estate.

(b) Failure to file an inventory or an account within the time allowed by law or by court order.

(c) Continued failure to perform duties or incapacity to perform duties suitably.

(d) Conviction of a felony, whether before or after appointment as guardian or conservator.

(e) Gross immorality.

(f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties.

(g) In the case of a guardian of the person or a conservator of the

person, acting in violation of any provision of Section 2356.

(h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.

(i) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if the guardian was nominated under Section 1500 or 1501, the court shall take that fact into consideration.

2651. The ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or any interested person may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

2652. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2653. (a) The guardian or conservator, the ward or conservatee, the spouse or any relative or friend of the ward or conservatee, and any interested person, may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the account as ordered, the court may compel the account pursuant to Section 2629.

2654. Whenever it appears that the ward or conservatee or the estate may suffer loss or injury during the time required for notice and hearing under this article, the court, on its own motion or on petition, may do either or both of the following:

(a) Suspend the powers of the guardian or conservator pending notice and hearing to such extent as the court deems necessary.

(b) Compel the guardian or conservator to surrender the estate to a custodian designated by the court.

2655. (a) A guardian or conservator may be removed from office if the guardian or conservator is found in contempt for disobeying an order of the court.

(b) Notwithstanding any other provision of this article, a guardian or conservator may be removed from office under subdivision (a) by a court order reciting the facts and without further showing or notice.

Article 2. Resignation of Guardian or Conservator

2660. A guardian or conservator may at any time file with the court a petition tendering the resignation of the guardian or conservator. Notice of the hearing on the petition shall be given for

the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. The court shall allow such resignation when it appears proper, to take effect at such time as the court shall fix, and may make any order as may be necessary to deal with the guardianship or conservatorship during the period prior to the appointment of a new guardian or conservator and the settlement of the accounts of the resigning guardian or conservator.

CHAPTER 9.5. APPOINTMENT OF SUCCESSOR GUARDIAN OR CONSERVATOR

Article 1. Appointment of Successor Guardian

2670. When for any reason a vacancy occurs in the office of guardian, the court may appoint a successor guardian, after notice and hearing as in the case of an original appointment of a guardian.

Article 2. Appointment of Successor Conservator

2680. When for any reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator in the manner provided in this article.

2681. A petition for appointment of a successor conservator may be filed by any of the following:

(a) The conservatee.

(b) The spouse of the conservatee.

(c) A relative of the conservatee.

(d) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(e) Any other interested person or friend of the conservatee.

2682. (a) The petition shall request that a successor conservator be appointed for the person or estate, or both, and shall specify the name and address of the proposed successor conservator and the name and address of the conservatee.

(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 conservatee within the second degree.

(c) If the petition is filed by one other than the conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the conservatee.

(d) If the 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 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 conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

2683. (a) At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons:

(1) The conservatee at the address stated in the petition.

(2) The spouse, if any, of the conservatee at the address stated in the petition.

(3) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If notice is required by Section 1461.5 to be given to the Veterans Administration, notice shall be mailed as so required.

2684. Unless the petition states that the conservatee will be present at the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the person proposed as successor conservator, and the conservatee's right to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.

(d) If the conservatee is not represented by legal counsel, determine whether the conservatee wishes to be represented by legal counsel and, if so, determine the name of an attorney the conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(e) 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 conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(f) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be

appointed.

(g) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (f) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the conservatee.

(3) Such other persons as the court orders.

2685. If the conservatee is present at the hearing, prior to making an order appointing a successor conservator the court shall do all of the following:

(a) Inform the conservatee of the nature and purpose of the proceeding.

(b) Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, and, if not represented by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court so informs the conservatee, the court shall consult the conservatee to determine the conservatee's opinion concerning the question of who should be appointed as successor conservator.

2686. If the petition states that the conservatee will be present at the hearing and the conservatee fails to appear at the hearing, the court shall continue the hearing and direct the court investigator to perform the duties set forth in Section 2684.

2687. The conservatee, the spouse or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

2688. (a) The court shall determine the question of who should be appointed as successor conservator according to the provisions of Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(b) The order appointing the successor conservator shall contain, among other things, the names, addresses and telephone numbers of the successor conservator, the conservatee's attorney, if any, and the court investigator, if any.

2689. If the conservatee is an "absentee" as defined in Section 1403:

(a) The petition for appointment of a successor conservator shall contain the matters required by Section 1841 in addition to the matters required by Section 2682.

(b) Notice of the hearing shall be given as provided by Section 1842 in addition to the requirements of Section 2683, except that notice need not be given to the conservatee.

(c) An interview and report by the court investigator is not required.

CHAPTER 10. REQUESTS FOR SPECIAL NOTICE

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward if over 14 years of age or the conservatee, the spouse or any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the court clerk a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) Special notice may be requested of any one or more of the following matters:

(1) Petitions filed in the guardianship or conservatorship proceeding.

(2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals.

(3) Accounts of the guardian or conservator.

(4) Proceedings for the final termination of the guardianship or conservatorship proceeding.

(d) Special notice may be requested of:

(1) Any one or more of the matters in subdivision (c) by describing the matter or matters.

(2) All the matters in subdivision (c) by referring generally to "the matters described in subdivision (c) of Section 2700 of the Probate Code" or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the guardian or conservator or to the attorney for the guardian or conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request and is deemed to be withdrawn at a date three years from the date it was served under subdivision (e) of Section 2700.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

2702. (a) Unless the court makes an order dispensing with the notice, if a request has been made pursuant to this chapter for special notice of a hearing, the person filing the petition, account, or other paper shall give written notice of the filing, together with a copy of the petition, account, or other paper, and the time and place set for the hearing, by mail to the person named in the request at the address set forth in the request, at least 15 days before the time set for the hearing.

(b) If a request has been made pursuant to this chapter for special notice of the filing of an inventory and appraisal of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisal or other paper shall be mailed not later than

15 days after the inventory and appraisal or other paper is filed with the court.

CHAPTER 11. APPEALS

2750. An appeal may be taken from the making of, or the refusal to make, a judgment or order doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Article 5 (commencing with Section 2500) (compromise of claim or action or extension, renewal, or modification of obligation) or Article 6 (commencing with Section 2520) (conveyance or transfer of property claimed to belong to ward or conservatee or other person) of Chapter 6.

(d) Settling an account of a guardian or conservator.

(e) Authorizing and instructing a guardian or conservator or approving and confirming acts of a guardian or conservator.

(f) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(g) Directing or allowing payment of a debt or claim or fixing, directing, authorizing, or allowing payment of attorney's fees.

(h) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a guardian or conservator.

(i) Directing, authorizing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(j) Granting or denying a petition under Section 2423 (payment of surplus income to relatives of conservatee) or under Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(k) Transferring the property of the guardianship or conservatorship estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

(*l*) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3.

(m) Allowing or denying a petition of the guardian or conservator to resign.

(n) Removing or discharging the guardian or conservator.

(o) Discharging a surety on the bond of a guardian or conservator.

(p) Appointing a successor guardian or conservator.

2751. (a) Except as provided in subdivisions (b) and (c), an appeal pursuant to Section 2750 stays the operation and effect of the judgment or order.

(b) Notwithstanding that an appeal is taken from the judgment or

order, for the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian or conservator of the person or estate, or both, to exercise the powers, from time to time, as though no appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal.

(c) In proceedings for guardianship of the person, the provisions of Section 917.7 of the Code of Civil Procedure apply.

2752. If an order appointing a guardian or conservator is reversed on appeal for error, all lawful acts of the guardian or conservator performed after issuance of letters and prior to the reversal are as valid as though the order were affirmed.

CHAPTER 12. TRANSFER OF PERSONAL PROPERTY OUT OF STATE

2800. As used in this chapter, "foreign guardian or conservator" means a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

2801. Subject to the limitations and requirements of this chapter, the court in which the guardianship of the estate or conservatorship of the estate is pending may order the transfer of some or all of the personal property of the estate to a foreign guardian or conservator in another jurisdiction outside this state where the ward or conservatee resides at the time the petition for the order authorizing the transfer is filed.

2802. A petition for an order authorizing a transfer may be filed by any of the following:

(a) The guardian of the estate or the conservator of the estate.

(b) The ward or conservatee.

(c) A foreign guardian or conservator.

2803. The petition shall set forth all of the following:

(a) The name and address of:

(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as is known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the personal property sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the property. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner in which and by whom the foreign

guardian or conservator was appointed.

(f) A general statement of the qualifications of the foreign guardian or conservator.

(g) The amount of bond, if any, of the foreign guardian or conservator.

(h) A general statement of the nature and value of the property of the ward or conservatee already under the management or control of the foreign guardian or conservator.

(i) The name of the court having jurisdiction of such foreign guardian or conservator or of the accounts of such foreign guardian or conservator or, if none, the court in which a proceeding may be had with respect to the guardianship or conservatorship if the property is transferred.

(j) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

(k) A statement of the reasons for the transfer.

2804. At least 30 days before the hearing, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to each person required to be listed in the petition at the address stated in the petition.

2805. Any of the following may appear and file written objections to the petition:

(a) Any person required to be listed in the petition.

(b) Any creditor of the ward or conservatee or of the estate

(c) The spouse or any relative or friend of the ward or conservatee.

(d) Any other interested person.

2806. The court may grant the petition and order the guardian or conservator to transfer some or all of the personal property of the estate to the foreign guardian or conservator if the court determines all of the following:

(a) The transfer will promote the best interests of the ward or conservatee and the estate.

(b) The substantial rights of creditors or claimants in this state will not be materially impaired by the transfer.

(c) The foreign guardian or conservator is qualified, willing, and able to administer the property to be transferred.

2807. If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just.

2808. (a) If the court's order provides for the transfer of all of the property of the estate to the foreign guardian or conservator, the court, upon settlement of the final account, shall order the guardianship of the estate or the conservatorship of the estate terminated upon the filing with the clerk of the court of a receipt for the property executed by the foreign guardian or conservator.

(b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the petition for discharge, together with a notice of the hearing thereon, shall be mailed at least 30 days before the date of the hearing to all persons required to be listed in

the petition for transfer, including the foreign guardian or conservator.

PART 5. PUBLIC GUARDIAN

CHAPTER 1. TAKING TEMPORARY POSSESSION OR CONTROL OF PROPERTY

2900. The public guardian may take possession or control of property of a person domiciled in the county that is subject to loss, injury, waste, or misappropriation if the public guardian determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian intends to apply for appointment.

2901. (a) A public guardian who is authorized to take possession or control of property under this chapter may issue a written certification of that fact. The written certification is effective for five days after the date of issuance.

(b) The public guardian may record a copy of the written certification in any county in which is located real property of which the public guardian is authorized to take possession or control under this chapter.

(c) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee.

(2) Surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification:

(1) Constitutes sufficient acquittance for providing information and for surrendering property of the proposed ward or conservatee.

(2) Fully discharges the financial institution or other person from any liability for any act or omission of the public guardian with respect to the property.

2902. A public guardian who takes possession or control of property pursuant to this chapter is entitled to reasonable costs incurred for the preservation of the property, together with reasonable compensation for services, in case of the subsequent appointment of another person as guardian or conservator of the estate. The costs and compensation are a proper and legal charge against the estate of the ward or conservatee.

2903. This chapter applies only to possession or control of property by a public guardian on or after July 1, 1989. Possession or control of property by a public guardian before July 1, 1989, is governed by the applicable law in effect before July 1, 1989, notwithstanding its repeal by Chapter 1199 of the Statutes of 1988.

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

2920. If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

2921. An application of the public guardian for guardianship or conservatorship of the person, the estate, or the person and estate, of a person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services may not be granted without the written consent of the department having jurisdiction of the person.

2922. If the public guardian is appointed as guardian or conservator:

(a) Letters shall be issued in the same manner and by the same proceedings as letters are issued to other persons. Letters may be issued to "the public guardian" of the county without naming the public guardian.

(b) The official bond and oath of the public guardian are in lieu of the guardian or conservator's bond and oath on the grant of letters.

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

2940. All funds coming into the custody of the public guardian shall be deposited or invested in the same manner and subject to the same terms and conditions as deposit or investment by the public administrator of money in an estate pursuant to Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7.

2941. The public guardian may, if necessary and in the public guardian's discretion, employ private attorneys where the cost of employment can be defrayed out of estate funds or where satisfactory pro bono or contingency fee arrangements can be made.

2942. The public guardian has a claim against the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk, in the amount the court determines is just and reasonable.

(c) A bond fee in the amount of twenty-five dollars ($25) plus one-fourth of 1 percent of the amount of an estate greater than ten thousand dollars ($10,000). The amount charged shall be deposited in the county treasury. This subdivision does not apply if the conservatee is eligible for Social Security Supplemental Income Benefits.

2943. Notwithstanding subdivision (c) of Section 2610, the property described in the inventory may be appraised by the public guardian and need not be appraised by a probate referee if the public guardian files with the inventory an appraisal showing that the estimated value of the property in the estate, including cash items, does not exceed ten thousand dollars ($10,000).

2944. The public guardian is not liable for failing to take possession or control of property that is beyond the ability of the public guardian to possess or control.

PART 6. MANAGEMENT OR DISPOSITION OF COMMUNITY PROPERTY WHERE SPOUSE LACKS LEGAL CAPACITY

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

3000. Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this part.

3002. "Community property" means community real property and community personal property, including, but not limited to, a community property business that is or was under the primary management and control of one of the spouses, but does not include community property in a revocable trust described in Section 5110.150 of the Civil Code.

3004. "Conservator" means conservator of the estate, or limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator, and includes the guardian of the estate of a married minor.

3006. "Conservatorship estate" includes the guardianship estate of a married minor.

3008. "Conservatorship proceeding" means conservatorship of the estate proceeding and includes a guardianship of the estate proceeding of a married minor.

3012. (a) Unless the spouse lacks legal capacity under the

applicable standard prescribed in subdivision (b), a spouse has legal capacity to:

(1) Manage and control community property, including legal capacity to dispose of community property.

(2) Join in or consent to a transaction involving community property.

(b) A spouse lacks legal capacity to:

(1) Manage and control, including legal capacity to dispose of, community property if the spouse is substantially unable to manage or control the community property.

(2) Join in or consent to a transaction involving community property if the spouse does not have legal capacity for the particular transaction measured by principles of law otherwise applicable to the particular transaction.

(3) Do any act, or engage in any activity, described in paragraph (1) or (2) if the spouse has a conservator.

(c) Nothing in this section shall be construed to deny a spouse, whether or not lacking legal capacity, any of the following:

(1) The right to control an allowance provided under Section 2421.

(2) The right to control wages or salary to the extent provided in Section 2601.

(3) The right to make a will.

(4) The right to enter into transactions to the extent reasonable to provide the necessities of life to the spouse, the other spouse, and the minor children of the spouses.

Article 2. General Provisions

3020. (a) The proceeds, rents, issues, and profits of community property dealt with or disposed of under this division, and any property taken in exchange for the community property or acquired with the proceeds, are community property.

(b) Except as provided in this part for the management, control, and disposition of community property, nothing in this division alters the rights of the spouses in community property or in the proceeds, rents, issues, or profits of community property.

3023. (a) Except as provided in subdivisions (b) and (c), where one or both of the spouses has a conservator, the court in which any of the conservatorship proceedings is pending may hear and determine whether property is community property or the separate property of either spouse when the issue is raised in any proceeding under this division.

(b) Any person having or claiming title to or an interest in the property, at or prior to the hearing on the issue, may object to the hearing if the court is not the proper court under any other provision of law for the trial of an action to determine the issue. If the objection is established, the court shall not hear and determine the issue.

(c) Except as provided in subdivision (d), if a civil action is

pending with respect to the issue and jurisdiction has been obtained in the court in which the civil action is pending, upon request of any party to the civil action, the court shall abate the hearing until the conclusion of the civil action.

(d) The court need not abate the hearing if the court determines that the civil action was filed for the purpose of delay.

3024. Appeals may be taken from orders and judgments under this part as in a civil action.

CHAPTER 2. MANAGEMENT, CONTROL, AND DISPOSITION

Article 1. Management, Control, and Disposition Generally

3051. (a) Subject to Section 3071, the right of a spouse to manage and control community property, including the right to dispose of community property, is not affected by the lack or alleged lack of legal capacity of the other spouse.

(b) Except as provided in subdivision (c), if one spouse has legal capacity and the other has a conservator:

(1) The spouse who has legal capacity has the exclusive management and control of the community property including, subject to Section 3071, the exclusive power to dispose of the community property.

(2) The community property is not part of the conservatorship estate.

(c) If one spouse has legal capacity and the other has a conservator, the spouse having legal capacity may consent, by a writing filed in the proceeding, that all or part of the community property be included in and, subject to Section 3071, be managed, controlled, and disposed of as a part of the conservatorship estate.

(d) Except as provided in subdivision (e), if both spouses have conservators, an undivided one-half interest in the community property shall be included in and, subject to Section 3071, be managed, controlled, and disposed of as a part of the conservatorship estate of each spouse.

(e) If both spouses have conservators, when authorized by order of the court in which any of the conservatorship proceedings is pending, the conservators may agree in writing that all or specific parts of the community property shall be included in the conservatorship estate of one or the other of the spouses and, subject to Section 3071, be managed, controlled, and disposed of as a part of the conservatorship estate of that spouse.

3054. When community property is included or proposed to be included in the conservatorship estate of a spouse, the court in which the conservatorship proceeding is pending, upon its own motion or upon petition of a spouse having legal capacity or the conservator of either spouse and upon such notice to such persons as the court prescribes, may do any of the following:

(a) Determine that the inclusion of some or all of the community

property that is proposed to be included in the conservatorship estate would not be in the best interest of the spouses or their estates and order that such property not be included.

(b) Permit revocation of a written consent for inclusion of property in the conservatorship estate, with or without terms or conditions.

(c) Determine that the continued inclusion of some or all of the community property in the conservatorship estate is not in the best interest of the spouses or their estates and order that the inclusion of such property in the conservatorship estate be terminated, with or without terms or conditions.

(d) Make such other orders as may be appropriate for the orderly administration of the conservatorship estate or to protect the interests of the spouses.

3055. (a) If consent is given under this article that community property be included in the conservatorship estate of a spouse, the death of either spouse terminates the consent.

(b) If a spouse consents under this article that community property be included in the conservatorship estate of the other spouse:

(1) Subject to paragraph (2), the subsequent lack of legal capacity of the spouse giving the consent has no effect on the inclusion of the property in the conservatorship estate of the other spouse.

(2) The appointment of a conservator for the spouse giving the consent terminates the consent.

3056. Except as otherwise provided in this part and subject to Section 3071, when community property is included in a conservatorship estate under this article for the purpose of management, control, and disposition, the conservator has the same powers and duties with respect to such property as the conservator has with respect to other property of the conservatorship estate.

3057. (a) Where a spouse lacks legal capacity and does not have a conservator, any interested person who has knowledge or reason to believe that the rights of such spouse in the community property are being prejudiced may bring an action on behalf of such spouse to enforce the duty of good faith in the management and control of the community property and to obtain such relief as may be appropriate.

(b) If one spouse has a conservator and the other spouse is managing or controlling community property, the conservator has the duty to keep reasonably informed concerning the management and control, including the disposition, of the community property. If the conservator has knowledge or reason to believe that the rights of the conservatee in the community property are being prejudiced, the conservator may bring an action on behalf of the conservatee to enforce the duty of good faith in the management and control of the community property and to obtain such relief as may be appropriate.

Article 2. Substitute for Joinder or Consent Requirements

3070. If the requirements of this article are satisfied with respect to a transaction described in Section 3071, the transaction is deemed to satisfy the joinder or consent requirements of the statute referred to in that section.

3071. (a) In case of a transaction for which the joinder or consent of both spouses is required by Section 5125 or 5127 of the Civil Code or by any other statute, if one or both spouses lacks legal capacity for the transaction, the requirement of joinder or consent shall be satisfied as provided in this section.

(b) Where one spouse has legal capacity for the transaction and the other spouse has a conservator, the requirement of joinder or consent is satisfied if both of the following are obtained:

(1) The joinder or consent of the spouse having legal capacity.

(2) The joinder or consent of the conservator of the other spouse given in compliance with Section 3072.

(c) Where both spouses have conservators, the joinder or consent requirement is satisfied by the joinder or consent of each such conservator given in compliance with Section 3072.

(d) In any case, the requirement of joinder or consent is satisfied if the transaction is authorized by an order of court obtained in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

3072. (a) Except as provided in subdivision (b), a conservator may join in or consent to a transaction under Section 3071 only after authorization by either of the following:

(1) An order of the court obtained in the conservatorship proceeding upon a petition filed pursuant to Section 2403 or under Article 7 (commencing with Section 2540) or 10 (commencing with Section 2580) of Chapter 6 of Part 4.

(2) An order of the court made in a proceeding pursuant to Chapter 3 (commencing with Section 3100).

(b) A conservator may consent without court authorization to a sale, conveyance, or encumbrance of community personal property requiring consent under subdivision (c) of Section 5125 of the Civil Code if the conservator could sell or transfer such property under Section 2545 without court authorization if the property were a part of the conservatorship estate.

3073. (a) The joinder or consent under Section 3071 of a spouse having legal capacity shall be in such manner as complies with Section 5125 or 5127 of the Civil Code or other statute that applies to the transaction.

(b) The joinder or consent under Section 3071 of a conservator shall be in the same manner as a spouse would join in or consent to the transaction under the statute that applies to the transaction except that the joinder or consent shall be executed by the conservator and shall refer to the court order, if one is required, authorizing the conservator to join in or consent to the transaction.

3074. Notwithstanding any other provision of this article, a

transaction that affects real property, entered into by a person acting in good faith and for a valuable consideration, is not affected by the fact that one or both spouses have conservators unless a notice of the establishment of the conservatorship or conservatorships, as the case may be, has been recorded prior to the transaction in the county in which the property is located.

Article 3. Enforcement of Support of Spouse Who Has Conservator

3080. If one spouse has a conservator and the other spouse has the management or control of community property, the conservator or conservatee, a relative or friend of the conservatee, or any interested person may file a petition under this article in the court in which the conservatorship proceeding is pending for an order requiring the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee as ordered by the court.

3081. (a) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(b) If the spouse who has the management or control of community property is not the conservator, the petitioner shall also cause notice of the hearing and a copy of the petition to be served on that spouse in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.

3082. Upon the filing of a petition under this article, the court may cite the spouse who has the management or control of community property to appear before the court, and the court and the petitioner may examine the spouse under oath concerning the community property and other matters relevant to the petition filed under this article. If the person so cited refuses to appear and submit to an examination, the court may proceed against the person as provided in Article 2 (commencing with Section 8870) of Chapter 2 of Part 3 of Division 7. Upon such examination, the court may make an order requiring the person cited to disclose his or her knowledge of the community property and other matters relevant to the petition filed under this article, and if the order is not complied with the court may proceed against the person as provided in Article 2 (commencing with Section 8870) of Chapter 2 of Part 3 of Division 7.

3083. In any proceeding under this article, the court may, after notice and hearing, order the spouse who has the management or control of community property to pay from the community property such amount as the court determines is necessary to the support and maintenance of the conservatee spouse pending the determination of the petition under this article. An order made pursuant to this section does not prejudice the rights of the spouses or other

interested parties with respect to any subsequent order which may be made under this article. Any order made under this section may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the petition to modify or revoke the order.

3084. When a petition is filed under this article, the spouse having the management or control of community property shall serve and file a current income and expense declaration and a current property declaration on the forms prescribed by the Judicial Council for use in family law proceedings.

3085. During the pendency of any proceeding under this article, the court, upon the application of the petitioner, may issue ex parte orders:

(a) Restraining the spouse having the management or control of community property from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.

(b) Requiring the spouse having the management or control of the community property to notify the petitioner of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

3086. Any person interested in the proceeding under this article may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of such purposes.

3087. In a proceeding under this article, the court may hear and determine whether property is community property or the separate property of either spouse if that issue is raised in the proceeding.

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee (including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

(1) The earning capacity and needs of each spouse.

(2) The obligations and assets, including the separate property, of each spouse.

(3) The duration of the marriage.

(4) The age and health of the spouses.

(5) The standard of living of the spouses.

(6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make

appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to such other person as is designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. Such order operates as an assignment and is binding upon any existing or future employer upon whom a copy of the order is served. The order shall be in the form for an order assigning salary or wages prescribed by the Judicial Council for use in family law proceedings. The employer may deduct 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 execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Section 4701 of the Civil Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of such employee. As used in this subdivision, "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code. The provisions of this subdivision apply to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that such moneys 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.

(f) The court retains jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding under Title 3 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code, the court has jurisdiction to modify or vacate an order made under this section to

the same extent as it may modify or vacate an order made in a proceeding under that title.

3089. If the spouse who has the management or control of the community property refuses to comply with any order made under this article or an order made in a separate action to provide support for the conservatee spouse, upon request of the petitioner or other interested person, the court may, in its discretion, divide the community property and the quasi-community property of the spouses, as it exists at the time of division, equally in the same manner as where a marriage is dissolved. If the property is so divided, the property awarded to each spouse is the separate property of that spouse and the court shall order that the property awarded to the conservatee spouse be transferred or paid over to the conservator of the estate of that spouse to be included in the conservatorship estate and be managed, controlled, and disposed of as a part of the conservatorship estate. The fact that property has been divided pursuant to this section has no effect on the nature of property thereafter acquired by the spouses, and the determination whether the thereafter-acquired property is community or separate property shall be made without regard to the fact that property has been divided pursuant to this section.

3090. Any order of the court made under this article may be enforced by the court by execution, the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

3091. Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this article.

3092. Nothing in this article affects or limits the right of the conservator or any interested person to institute an action against any person to enforce the duty otherwise imposed by law to support the spouse having a conservator. This article is permissive and in addition to any other procedure otherwise available to enforce the obligation of support.

CHAPTER 3. PROCEEDING FOR PARTICULAR TRANSACTION

Article 1. General Provisions

3100. As used in this chapter, "transaction" means a transaction that involves community real or personal property, tangible or intangible, or an interest therein or a lien or encumbrance thereon, including, but not limited to, those transactions with respect thereto as are listed in Section 3102.

3101. (a) A proceeding may be brought under this chapter for a court order authorizing a proposed transaction, whether or not the proposed transaction is one that otherwise would require the joinder or consent of both spouses, if both of the following conditions are satisfied:

(1) One of the spouses is alleged to lack legal capacity for the proposed transaction, whether or not that spouse has a conservator.

(2) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(b) A proceeding may be brought under this chapter for a court order declaring that one or both spouses has legal capacity for a proposed transaction.

(c) One proceeding may be brought under this chapter under both subdivision (a) and subdivision (b).

(d) In a proceeding under this chapter, the court may determine whether the property that is the subject of the proposed transaction is community property or the separate property of either spouse, but such determination shall not be made in the proceeding under this chapter if the court determines that the interest of justice requires that the determination be made in a civil action.

(e) This chapter is permissive and cumulative for the transactions to which it applies.

3102. The transactions that may be the subject of a proceeding under this chapter include, but are not limited to:

(a) Sale, conveyance, assignment, transfer, exchange, conveyance pursuant to a preexisting contract, encumbrance by security interest, deed of trust, mortgage, or otherwise, lease, including but not limited to a lease for the exploration for and production of oil, gas, minerals, or other substances, or unitization or pooling with other property for or in connection with such exploration and production.

(b) Assignment, transfer, or conveyance, in whole or in part, in compromise or settlement of an indebtedness, demand, or proceeding to which the property may be subject.

(c) Dedication or conveyance, with or without consideration, of any of the following:

(1) The property to this state or any public entity in this state, or to the United States or any agency or instrumentality of the United States, for any purpose.

(2) An easement over the property to any person for any purpose.

(d) Conveyance, release, or relinquishment to this state or any public entity in this state, with or without consideration, of any access rights to a street, highway, or freeway from the property.

(e) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under subdivision (c) or (d) by the owner of property subject to the lien.

(f) Conveyance or transfer, without consideration, to provide gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses.

Article 2. Commencement of Proceeding

3110. (a) A proceeding under this chapter shall be brought by a petition filed in the superior court.

(b) Except as provided in subdivision (d), if the proceeding affects real property or a lien or encumbrance on real property, the proper county for commencement of the proceeding is either of the following:

(1) The county in which the real property, or some part thereof, is located.

(2) The county in which a conservatorship proceeding of one of the spouses is pending.

(c) Except as provided in subdivision (d), if the proceeding affects only personal property, other than a lien or encumbrance on real property, the proper county for commencement of the proceeding is any of the following:

(1) The county in which one or both of the spouses resides at the time the petition is filed.

(2) The county in which a conservatorship proceeding of one of the spouses is pending.

(3) Such other county as may be in the best interests of the spouses.

(d) If both spouses have conservators and the conservatorship proceedings are pending in the same county, the proper county for the commencement of the proceeding, whether the proceeding affects real or personal property, is the county in which the conservatorship proceedings are pending.

3111. (a) Except as provided in subdivision (b), any of the following persons may file, or join in, a petition under this chapter:

(1) Either spouse, whether or not the spouse has legal capacity.

(2) The conservator of either spouse.

(b) If the petition requests approval of a proposed transaction, at least one of the petitioners shall be either a conservator or a spouse having legal capacity for the transaction.

3112. (a) If a petitioning spouse is one whose legal capacity for the proposed transaction is to be determined in the proceeding, the court may do any of the following:

(1) Permit the spouse to appear without a representative.

(2) Appoint a guardian ad litem for the spouse.

(3) Take such other action as the circumstances warrant.

(b) If a petitioning spouse lacks legal capacity for the proposed transaction, the court may do either of the following:

(1) Require the spouse to be represented by the conservator of the spouse.

(2) Appoint a guardian ad litem for the spouse.

3113. A proceeding may be brought under this chapter by the conservator of a spouse, or by a spouse having legal capacity for the proposed transaction, without the necessity of appointing a conservator for the other spouse.

Article 3. Petition

3120. (a) Several proposed transactions may be included in one petition and proceeding under this chapter.

(b) The petition may contain inconsistent allegations and may request relief in the alternative.

3121. The petition shall set forth all of the following information:

(a) The name, age, and residence of each spouse.

(b) If one or both spouses is alleged to lack legal capacity for the proposed transaction, a statement that the spouse has a conservator or a statement of the facts upon which the allegation is based.

(c) If there is a conservator of a spouse, the name and address of the conservator, the county in which the conservatorship proceeding is pending, and the court number of the proceeding.

(d) If a spouse alleged to lack legal capacity for the proposed transaction 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, the name and address of the institution.

(e) The names and addresses of the adult relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction, if known to the petitioner.

(f) A sufficient description of the property that is the subject of the proposed transaction.

(g) An allegation that the property is community property.

(h) The estimated value of the property.

(i) The terms and conditions of the proposed transaction, including the names of all parties thereto.

(j) The relief requested.

3122. If the proceeding is brought for a court order authorizing a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, all of the following:

(a) An allegation that one of the spouses has a conservator or facts establishing lack of legal capacity of the spouse for the proposed transaction.

(b) An allegation that the other spouse has legal capacity for the proposed transaction or has a conservator.

(c) An allegation that each spouse either: (1) joins in or consents to the proposed transaction, (2) has a conservator, or (3) is substantially unable to manage his or her financial resources or resist fraud or undue influence.

(d) Facts that may be relied upon to show that the authorization sought is for one or more of the following purposes:

(1) The advantage, benefit, or best interests of the spouses or their estates.

(2) The care and support of either spouse or of such persons as either spouse may be legally obligated to support.

(3) The payment of taxes, interest, or other encumbrances or charges for the protection and preservation of the community

property.

(4) The providing of gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses.

3123. If the proceeding is brought for a court order declaring that one or both spouses has legal capacity for a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, an allegation of the legal capacity of such spouse or spouses for the proposed transaction.

Article 4. Citation and Notice of Hearing

3130. (a) Except as provided in subdivision (b), upon the filing of the petition, the clerk shall issue a citation to each nonpetitioning spouse alleged to lack legal capacity for the proposed transaction, setting forth the time and place of hearing. The citation and a copy of the petition shall be served upon the spouse at least 15 days before the hearing.

(b) Unless the court otherwise orders, if a spouse alleged to lack legal capacity for the proposed transaction has a conservator, no citation to the spouse need be issued, and the petitioner shall cause a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to be served on the conservator at least 15 days before the hearing.

(c) Service under this section shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

3131. (a) At least 15 days before the hearing on the petition, the petitioner shall cause a notice of the time and place of the hearing and a copy of the petition to be served upon any nonpetitioning spouse not alleged to lack legal capacity for the proposed transaction.

(b) Service under subdivision (a) shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

(c) At least 15 days before the hearing on the petition, the petitioner shall mail a notice of the time and place of the hearing on the petition to the adult relatives named in the petition at the addresses set forth in the petition.

Article 5. Hearing and Order

3140. (a) A conservator served pursuant to this article shall, and the Director of Mental Health or the Director of Developmental

Services given notice pursuant to Section 1461 may, appear at the hearing and represent a spouse alleged to lack legal capacity for the proposed transaction.

(b) If a spouse alleged to lack legal capacity is not otherwise represented, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.

(c) If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if such appointment is made, Section 1472 applies.

(d) Except as provided in subdivision (c), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.

3141. (a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the spouse shall be produced at the hearing unless unable to attend the hearing.

(b) If the spouse is not able to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the spouse is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.

(c) Emotional or psychological instability is not good cause for absence of the spouse from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage.

3142. (a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the court, before commencement of the hearing on the merits, shall inform the spouse of all of the following:

(1) A determination of lack of legal capacity for the proposed transaction may result in approval of the proposed transaction.

(2) The spouse has the right to legal counsel of the spouse's own choosing, including the right to have legal counsel appointed by the court if unable to retain legal counsel.

(b) This section does not apply if the spouse is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 3141 and any showing required by Section 3141 has been made.

3143. (a) If the petition requests that the court make an order declaring a spouse to have legal capacity for the proposed transaction and the court determines that the spouse has legal capacity for the proposed transaction, the court shall so order.

(b) If the petition alleges that a spouse having no conservator lacks legal capacity for the proposed transaction and the court

determines that the spouse has legal capacity for the transaction, the court shall make an order so declaring.

3144. (a) The court may authorize the proposed transaction if the court determines all of the following:

(1) The property that is the subject of the proposed transaction is community property of the spouses.

(2) One of the spouses then has a conservator or otherwise lacks legal capacity for the proposed transaction.

(3) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(4) Each of the spouses either (i) joins in or consents to the proposed transaction, (ii) has a conservator, or (iii) is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved by isolated incidents of negligence or improvidence.

(5) The proposed transaction is one that should be authorized under this chapter.

(b) If the proposed transaction is to provide gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses, the court may authorize the transaction under this chapter only if the transaction is one that the court would authorize under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship.

(c) If the court determines under subdivision (a) that the transaction should be authorized, the court shall so order and may authorize the petitioner to do and perform all acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

(d) In an order authorizing a transaction, the court may prescribe such terms and conditions as the court in its discretion determines appropriate, including but not limited to requiring joinder or consent of another person.

3145. A court determination pursuant to this chapter that a spouse lacks legal capacity for the proposed transaction affects the legal capacity of the spouse for that transaction alone and has no effect on the legal capacity of the spouse for any other purpose.

Article 6. Consummation of Transaction

3150. (a) Unless the court for good cause dispenses with the bond, the court shall require the petitioner to give a bond, in the amount fixed by the court, conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction to be received by the petitioner only as the court may by order direct.

(b) Unless the court for good cause fixes the amount of the bond in a lesser amount, if given by an admitted surety insurer, the bond shall be in an amount not less than the value of the personal property

(including cash and any notes) to be received by the petitioner, as determined by the court.

(c) If the sureties on the bond are personal sureties, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an admitted surety insurer.

(d) Section 2328 is applicable to the bond of the petitioner under this chapter.

3151. (a) The petitioner shall, upon receipt of the consideration therefor, execute, acknowledge, and deliver any necessary instruments or documents as directed by the court, setting forth therein that they are made by authority of the order.

(b) The petitioner shall cause a certified copy of the order to be recorded in the office of the recorder of each county in which is located any real property affected by the order or any real property upon which there is a lien or encumbrance affected by the order.

(c) If a sale is made upon a credit pursuant to the order, the petitioner shall take the note of the person to whom the sale is made for the amount of the unpaid balance of the purchase money, with such security for the payment thereof as the court shall by order approve. The note shall be made payable to the petitioner or, if the petition was made by a conservator, to the petitioner as conservator.

3152. A sale, conveyance, assignment, transfer, exchange, encumbrance, security interest, mortgage, deed of trust, lease, dedication, release, or relinquishment, and any instrument or document, made pursuant to the court's order, is as valid and effectual as if the property affected thereby were the sole and absolute property of the person making it.

3153. Notes, encumbrances, security interests, mortgages, leases, or deeds of trust, executed as provided in this chapter by a petitioning conservator create no personal liability against the conservator so executing, unless the conservator is one of the spouses and then only to the extent that personal liability would have resulted had both spouses had legal capacity for the transaction and joined in the execution.

3154. (a) If any party to the transaction, other than the petitioner, does not consummate a transaction authorized by the court, the court, on application of the petitioner, after such notice to the parties to the transaction as the court directs, may vacate the order authorizing the transaction.

(b) If the order authorized the sale or encumbrance of property, the petitioner may by supplemental petition apply to the court for an order authorizing any other sale or encumbrance of the property to the advantage, benefit, or best interests of the spouses or their estates. The supplemental petition and a notice of the time and place of the hearing shall be served and mailed as provided in Article 4 (commencing with Section 3130) except that (1) no further citation shall be issued and (2) a copy of the supplemental petition and a notice of the time and place of the hearing shall be served upon any person who has appeared as representative of a nonpetitioning

spouse or upon counsel of record for a nonpetitioning spouse or as the court may otherwise direct.

(c) If it appears to the court that the other sale or encumbrance is to the advantage, benefit, or best interests of the spouses or their estates and that the request in the supplemental petition that the transaction be authorized should be granted, the court may so order and may authorize the petitioner to do and perform acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

PART 7. AUTHORIZATION OF MEDICAL TREATMENT FOR ADULT WITHOUT CONSERVATOR

3200. As used in this part, "patient" means an adult who does not have a conservator of the person and who is in need of medical treatment.

3201. If a patient requires medical treatment for an existing or continuing medical condition and the patient is unable to give an informed consent to such medical treatment, a petition may be filed under this part for an order authorizing such medical treatment and authorizing the petitioner to give consent to such treatment on behalf of the patient.

3202. The petition may be filed in the superior court of any of the following counties:

(a) The county in which the patient resides.

(b) The county in which the patient is temporarily living.

(c) Such other county as may be in the best interests of the patient.

3203. A petition may be filed by any of the following:

(a) The patient.

(b) The spouse of the patient.

(c) A relative or friend of the patient or other interested person.

(d) The patient's physician.

(e) A person acting on behalf of the medical facility in which the patient is located if the patient is in a medical facility.

(f) The public guardian or such other county officer as is designated by the board of supervisors of the county in which the patient is located or resides or is temporarily living.

3204. The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(a) The nature of the medical condition of the patient which requires treatment.

(b) The recommended course of medical treatment which is considered to be medically appropriate.

(c) The threat to the health of the patient if authorization for the recommended course of treatment is delayed or denied by the court.

(d) The predictable or probable outcome of the recommended course of treatment.

(e) The medically available alternatives, if any, to the course of treatment recommended.

(f) The efforts made to obtain an informed consent from the patient.

(g) If the petition is filed by a person on behalf of a medical facility, the name of the person to be designated to give consent to the recommended course of treatment on behalf of the patient.

3205. Upon the filing of the petition, the court shall determine the name of the attorney the patient has retained to represent the patient in the proceeding under this part or the name of the attorney the patient plans to retain for that purpose. If the patient has not retained an attorney and does not plan to retain one, the court shall appoint the public defender or private counsel under Section 1471 to consult with and represent the patient at the hearing on the petition and, if such appointment is made, Section 1472 applies.

3206. (a) Notice of the time and place of the hearing on the petition shall be given for the period and in the manner prescribed by order of court. In determining the period of notice to be required, the court shall take into account (1) the existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court and (2) the desirability, where the condition of the patient permits, of giving adequate notice to all interested persons.

(b) A notice of the time and place of the hearing or a copy of the order prescribing the time and place of the hearing, and a copy of the petition, shall be given, as prescribed in the order, to all of the following:

(1) The patient.

(2) The attorney for the patient.

(3) Such other persons, if any, as the court in its discretion may require in the order, which may include the spouse of the patient and any known relatives of the patient within the second degree.

3207. Notwithstanding Section 3206, the matter presented by the petition may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the patient so stipulate and further stipulate that there remains no issue of fact to be determined.

3208. (a) The court may make an order authorizing the recommended course of medical treatment of the patient and designating a person to give consent to the recommended course of medical treatment on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the patient requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the patient.

(3) The patient is unable to give an informed consent to the

recommended course of treatment.

(b) If the patient has the capacity to give an informed consent to the recommended course of medical treatment but refuses to do so, the court is not authorized to make an order under this part. If an order has been made under this part, the order shall be revoked if the court determines that the patient has recovered the capacity to give informed consent to the recommended course of medical treatment. Until revoked or modified, the order is effective authorization of the course of medical treatment.

(Amended by Stats. 1990, Ch. 710, Sec 12. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

3208 (a) The court may make an order authorizing the recommended course of medical treatment of the patient and designating a person to give consent to the recommended course of medical treatment on behalf of the patient if the court determines from the evidence all of the following·

(1) The existing or continuing medical condition of the patient requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical health of the patient

(3) The patient is unable to give an informed consent to the recommended course of treatment.

(b) If the patient has the capacity to give an informed consent to the recommended course of medical treatment but refuses to do so, the court is not authorized to make an order under this part If an order has been made under this part, the order shall be revoked if the court determines that the patient has recovered the capacity to give informed consent to the recommended course of medical treatment. Until revoked or modified, the order is effective authorization of the course of medical treatment

3209. The court in which the petition is filed has continuing jurisdiction to revoke or modify an order made under this part upon a petition filed, noticed, and heard in the same manner as an original petition filed under this part.

3210. (a) This part is supplemental and alternative to other procedures or methods for obtaining medical consent.

(b) Nothing in this part limits the providing of medical treatment in an emergency case in which the medical treatment is required because (1) such treatment is required for the alleviation of severe pain or (2) the patient has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

3211. (a) No person may be placed in a mental health treatment facility under the provisions of this part.

(b) No experimental drug as defined in Section 26668 of the Health and Safety Code may be prescribed for or administered to any person under this part.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on any person under this part.

(d) No person may be sterilized under this part.

(e) The provisions of this part are subject to any of the following instruments if valid and effective:

(1) A directive of the patient under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

(2) A power of attorney for health care, whether or not a durable power of attorney.

PART 8. OTHER PROTECTIVE PROCEEDINGS

CHAPTER 1. GENERAL PROVISIONS

3300. A parent who receives any money or property belonging to a minor under any provision of this part shall account to the minor for the money or other property when the minor reaches the age of majority.

3301. Whenever it appears to the satisfaction of the superior court by application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in this state and that such minor has no parent or guardian available to give such consent, the court may summarily grant such consent. No fee may be charged for proceedings under this section.

3302. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved by the court in which the litigation is pending or the court having jurisdiction of the guardianship estate of the minor, upon petition of any interested person. When no such contract is approved and a judgment is recovered by or on behalf of a minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

3303. Nothing in this part limits the provisions of the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

CHAPTER 2. MONEY OR PROPERTY BELONGING TO MINOR

Article 1. Total Estate Not in Excess of $5,000

3400. (a) As used in this article, "total estate of the minor" includes both the money and other property belonging to the minor and the money and other property belonging to the guardianship estate, if any, of the minor.

(b) In computing the "total estate of the minor" for the purposes of this article, all of the following shall be deducted:

(1) "Custodial property" held pursuant to the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

3401. (a) Where a minor does not have a guardian of the estate, money or other property belonging to the minor may be paid or delivered to a parent of the minor entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if the requirements of subdivision (c) are satisfied.

(b) Where the minor has a guardian of the estate, all the money and other property belonging to the guardianship estate may be paid or delivered to a parent entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if the requirements of subdivision (c) are satisfied.

(c) This section applies only if both of the following requirements are satisfied:

(1) The total estate of the minor, including the money and other property to be paid or delivered to the parent, does not exceed five thousand dollars ($5,000) in value.

(2) The parent to whom the money or other property is to be paid or delivered gives the person making the payment or delivery written assurance, verified by the oath of such parent, that the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed five thousand dollars ($5,000) in value.

3402. The written receipt of the parent giving the written assurance under Section 3401 shall be an acquittance of the person making the payment of money or delivery of other property pursuant to this article.

Article 2. Property in the Form of Money

3410. (a) This article applies to both of the following cases:

(1) Where the minor has a guardian of the estate and the sole asset of the guardianship estate is money.

(2) Where the minor has no guardian of the estate and there is money belonging to the minor.

(b) This article does not apply to, and there shall be excluded in computing "money belonging to the minor" for the purpose of this article, all of the following:

(1) Money or property which is or will be held as "custodial property" pursuant to the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(2) Any money or property subject to court order pursuant to subdivision (c) of Section 3602 or Article 2 (commencing with Section 3610) of Chapter 4.

3411. (a) A parent of a minor entitled to custody of the minor, the guardian of the estate of the minor, or the person holding the money belonging to the minor may file a petition requesting that the court make an order under this article.

(b) The petition shall be filed in the superior court of:

(1) The county where the minor resides if the minor has no guardian of the estate.

(2) The county having jurisdiction of the guardianship estate if the minor has a guardian of the estate.

3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money of the guardianship estate does not exceed twenty thousand dollars ($20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

(d) If the money of the guardianship estate does not exceed five thousand dollars ($5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money belonging to the minor does not exceed twenty thousand dollars ($20,000), that the money be held on such other conditions as the court in its discretion determines to be in the best interests of the minor.

(d) If the money belonging to the minor does not exceed five thousand dollars ($5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

CHAPTER 3. COMPROMISE BY PARENT OF MINOR'S DISPUTED CLAIM

3500. (a) When a minor has a disputed claim for damages, money, or other property and does not have a guardian of the estate, the following persons have the right to compromise, or to execute a covenant not to sue on or a covenant not to enforce judgment on, the

claim, unless the claim is against such person or persons:

(1) Either parent if the parents of the minor are not living separate and apart.

(2) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.

(b) The compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court of either of the following counties:

(1) The county where the minor resides when the petition is filed.

(2) Any county where suit on the claim or matter properly could be brought.

(c) Any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Chapter 4 (commencing with Section 3600).

(d) A parent having the right to compromise the disputed claim of the minor under this section may execute a full release and satisfaction, or execute a covenant not to sue on or a covenant not to enforce judgment on the disputed claim, after the money or other property to be paid or delivered has been paid or delivered as provided in subdivision (c). If the court orders that all or any part of the money to be paid under the compromise or covenant be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited as directed in the order of the court.

CHAPTER 4. MONEY OR PROPERTY PAID OR DELIVERED PURSUANT TO COMPROMISE OR JUDGMENT FOR MINOR OR INCOMPETENT PERSON

Article 1. General Provisions

3600. This article applies whenever both of the following conditions exist:

(a) A court approves (1) a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim or (2) approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party or (3) gives judgment for a minor or incompetent person.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or incompetent person.

3601. (a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that such reasonable expenses (medical or otherwise and including reimbursement to a parent, guardian, or conservator), costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other

property to be paid or delivered for the benefit of the minor or incompetent person.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the incompetent person.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or incompetent person.

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivision (c), if there is a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order either or both of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(d) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

3603. Where reference is made in this chapter to "incompetent

person," the reference shall be deemed to include "a person for whom a conservator may be appointed."

Article 2. Disposition of Money or Other Property Where No Guardianship or Conservatorship

3610. When money or other property is to be paid or delivered for the benefit of a minor or incompetent person under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interest of the minor or incompetent person.

(c) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars ($20,000) in value, that all or any part of the money and other property be held on such other conditions as the court in its discretion determines to be in the best interest of the minor or incompetent person.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars ($5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(e) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

3612. Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money

and other property paid, delivered, deposited, or invested under this article until the minor reaches the age of 18 years.

CHAPTER 5. PERSONAL PROPERTY OF ABSENT FEDERAL PERSONNEL

Article 1. Definitions

3700. As used in this chapter:

(a) "Absentee" is defined in Section 1403.

(b) "Certificate of missing status" means the official written report complying with Section 1283 of the Evidence Code and showing the determination of the secretary of the military department or the head of the department or agency concerned or the delegate of the secretary or head that the absentee is in missing status.

(c) "Eligible spouse" means the spouse of an absentee who has not commenced an action or proceeding for judicial or legal separation, annulment, adjudication of nullity, or dissolution of the marriage of the spouse and the absentee.

(d) "Family of an absentee" means an eligible spouse, if any, or if no eligible spouse, the child or children of an absentee, equally, or if no child or children, the parent or parents of an absentee, equally, provided these persons are dependents of the absentee as defined in Section 401 of Title 37 of the United States Code, and the guardian of the estate or conservator of the estate of any person bearing such relationship to the absentee.

(e) "Secretary concerned" is defined in Section 1440.

Article 2. Court Proceeding to Set Aside Personal Property of Absentee

3701. Upon petition as provided in this chapter, the court may set aside to the family of an absentee personal property of the absentee situated in this state for the purpose of managing, controlling, encumbering, selling, or conveying, or otherwise engaging in any transaction with respect to the property, if the court determines that to do so will be in the best interest of the absentee, including the interest of the absentee in providing for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee. The absentee's interest in the property set aside shall not exceed twenty thousand dollars ($20,000).

3702. A petition that personal property of an absentee be set aside as provided in this chapter may be filed by any of the following persons:

(a) A person in whose favor the personal property of the absentee may be set aside.

(b) A person to whom the absentee has issued a general power of

attorney while serving in the armed forces of the United States or while an employee of any agency or department of the United States, provided the power of attorney was valid and effective at the time issued, regardless whether it has expired or terminated.

3703. (a) The petition shall contain all of the following:

(1) A statement that the petition is filed under this chapter.

(2) In its caption, the last known military rank or grade and the social security account number of the absentee.

(3) A specific description and estimate of the value of all of the absentee's property, wherever situated (including all sums due the absentee from the United States).

(4) A designation of the property to be set aside, and the facts establishing that setting aside the property is necessary and in the best interest of the absentee.

(5) If the property is to be set aside for the benefit of the spouse of the absentee, an allegation that the spouse is an eligible spouse.

(6) So far as known to the petitioner, the names and addresses of all persons comprising the family of the absentee, and an allegation whether a guardian of the estate or a conservator of the estate of any member of the family of the absentee has been appointed.

(b) There shall be attached to the petition a certificate of missing status. The certificate of missing status shall be received as evidence of that fact and the court shall not determine the status of the absentee inconsistent with the status shown in the certificate.

3704. (a) Notice of the nature of the proceedings and the time and place of the hearing shall be given by the petitioner at least 15 days before the hearing date by all of the following means:

(1) By mail, together with a copy of the petition, to all persons comprising the family of the absentee.

(2) By delivery by a method that would be sufficient for service of summons in a civil action, together with a copy of the petition, to the secretary concerned or to the head of the United States department or agency concerned.

(3) By publication pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

(b) Whenever notice to an officer or agency of this state or of the United States would be required under Section 1461 or Section 1822 upon petition for appointment of a conservator, like notice shall be given of the petition under this chapter.

3705. (a) Upon the hearing of the petition, any officer or agency of this state or the United States or the authorized delegate of the officer or agency, or any relative or friend of the absentee, may appear and support or oppose the petition.

(b) If the court determines that the allegations of the petition are true and correct, the court may order set aside to the family of the absentee personal property of the absentee situated in this state (excluding any sums due the absentee from the United States) in which the absentee's interest does not exceed twenty thousand

dollars ($20,000). The property set aside shall be specified in the order.

(c) No bond shall be required of any person to whom property of the absentee has been set aside by order of the court pursuant to this chapter.

3706. A determination by the court that the value of all of the absentee's property, wherever situated, exceeds twenty thousand dollars ($20,000) or that the absentee owns or has an interest in real property, wherever situated, does not deprive the court of jurisdiction to set aside to the family of the absentee personal property of the absentee situated in this state in which the absentee's interest does not exceed twenty thousand dollars ($20,000), and the court shall order set aside such personal property to the family of the absentee if the court finds that all of the other provisions of this chapter have been complied with. The property set aside shall be specified in the order.

3707. For the purposes of this chapter, any property or interest therein or lien thereon that the absentee holds as joint tenant shall be included in determining the property of the absentee and its value. The joint tenancy interest may be set aside to the family of the absentee as provided in this chapter but may only be set aside to a member of the absentee's family who was a joint tenant with the absentee in the property.

3708. (a) Within six months after the absentee has returned to the controllable jurisdiction of the military department or civilian agency or department concerned, or within six months after the determination of death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head, the former absentee or the personal representative of the deceased absentee may, by motion in the same proceeding, require the person or persons to whom the property of the absentee was set aside to account for the property and the proceeds, if any. The time of return to the controllable jurisdiction of the military department or civilian department or agency concerned or the determination of the time of death of the absentee shall be determined by the court under 37 United States Code, Section 556, or 5 United States Code, Section 5566. An official written report or record of the military department or civilian department or agency that the absentee has returned to its controllable jurisdiction or is deceased shall be received as evidence of that fact.

(b) This section does not in any manner derogate the finality and conclusiveness of any order, judgment, or decree previously entered in the proceeding.

Article 3. Management and Disposition of Personal Property of Absentee Without Court Proceeding

3710. The family of an absentee may collect, receive, dispose of, or engage in any transaction relating to the absentee's personal

property situated in this state without any judicial proceeding if all the following conditions are satisfied:

(a) The absentee owns no real property situated in this state.

(b) The aggregate value of all of the absentee's personal property situated in this state is five thousand dollars ($5,000) or less, excluding any money owed the absentee by the United States.

(c) The family of the absentee needs to dispose of such personal property to provide for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee.

3711. (a) If the conditions set forth in Section 3710 are satisfied, the family of the absentee may have any evidence of interest, indebtedness, or right attributable to the absentee's personal property transferred to the family of the absentee, or transferred to the person to whom the property is to be sold or transferred by the family of the absentee, upon furnishing the person (including any governmental body) having custody of the property both of the following:

(1) A certificate of missing status.

(2) An affidavit stating under oath that the provisions of this article are applicable and that the aggregate value of all property received pursuant to this affidavit, together with all other property previously received under this article, does not exceed five thousand dollars ($5,000).

(b) The receipt of a certificate of missing status and affidavit under subdivision (a) constitutes sufficient acquittance for any payment of money or delivery of property made pursuant to this article and fully discharges the recipient from any further liability concerning the money or property without the necessity of inquiring into the truth of any of the facts stated in the affidavit.

3712. The time within which an absentee may commence an action against any person who executes an affidavit and receives property pursuant to this article commences to run on the earlier of the following dates:

(a) Ninety days after the absentee returns to the United States after the termination of the condition that caused the classification of an absentee.

(b) Two years after the termination of the condition that caused the classification of an absentee.

Article 4. Absentee's Power of Attorney

3720. If an absentee executed a power of attorney that expires during the period that occasions absentee status, the power of attorney continues in full force and effect until 30 days after the absentee status is terminated. Any person who acts in reliance upon the power of attorney when accompanied by a copy of a certificate of missing status is not liable for relying and acting upon the power of attorney.

CHAPTER 6. REMOVAL OF PROPERTY OF NONRESIDENT

3800. (a) If a nonresident has a duly appointed, qualified, and acting guardian, conservator, committee, or comparable fiduciary in the place of residence and if no proceeding for guardianship or conservatorship of the nonresident is pending or contemplated in this state, the nonresident fiduciary may petition to have property owned by the nonresident removed to the place of residence.

(b) The petition for removal of property of the nonresident shall be filed in the superior court of the county in which the nonresident is or has been temporarily present or in which the property of the nonresident, or the principal part thereof, is located.

3801. (a) The petition shall be made upon 15 days' notice, by mail or personal delivery, to all of the following persons:

(1) The personal representative or other person in whose possession the property may be.

(2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident.

(b) The petition shall be made upon such additional notice, if any, as the court may order.

3802. (a) The nonresident fiduciary shall produce and file one of the following certificates:

(1) A certificate that the fiduciary is entitled, by the laws of the place of appointment of the fiduciary, to the possession of the estate of the nonresident. The certificate shall be under the hand of the clerk and seal of the court from which the appointment of the fiduciary was derived and shall show a transcript of the record of appointment and that the fiduciary has entered upon the discharge of the duties of the fiduciary.

(2) A certificate that the fiduciary is entitled, by the laws of the place of residence, to custody of the estate of the nonresident, without the appointment of any court. The certificate shall be under the hand of the clerk and seal of either (i) the court in the place of residence having jurisdiction of estates of persons that have a guardian, conservator, committee, or comparable fiduciary or (ii) the highest court in the place of residence.

(b) In the case of a foreign country, the certificate shall be accompanied by a final statement certifying the genuineness of the signature and official position of (1) the court clerk making the original certificate or (2) any foreign official who has certified either the genuineness of the signature and official position of the court clerk making the original certificate or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the clerk making the original certificate. The final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the

United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

3803. (a) Upon the petition, if the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

(b) The order is authority to the fiduciary to sue for and receive the property in his or her own name for the use and benefit of the nonresident.

(c) The order is a discharge of the personal representative or other person in whose possession the property may be at the time the order is made and of the person obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident, upon filing with the clerk of the court the receipt of the nonresident fiduciary for the property and transmitting a duplicate receipt, or a certified copy of the receipt, to the court, if any, from which the nonresident fiduciary received his or her appointment.

PART 9. CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT

3900. This part may be cited as the "California Uniform Transfers to Minors Act."

3901. In this part:

(a) "Adult" means an individual who has attained the age of 18 years.

(b) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(c) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(d) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(e) "Court" means the superior court.

(f) "Custodial property" means (1) any interest in property transferred to a custodian under this part and (2) the income from and proceeds of that interest in property.

(g) "Custodian" means a person so designated under Section 3909 or a successor or substitute custodian designated under Section 3918.

(h) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law or an industrial loan company licensed and supervised under the laws of this state.

(i) "Legal representative" means an individual's personal

representative or conservator.

(j) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(k) "Minor" means:

(1) Except as provided in paragraph (2), an individual who has not attained the age of 18 years.

(2) When used with reference to the beneficiary for whose benefit custodial property is held or is to be held, an individual who has not attained the age at which the custodian is required under Sections 3920 and 3920.5 to transfer the custodial property to the beneficiary.

(*l*) "Person" means an individual, corporation, organization, or other legal entity.

(m) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(n) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(o) "Transfer" means a transaction that creates custodial property under Section 3909.

(p) "Transferor" means a person who makes a transfer under this part.

(q) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

3902. (a) This part applies to a transfer that refers to this part in the designation under subdivision (a) of Section 3909 by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this part despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this part is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

3903. (a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the

custodian followed in substance by the words:
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."
The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subdivision (a) of Section 3909.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 3909. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event, the custodianship becomes effective, and the custodian shall enforce a transfer of the custodial property pursuant to Section 3909.

3904. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 3909.

3905. (a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 3909 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 3903 to receive the custodial property, the transfer shall be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 3903, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subdivision (a) of Section 3909.

3906. (a) Subject to subdivision (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 3909, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subdivision (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 3909.

(c) A transfer under subdivision (a) or (b) may be made only if all of the following requirements are satisfied:

(1) The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor.

(2) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument.

(3) The transfer is authorized by the court if it exceeds ten thousand dollars ($10,000) in value.

3907. (a) Subject to subdivisions (b) and (c), a person not subject to Section 3905 or 3906 who holds property of, or owes a liquidated debt to, a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 3909.

(b) If a person having the right to do so under Section 3903 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

(c) If no custodian has been nominated under Section 3903, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars ($10,000) in value.

3908. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this part.

3909. (a) Custodial property is created and a transfer is made whenever any of the following occurs:

(1) An uncertificated security or a certificated security in registered form is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(B) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subdivision (b).

(2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

(A) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:

"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words:
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words:
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words:
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(B) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words:
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(7) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subdivision (b).

(b) An instrument in the following form satisfies the requirements of subparagraph (B) of paragraph (1) and paragraph (7) of subdivision (a):

"TRANSFER UNDER THE CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT

I, _____
(Name of Transferor or Name and Representative Capacity if a Fiduciary)
hereby transfer to _____,
(Name of Custodian)
as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____

_____
(Signature)

_____ acknowledges receipt of the property
(Name of Custodian)
described above as custodian for the minor named above under the California Uniform Transfers to Minors Act.

Dated: _____

_____"
(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

3910. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this part by the same custodian for the benefit of the same minor constitutes a single custodianship.

3911. (a) The validity of a transfer made in a manner prescribed in this part is not affected by any of the following:

(1) Failure of the transferor to comply with subdivision (c) of Section 3909.

(2) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subdivision (a) of Section 3909.

(3) Death or incapacity of a person nominated under Section 3903 or designated under Section 3909 as custodian, or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 3909 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this part, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this part.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this part and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this part.

(d) A person is not precluded from being a custodian for a minor under this part with respect to some property because the person is a conservator of the minor with respect to other property.

(e) A person who is the conservator of the minor is not precluded from being a custodian for a minor under this part because the custodial property has or will be transferred to the custodian from the guardianship estate of the minor. In such case, for the purposes of Section 3909, the custodian shall be deemed to be "an adult other than the transferor."

(f) In the cases described in subdivisions (d) and (e), with respect to the property transferred to the custodian, this part applies to the extent it would apply if the person to whom the custodial property is transferred were not and had not been a conservator of the minor.

3912. (a) A custodian shall do all of the following:

(1) Take control of custodial property.

(2) Register or record title to custodial property if appropriate.

(3) Collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries except that:

(1) If a custodian is not compensated for his or her services, the custodian is not liable for losses to custodial property unless they result from the custodian's bad faith, intentional wrongdoing, or gross negligence, or from the custodian's failure to maintain the standard of prudence in investing the custodial property provided in this section.

(2) A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (1) the life of the minor only if the minor or the minor's estate is the sole beneficiary or (2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the

custodian, followed in substance by the words:
"as a custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

3913. (a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 3912.

3914. (a) A custodian may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (1) the duty or ability of the custodian personally, or of any other person, to support the minor or (2) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect, any obligation of a person to support the minor.

(d) In lieu of the powers and duties described in subdivision (a), a transferor who is also the custodian may elect to govern his or her custodial powers and duties under this subdivision. If such election is made, the custodian shall not pay over to the minor for expenditure by the minor, and shall not expend for the minor's use or benefit, any part of the custodial property for any purpose prior to the time specified in Section 3920, except by order of the court upon a showing that the expenditure is necessary for the support, maintenance, or education of the minor. When the powers and duties of the custodian are governed by this subdivision, the transferor-custodian shall file with the clerk of the court a declaration in substantially the following form:

Declaration Under the California Uniform Transfers to Minors Act

I, _____,
(Name of Transferor-Custodian)
as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act, hereby irrevocably elect to be governed under subdivision (d) of Section 3914 of the Probate Code in my custodial capacity over the following described property _____
_____.
(Description of Custodial Property)

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____, 19____

_____
(Signature of Transferor-Custodian)

3915. (a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 3904, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in subdivision (f) of Section 3918, a custodian need not give a bond.

3916. A third person in good faith and without court order may act on the instructions of, or otherwise deal with, any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining any of the following:

(a) The validity of the purported custodian's designation.

(b) The propriety of, or the authority under this part for, any act of the purported custodian.

(c) The validity or propriety under this part of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

(d) The propriety of the application of any property of the minor delivered to the purported custodian.

3917. (a) A claim based on (1) a contract entered into by a custodian acting in a custodial capacity, (2) an obligation arising from the ownership or control of custodial property, or (3) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable for either of the following:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract.

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

3918. (a) A person nominated under Section 3903 or designated under Section 3909 as custodian may decline to serve by delivering a valid disclaimer under Part 8 (commencing with Section 260) of Division 2 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 3903, the person who made the nomination may nominate a substitute custodian under Section 3903; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subdivision (a) of Section 3909. The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 3904 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed. The transferor may designate one or more persons as successor custodians to serve, in the designated order of priority, in case the custodian originally designated or a prior successor custodian is unable, declines, or is ineligible to serve or resigns, dies, becomes incapacitated, or is removed. The designation either (1) shall be made in the same transaction and by the same document by which the transfer is made or (2) shall be made by executing and dating a separate instrument of designation before a subscribing witness other than a successor as a part of the same transaction and contemporaneously with the execution of the document by which the transfer is made. The designation is made by setting forth the successor custodian's name, followed in substance by the words: " is designated [first, second, etc., where applicable] successor custodian." A successor custodian designated by the transferor may be a trust company or an adult other than a transferor under Section 3904. A successor custodian effectively designated by the transferor has priority over a successor custodian designated by a custodian

(c) A custodian may resign at any time by delivering written

notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If the transferor has not effectively designated a successor custodian, and a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subdivision (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subdivision (a) or resigns under subdivision (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years, may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 3904 or to require the custodian to give appropriate bond.

(g) Upon the filing of a petition under subdivision (d) or (f), the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

3919. (a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for any of the following:

(1) An accounting by the custodian or the custodian's legal representative.

(2) A determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 3917 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an

accounting by the predecessor custodian.

(c) The court, in a proceeding under this part or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under subdivision (f) of Section 3918, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

(e) The right to petition for an accounting shall continue for one year after the filing of a final accounting by the custodian or the custodian's legal representative and delivery of the custodial property to the minor or the minor's estate.

3920. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the following:

(a) The minor's attainment of 18 years of age unless the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(b) The time specified in the transfer pursuant to Section 3909 if the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(c) The minor's death.

3920.5. (a) Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under or pursuant to Section 3903, 3904, or 3905 may be delayed until a specified time after the time the minor attains the age of 18 years, which time shall be specified in the transfer pursuant to Section 3909.

(b) To specify a delayed time for transfer to the minor of the custodial property, the words

"as custodian for _____
(Name of Minor)

until age _____
(Age for Delivery of Property to Minor)

under the California Uniform Transfers to Minors Act"

shall be substituted in substance for the words

"as custodian for _____
(Name of Minor)

under the California Uniform Transfers to Minors Act"

in making the transfer pursuant to Section 3909.

(c) The time for transfer to the minor of custodial property transferred under or pursuant to Section 3903 or 3905 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age, and in that case the

governing will or trust or nomination shall determine the time to be specified in the transfer pursuant to Section 3909.

(d) The time for transfer to the minor of custodial property transferred by the irrevocable exercise of a power of appointment under Section 3904 may be delayed under this section only if the transfer pursuant to Section 3909 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age.

(e) The time for transfer to the minor of custodial property transferred by irrevocable gift under Section 3904 may be delayed under this section only if the transfer pursuant to Section 3909 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 21 years of age.

(f) If the transfer pursuant to Section 3909 does not specify any age, the time for the transfer of the custodial property to the minor under Section 3920 is the time when the minor attains 18 years of age.

(g) If the transfer pursuant to Section 3909 provides in substance that the duration of the custodianship is for a time longer than the maximum time permitted by this section for the duration of a custodianship created by that type of transfer, the custodianship shall be deemed to continue only until the time the minor attains the maximum age permitted by this section for the duration of a custodianship created by that type of transfer.

3921. Subject to the power of the court to transfer actions and proceedings as provided in the Code of Civil Procedure, a petition filed under this part shall be heard and proceedings thereon held in the superior court in the proper county, which shall be determined as follows:

(a) If the minor resides in this state, in either of the following counties:

(1) Where the minor resides.

(2) Where the custodian resides.

(b) If the minor does not reside within this state, in any of the following counties:

(1) Where the transferor resides.

(2) Where the custodian resides.

(3) Where the estate of a deceased or legally incapacitated custodian is being administered.

(4) Where a parent of the minor resides.

(c) If neither the minor, nor the transferor, nor any parent resides within this state, and no estate of a deceased or legally incapacitated custodian is being administered within this state, in any county.

3922. This part applies to a transfer within the scope of Section 3902 made on or after January 1, 1985, if either of the following requirements is satisfied:

(a) The transfer purports to have been made under the California Uniform Gifts to Minors Act.

(b) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this part is necessary to validate the transfer.

3923. (a) As used in this section, "California Uniform Gifts to Minors Act" means former Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(b) Any transfer of custodial property, as now defined in this part, made before January 1, 1985, is validated, notwithstanding that there was no specific authority in the California Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(c) This part applies to all transfers made before January 1, 1985, in a manner and form prescribed in the California Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights.

(d) To the extent that this part, by virtue of subdivision (c), does not apply to transfers made in a manner prescribed in the California Uniform Gifts to Minors Act or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the California Uniform Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities.

3925. This part shall not be construed as providing an exclusive method for making gifts or other transfers to minors.

DIVISION 5. NONPROBATE TRANSFERS

PART 1. PROVISIONS RELATING TO EFFECT OF DEATH

5000. (a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is not invalid because the instrument does not comply with the requirements for execution of a will, and this code does not invalidate the instrument.

(b) Included within subdivision (a) are the following:

(1) A written provision that money or other benefits due to, controlled by, or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(2) A written provision that money due or to become due under the instrument shall cease to be payable in event of the death of the

promisee or the promisor before payment or demand.

(3) A written provision that any property controlled by or owned by the decedent before death that is the subject of the instrument shall pass to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(c) Nothing in this section limits the rights of creditors under any other law.

PART 2. MULTIPLE-PARTY ACCOUNTS

CHAPTER 1. SHORT TITLE AND DEFINITIONS

Article 1. Short Title

5100. This part may be cited as the California Multiple-Party Accounts Law.

Article 2. Definitions

5120. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

5122. (a) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(b) "Account" does not include:

(1) An account established for deposit of funds of a partnership, joint venture, or other association for business purposes.

(2) An account controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization.

(3) A regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(4) An account established for the deposit of funds of the estate of a ward, conservatee, or decedent.

5124. "Agent" means a person who has a present right, subject to request, to payment from an account as an attorney in fact under a power of attorney.

5126. "Beneficiary" means a person named in a Totten trust account as one for whom a party to the account is named as trustee.

5128. "Financial institution" includes:

(a) A financial institution as defined in Section 40.

(b) An industrial loan company as defined in Section 18003 of the Financial Code.

5130. "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

5132. A "multiple-party account" is any of the following types of

account:

(a) A joint account.

(b) A P.O.D. account.

(c) A Totten trust account.

5134. (a) "Net contribution" of a party to an account as of any given time is the sum of all of the following:

(1) All deposits thereto made by or for the party, less all withdrawals made by or for the party that have not been paid to or applied to the use of any other party.

(2) A pro rata share of any interest or dividends earned, whether or not included in the current balance.

(3) Any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(b) In the absence of proof otherwise:

(1) Only parties who have a present right of withdrawal shall be considered as having a net contribution.

(2) The net contribution of each of the parties having a present right of withdrawal is deemed to be an equal amount.

(c) It is the intent of the Legislature in enacting this section to provide a definition for the purpose of determining ownership interests in an account as between the parties to the account, and not as between the parties and the financial institution.

5136. (a) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account other than as an agent.

(b) A P.O.D. payee is a party, by reason of being a P.O.D. payee, only after the account becomes payable to the payee by reason of surviving all persons named as original payees.

(c) A beneficiary of a Totten trust account is a party, by reason of being a beneficiary, only after the account becomes payable to the beneficiary by reason of surviving all persons named as trustees.

5138. "Payment" of sums on deposit includes all of the following:

(a) A withdrawal, including payment on check or other directive of a party.

(b) A pledge of sums of deposit.

(c) A setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

5139. "P.O.D." means pay on death.

5140. "P.O.D. account" means any of the following:

(a) An account payable on request to one person during the person's lifetime and on the person's death to one or more P.O.D. payees.

(b) An account payable on request to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

5142. "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

5144. "Proof of death" includes any of the following:

(a) An original or attested or certified copy of a death certificate.

(b) A record or report that is prima facie evidence of death under Section 10577 of the Health and Safety Code, Sections 1530 to 1532, inclusive, of the Evidence Code, or another statute of this state.

5146. Except to the extent the terms of the account or deposit agreement expressly provide otherwise, a financial institution "receives" an order or notice under this part when it is received by the particular office or branch office of the financial instutition where the account is carried.

5148. "Request" means a proper request for withdrawal, including a check or order for payment, that complies with all conditions of the account (including special requirements concerning necessary signatures) and regulations of the financial institution; but, if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

5150. "Sums on deposit" means both of the following:

(a) The balance payable on an account, including interest and dividends earned, whether or not included in the current balance.

(b) Any life insurance proceeds added to the account by reason of the death of a party.

5152. "Withdrawal" includes payment to a third person pursuant to a check or other directive of a party or an agent.

CHAPTER 2. GENERAL PROVISIONS

5201. (a) The provisions of Chapter 3 (commencing with Section 5301) concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

(b) The provisions of Chapter 4 (commencing with Section 5401) govern the liability of financial institutions who make payments pursuant to that chapter.

5202. Nothing in this part affects the law relating to transfers in fraud of creditors.

5203. (a) Words in substantially the following form in a signature card, passbook, contract, or instrument evidencing an account, or words to the same effect, executed before, on, or after July 1, 1990, create the following accounts:

(1) Joint account: "This account or certificate is owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s)."

(2) P.O.D. account with single party: "This account or certificate is owned by the named party. Upon the death of that party,

ownership passes to the named pay-on-death payee(s)."

(3) P.O.D. account with multiple parties: "This account or certificate is owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s). Upon the death of all of them, ownership passes to the named pay-on-death payee(s)."

(4) Joint account of husband and wife with right of survivorship: "This account or certificate is owned by the named parties, who are husband and wife, and is presumed to be their community property. Upon the death of either of them, ownership passes to the survivor."

(5) Community property account of husband and wife: "This account or certificate is the community property of the named parties who are husband and wife. The ownership during lifetime and after the death of a spouse is determined by the law applicable to community property generally and may be affected by a will."

(6) Tenancy in common account: "This account or certificate is owned by the named parties as tenants in common. Upon the death of any party, the ownership interest of that party passes to the named pay-on-death payee(s) of that party or, if none, to the estate of that party."

(b) Use of the form language provided in this section is not necessary to create an account that is governed by this part. If the contract of deposit creates substantially the same relationsip between the parties as an account created using the form language provided in this section, this part applies to the same extent as if the form language had been used.

5204. (a) In addition to a power of attorney otherwise authorized by law, a special power of attorney is authorized under this section to apply to one or more accounts at a financial institution. For the purposes of this section, "account" includes checking accounts, savings accounts, certificates of deposit, savings certificates, and any other depository relationship with the financial institution.

(b) The special power of attorney under this section shall:

(1) Be in writing.

(2) Be signed by the person or persons giving the power of attorney.

(3) Explicitly identify the attorney in fact or attorneys in fact, the financial institution, and the account or accounts subject to the power.

(c) Language in substantially the following form is sufficient to create a power of attorney under this section: "Transactions regarding this account or certificate of deposit may be made by the named agent(s). This agency is governed by Section 5204 of the California Probate Code. Under Section 5204, (1) the agent has no present or future ownership or right of survivorship in this account, (2) the agent must keep a record of the transactions and disbursements made under the agency, and (3) the agent may make disbursements from this account only to or for the benefit of the account owner unless the account owner has authorized the

disbursement in writing."

(d) The power of attorney granted under this section shall endure as between the grantor and grantee of the power until the earliest of the following occurs:

(1) Revocation by the grantor of the power.

(2) Termination of the account.

(3) Death of the grantor of the power.

(4) Appointment of a guardian or conservator of the estate of the grantor of the power.

(e) A financial institution may rely in good faith upon the validity of the power of attorney granted under this section and is not liable to the principal or any other person for doing so if (1) the power of attorney is on file with the financial institution and the transaction is made by the attorney in fact named in the power of attorney, (2) the power of attorney appears on its face to be valid, and (3) the financial institution has convincing evidence of the identity of the person signing the power of attorney as principal.

(f) For the purposes of subdivision (e), "convincing evidence" requires both of the following:

(1) Reasonable reliance on a document that satisfies the requirement of Section 2511 of the Civil Code.

(2) The absence of any information, evidence, or other circumstances that would lead a reasonable person to believe that the person signing the power of attorney as principal is not the individual he or she claims to be.

(g) The protection provided by subdivision (e) does not extend to payments made after written notice is received by the financial institution as to any of the events of termination of the power under subdivision (d) if the financial institution has had a reasonable time to act on the notice. No other notice or any other information shown to have been available to the financial institution shall affect its right to the protection provided by this subdivision.

(h) The attorney in fact acting under the power of attorney granted under this section shall maintain such books or records as will permit an accounting of the acts of the attorney in fact if an accounting is requested by a legal representative of the grantor of the power.

(i) The attorney in fact acting under a power of attorney granted under this section is liable for any disbursement other than a disbursement to or for the benefit of the grantor of the power, unless the grantor has authorized the disbursement in writing.

(j) Nothing in this section limits the use or effect of any other form of power of attorney for transactions with a financial institution. Nothing in this section creates an implication that a financial institution is liable for acting in reliance upon a power of attorney under circumstances where the requirements of subdivision (e) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

(k) Nothing in this section prevents the attorney in fact from also

being designated as a P.O.D. payee.

5205. This part applies to accounts in existence on July 1, 1990, and accounts thereafter established.

CHAPTER 3. OWNERSHIP BETWEEN PARTIES AND THEIR CREDITORS AND SUCCESSORS

5301. (a) An account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) In the case of a P.O.D. account, the P.O.D. payee has no rights to the sums on deposit during the lifetime of any party, unless there is clear and convincing evidence of a different intent.

(c) In the case of a Totten trust account, the beneficiary has no rights to the sums on deposit during the lifetime of any party, unless there is clear and convincing evidence of a different intent. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

5302. (a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent. If there are two or more surviving parties, their respective ownerships during lifetime are in proportion to their previous ownership interests under Section 5301 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the decedent's death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account:

(1) On death of one of two or more parties, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole party or of the survivor of two or more parties, (A) any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the party, (B) if two or more P.O.D. payees survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C) if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a Totten trust account:

(1) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole trustee or the survivor of two or more trustees, (A) any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a different intent, (B) if two or more

beneficiaries survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C) if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent's estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a Totten trust account, or a P.O.D. payee designation, cannot be changed by will.

5303. (a) The provisions of Section 5302 as to rights of survivorship are determined by the form of the account at the death of a party.

(b) Once established, the terms of a multiple-party account can be changed only by any of the following methods:

(1) Closing the account and reopening it under different terms.

(2) Presenting to the financial institution a modification agreement that is signed by all parties with a present right of withdrawal. If the financial institution has a form for this purpose, it may require use of the form.

(3) If the provisions of the terms of the account or deposit agreement provide a method of modification of the terms of the account, complying with those provisions.

(4) As provided in subdivision (c) of Section 5405.

(c) During the lifetime of a party, the terms of the account may be changed as provided in subdivision (b) to eliminate or to add rights of survivorship. Withdrawal of funds from the account by a party with a present right of withdrawal during the lifetime of a party also eliminates rights of survivorship upon the death of that party with respect to the funds withdrawn.

5304. Any transfers resulting from the application of Section 5302 are effective by reason of the account contracts involved and this part and are not to be considered as testamentary. The right under this part of a surviving party to a joint account, or of a beneficiary, or of a P.O.D. payee, to the sums on deposit on the death of a party to a multiple-party account shall not be denied, abridged, or affected because such right has not been created by a writing executed in accordance with the laws of this state prescribing the requirements to effect a valid testamentary disposition of property.

5305. (a) Notwithstanding Sections 5301 to 5303, inclusive, if parties to an account are married to each other, whether or not they are so described in the deposit agreement, their net contribution to the account is presumed to be and remain their community property.

(b) Notwithstanding Sections 4800.1 and 4800.2 of the Civil Code, the presumption established by this section is a presumption affecting the burden of proof and may be rebutted by proof of either of the following:

(1) The sums on deposit that are claimed to be separate property can be traced from separate property unless it is proved that the married persons made a written agreement that expressed their clear intent that such sums be their community property.

(2) The married persons made a written agreement, separate from the deposit agreement, that expressly provided that the sums on deposit, claimed not to be community property, were not to be community property.

(c) Except as provided in Section 5307, a right of survivorship arising from the express terms of the account or under Section 5302, a beneficiary designation in a Totten trust account, or a P.O.D. payee designation, may not be changed by will.

(d) Except as provided in subdivisions (b) and (c), a multiple-party account created with community property funds does not in any way alter community property rights.

5306. For the purposes of this chapter, if an account is expressly described in the deposit agreement as a "tenancy in common" account, no right of survivorship arises from the terms of the account or under Section 5302 unless the terms of the account or deposit agreement expressly provide for survivorship.

5307. For the purposes of this chapter, except to the extent the terms of the account or deposit agreement expressly provide otherwise, if the parties to an account are married to each other and the account is expressly described in the account agreement as a "community property" account, the ownership of the account during lifetime and after the death of a spouse is governed by the law governing community property generally.

CHAPTER 4. PROTECTION OF FINANCIAL INSTITUTION

5401. (a) Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request and according to its terms, to any one or more of the parties or agents.

(b) The terms of the account or deposit agreement may require the signatures of more than one of the parties to a multiple-party account during their lifetimes or of more than one of the survivors after the death of any one of them on any check, check endorsement, receipt, notice of withdrawal, request for withdrawal, or withdrawal order. In such case, the financial institution shall pay the sums on deposit only in accordance with such terms, but those terms do not limit the right of the sole survivor or of all of the survivors to receive the sums on deposit.

(c) A financial institution is not required to do any of the following:

(1) Inquire as to the source of funds received for deposit to a multiple-party account, or inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

(2) Determine any party's net contribution.

(3) Limit withdrawals or any other use of an account based on the net contribution of any party, whether or not the financial institution has actual knowledge of each party's contribution.

(d) All funds in an account, unless otherwise agreed in writing by the financial institution and the parties to the account, remain subject to liens, security interests, rights of setoff, and charges, notwithstanding the determination or allocation of net contributions with respect to the parties.

5402. Any sums in a joint account may be paid, on request and according to its terms, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proof of death is presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 5302.

5403. Any P.O.D. account may be paid, on request and according to its terms, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that the deceased original payee was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

5404. Any Totten trust account may be paid, on request and according to its terms, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that the deceased trustee was the survivor of all other persons named on the account either as trustee or beneficiary. A Totten trust account may be paid to a beneficiary or beneficiaries or the personal representative or heirs of a beneficiary or beneficiaries if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as trustees.

5405. (a) Payment made pursuant to Section 5401, 5402, 5403, or 5404 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors.

(b) The protection provided by subdivision (a) does not extend to payments made after the financial institution has been served with a court order restraining payment. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided by subdivision (a).

(c) Unless the notice is withdrawn by a subsequent writing, after receipt of a written notice from any party that withdrawals in accordance with the terms of the account, other than a checking account, share draft account, or other similar third-party payment instrument, should not be permitted, except with the signatures of more than one of the parties during their lifetimes or of more than one of the survivors after the death of any one of the parties, the financial institution may only pay the sums on deposit in accordance with the written instructions pending determination of the rights of the parties or their successors. No liability shall attach to the financial institution for complying with the terms of any written notice provided pursuant to this subdivision.

(d) The protection provided by this section has no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts and is in addition to, and not exclusive of, any protection provided the financial institution by any other provision of law.

5406. The provisions of this chapter that apply to the payment of a Totten trust account apply to an account in the name of one or more parties as trustee for one or more other persons if the financial institution has no other or further notice in writing that the account is not a Totten trust account as defined in Section 80.

5407. If a financial institution is required or permitted to make payment pursuant to this chapter to a person who is a minor:

(a) If the minor is a party to a multiple-party account, payment may be made to the minor or to the minor's order, and payment so made is a valid release and discharge of the financial institution, but this subdivision does not apply if the account is to be paid to the minor because the minor was designated as a P.O.D. payee or as a beneficiary of a Totten trust account.

(b) In cases where subdivision (a) does not apply, payment shall be made pursuant to the California Uniform Transfers to Minors Act (Part 9 (commencing with Section 3900) of Division 4), or as provided in Chapter 2 (commencing with Section 3400) of Part 8 of Division 4.

DIVISION 6. WILLS AND INTESTATE SUCCESSION

PART 1. WILLS

CHAPTER 1. GENERAL PROVISIONS

6100. An individual 18 or more years of age who is of sound mind

may make a will.

6100.5. (a) An individual is not mentally competent to make a will if at the time of making the will either of the following is true:

(1) The individual does not have sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual's property, or (C) remember and understand the individual's relations to living descendants, spouse, and parents, and those whose interests are affected by the will.

(2) The individual suffers from a mental disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in the individual's devising property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.

(b) Nothing in this section supersedes existing law relating to the admissibility of evidence to prove the existence of mental incompetence or mental disorders.

6101. A will may dispose of the following property:

(a) The testator's separate property.

(b) The one-half of the community property that belongs to the testator under Section 100.

(c) The one-half of the testator's quasi-community property that belongs to the testator under Section 101.

6102. A will may make a disposition of property to any person, including but not limited to any of the following:

(a) An individual.

(b) A corporation.

(c) An unincorporated association, society, lodge, or any branch thereof.

(d) A county, city, city and county, or any municipal corporation.

(e) Any state, including this state.

(f) The United States or any instrumentality thereof.

(g) A foreign country or a governmental entity therein.

6103. Except as otherwise specifically provided, Chapter 1 (commencing with Section 6100), Chapter 2 (commencing with Section 6110), Chapter 3 (commencing with Section 6120), Chapter 4 (commencing with Section 6130), Chapter 5 (commencing with Section 6140), Chapter 6 (commencing with Section 6200), and Chapter 7 (commencing with Section 6300) do not apply where the testator died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

6104. The execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by duress, menace, fraud, or undue influence.

6105. A will, the validity of which is made conditional by its own terms, shall be admitted to probate or rejected, or denied effect after admission to probate, in conformity with the condition.

CHAPTER 2. EXECUTION OF WILLS

6110. (a) Except as provided in this part, a will shall be in writing and satisfy the requirements of this section.

(b) The will shall be signed either (1) by the testator or (2) in the testator's name by some other person in the testator's presence and by the testator's direction.

(c) The will shall be witnessed by being signed by at least two persons each of whom (1) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (2) understand that the instrument they sign is the testator's will.

6111. (a) A will that does not comply with Section 6110 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(b) If a holographic will does not contain a statement as to the date of its execution and:

(1) If the omission results in doubt as to whether its provisions or the inconsistent provisions of another will are controlling, the holographic will is invalid to the extent of the inconsistency unless the time of its execution is established to be after the date of execution of the other will.

(2) If it is established that the testator lacked testamentary capacity at any time during which the will might have been executed, the will is invalid unless it is established that it was executed at a time when the testator had testamentary capacity.

(c) Any statement of testamentary intent contained in a holographic will may be set forth either in the testator's own handwriting or as part of a commercially printed form will.

(Amended by Stats. 1990, Ch 710, Sec 13. Operative July 1, 1991, by Sec. 47 of chapter)

[ORIGINAL SECTION]

6111. (a) A will that does not comply with Section 6110 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(b) If a holographic will does not contain a statement as to the date of its execution and

(1) If the omission results in doubt as to whether its provisions or the inconsistent provisions of another will are controlling, the holographic will is invalid to the extent of the inconsistency unless the time of its execution is established to be after the date of execution of the other will

(2) If it is established that the testator lacked testamentary capacity at any time during which the will might have been executed, the will is invalid unless it is established that it was executed at a time when the testator had testamentary capacity.

6111.5. Extrinsic evidence is admissible to determine whether a document constitutes a will pursuant to Section 6110 or 6111, or to determine the meaning of a will or a portion of a will if the meaning is unclear.

(Added by Stats 1990, Ch 710, Sec 14. Operative July 1, 1991, by Sec 47 of chapter)

6112. (a) Any person generally competent to be a witness may

act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

(c) Unless there are at least two other subscribing witnesses to the will who are disinterested witnesses, the fact that the will makes a devise to a subscribing witness creates a presumption that the witness procured the devise by duress, menace, fraud, or undue influence. This presumption is a presumption affecting the burden of proof. This presumption does not apply where the witness is a person to whom the devise is made solely in a fiduciary capacity.

(d) If a devise made by the will to an interested witness fails because the presumption established by subdivision (c) applies to the devise and the witness fails to rebut the presumption, the interested witness shall take such proportion of the devise made to the witness in the will as does not exceed the share of the estate which would be distributed to the witness if the will were not established. Nothing in this subdivision affects the law that applies where it is established that the witness procured a devise by duress, menace, fraud, or undue influence.

6113. A written will is validly executed if its execution complies with any of the following:

(a) The will is executed in compliance with Section 6110 or 6111 or Chapter 6 (commencing with Section 6200) (California statutory will) or Chapter 11 (commencing with Section 6380) (Uniform International Wills Act).

(b) The execution of the will complies with the law at the time of execution of the place where the will is executed.

(c) The execution of the will complies with the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

CHAPTER 3. REVOCATION AND REVIVAL

6120. A will or any part thereof is revoked by any of the following:

(a) A subsequent will which revokes the prior will or part expressly or by inconsistency.

(b) Being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator or (2) another person in the testator's presence and by the testator's direction.

6121. A will executed in duplicate or any part thereof is revoked if one of the duplicates is burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator or (2) another person in the testator's presence and by the testator's direction.

6122. (a) Unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:

(1) Any disposition or appointment of property made by the will

to the former spouse.

(2) Any provision of the will conferring a general or special power of appointment on the former spouse.

(3) Any provision of the will nominating the former spouse as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(c) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Other provisions of the will conferring some power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

(d) For purposes of this section, dissolution or annulment means any dissolution or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(e) No change of circumstances other than as described in this section revokes a will.

(f) Subdivisions (a) to (d), inclusive, do not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985. Such case is governed by the law in effect prior to January 1, 1985.

6123. (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under Section 6120 or 6121, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from the testator's contemporary or subsequent declarations that the testator intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

6124. If the testator's will was last in the testator's possession, the testator was competent until death, and neither the will nor a duplicate original of the will can be found after the testator's death, it is presumed that the testator destroyed the will with intent to revoke it. This presumption is a presumption affecting the burden of producing evidence.

CHAPTER 4. REFERENCE TO MATTERS OUTSIDE THE WILL

6130. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this

intent and describes the writing sufficiently to permit its identification.

6131. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the acts and events occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

CHAPTER 5. RULES OF CONSTRUCTION OF WILLS

Article 1. General Provisions

6140. (a) The intention of the testator as expressed in the will controls the legal effect of the dispositions made in the will.

(b) The rules of construction expressed in this article apply where the intention of the testator is not indicated by the will.

6141. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in the will unless the application of that law is contrary to any of the following:

(a) The rights of the surviving spouse in community and quasi-community property.

(b) The provisions of Part 3 (commencing with Section 6500).

(c) Any other public policy of this state otherwise applicable to the disposition.

6142. Except as provided by Sections 1386.1 and 1386.2 of the Civil Code relating to powers of appointment, unless a contrary intention is indicated by the will, a will passes all property the testator owns at death including property acquired after execution of the will.

6143. Unless a contrary intention is indicated by the will, a devise of property to more than one person vests the property in them as owners in common.

6144. Unless a contrary intention is indicated by the will, if a will directs the conversion of real property into money, the property and its proceeds are deemed personal property from the time of the testator's death.

6145. The law of this state does not include (1) the common law rule of worthier title that a testator cannot devise an interest to his or her own heirs or (2) a presumption or rule of interpretation that a testator does not intend, by a devise to his or her own heirs or next of kin, to transfer an interest to them. The meaning of a devise of a legal or equitable interest to a testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of wills. This section applies to all cases in which a final judgment had not been entered as of September 18, 1959.

6146. (a) A devisee who fails to survive the testator or until any

future time required by the will does not take under the will.

(b) In the absence of a contrary provision in the will:

(1) If it cannot be established by clear and convincing evidence that the devisee has survived the testator, it is deemed that the devisee did not survive the testator.

(2) If it cannot be established by clear and convincing evidence that the devisee survived until a future time required by the will, it is deemed that the devisee did not survive until the required future time.

6147. (a) As used in this section, "devisee" means a devisee who is kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator.

(b) Subject to subdivision (c), if a devisee is dead when the will is executed, or is treated as if the devisee predeceased the testator, or fails to survive the testator or until a future time required by the will, the issue of the deceased devisee take in the devisee's place in the manner provided in Section 240. A devisee under a class gift is a devisee for the purpose of this subdivision unless the devisee's death occurred before the execution of the will and that fact was known to the testator when the will was executed.

(c) The issue of a deceased devisee do not take in the devisee's place if the will expresses a contrary intention or a substitute disposition. A requirement that the initial devisee survive for a specified period of time after the death of the testator constitutes such a contrary intention. A requirement that the initial devisee survive until a future time that is related to the probate of the will or administration of the estate of the testator constitutes such a contrary intention.

6148. Except as provided in Section 6147 or in the will:

(a) If a devise (other than a residuary devise or a devise of a future interest) fails for any reason, the property devised becomes a part of the residue.

(b) If the residue or a future interest is devised to two or more persons and the share of a devisee fails for any reason, the share passes to the other devisees in proportion to their other interest in the residue or future interest.

6149. In the absence of a contrary provision in the will, a condition in a devise of a present or future interest that refers to a person's death "with" or "without" issue, or to a person's "having" or "leaving" issue or no issue, or a condition based on words of similar import, is construed to refer to that person's being dead at the time the devise takes effect in enjoyment and to his or her either having or not having, as the case may be, issue who are alive at the time of enjoyment.

6150. In the absence of a contrary provision in the will:

(a) A devise of a present interest to a class includes all persons answering the class description at the testator's death.

(b) A devise of a future interest to a class includes all persons answering the class description at the time the devise is to take effect

in enjoyment.

(c) A person conceived before but born after the testator's death or after the time the devise is to take effect in enjoyment, as the case may be, takes if answering the class description.

6151. Unless a contrary intention is indicated by the will, a devise of a present or future interest to the testator's or another designated person's "heirs," "next of kin," "relatives," or "family," or to "the persons entitled thereto under the intestate succession laws," or to persons described by words of similar import, is a devise to those who would be the testator's or other designated person's heirs, their identities and respective shares to be determined as if the testator or other designated person were to die intestate at the time when the devise is to take effect in enjoyment and according to the California statutes of intestate succession of property not acquired from a predeceased spouse in effect at that time.

6152. Unless otherwise provided in the will:

(a) Except as provided in subdivision (b), halfbloods, adopted persons, persons born out of wedlock, stepchildren, foster children, and the issue of all such persons when appropriate to the class, are included in terms of class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.

(b) In construing a devise by a testator who is not the natural parent, a person born to the natural parent shall not be considered the child of that parent unless the person lived while a minor as a regular member of the household of the natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse. In construing a devise by a testator who is not the adoptive parent, a person adopted by the adoptive parent shall not be considered the child of that parent unless the person lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent or of that parent's parent, brother, sister, or surviving spouse.

(c) Subdivisions (a) and (b) also apply in determining:

(1) Persons who would be kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator under Section 6147.

(2) Persons to be included as issue of a deceased devisee under Section 6147.

(3) Persons who would be the testator's or other designated person's heirs under Section 6151.

6153. A testamentary disposition, including a devise to a person on attaining majority, is presumed to vest at the testator's death.

6154. Devises are classified as follows:

(a) A specific devise is a devise of specifically identifiable property.

(b) A general devise is a devise from the general estate that does not give specific property.

(c) A demonstrative devise is a general devise that specifies the

fund or property from which the devise is primarily to be made.

(d) A general pecuniary devise is a pecuniary gift within the meaning of Section 21120 that is made by will.

(e) An annuity is a general pecuniary devise that is payable periodically.

(f) A residuary devise is a devise of property that remains after all specific and general devises have been satisfied.

Article 2. Ascertaining Meaning of Language Used in the Will

6160. The words of a will are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative. Preference is to be given to an interpretation of a will that will prevent an intestacy, rather than one that will result in an intestacy.

6161. All the parts of a will are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the will.

6162. The words of a will are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. Technical words are not necessary to give effect to a disposition in a will. Technical words in a will are to be considered as having been used in their technical sense unless (1) the context clearly indicates a contrary intention or (2) it satisfactorily appears that the will was drawn solely by the testator and that the testator was unacquainted with the technical sense.

Article 3. Exoneration; Ademption

6165. The rules of construction in this article apply where the intention of the testator is not indicated by the will.

6170. A specific devise passes the property devised subject to any mortgage, deed of trust, or other lien existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

6171. (a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) As much of the devised securities as is a part of the estate at the time of the testator's death.

(2) Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.

(3) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity.

(4) Any additional securities of the entity owned by the testator

as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subdivision (a) are not part of the specific devise.

6172. A specific devisee has the right to the remaining specifically devised property and all of the following:

(a) Any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property.

(b) Any amount of an eminent domain award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on the property.

(d) Property owned by the testator at death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

6173. (a) Except as otherwise provided in this section, if specifically devised property is sold by a conservator, the specific devisee has the right to a general pecuniary devise equal to the net sale price of the property.

(b) Except as otherwise provided in this section, if an eminent domain award for the taking of specifically devised property is paid to a conservator, or if the proceeds on fire or casualty insurance on specifically devised property are paid to a conservator, the specific devisee has the right to a general pecuniary devise equal to the eminent domain award or the insurance proceeds.

(c) This section does not apply if, after the sale, condemnation, fire, or casualty, the conservatorship is terminated and the testator survives the termination by one year.

(d) The right of the specific devisee under this section is reduced by any right the specific devisee has under Section 6172.

6174. (a) Property a testator gave during lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part only if one of the following conditions is satisfied:

(1) The will provides for deduction of the lifetime gift.

(2) The testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise.

(3) The devisee acknowledges in writing that the gift is in satisfaction.

(b) Subject to subdivision (c), for the purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

(c) If the value of the gift is expressed in the contemporaneous writing of the testator, or in an acknowledgment of the devisee made contemporaneously with the gift, that value is conclusive in the division and distribution of the estate.

6175. If the testator after execution of the will enters into an agreement for the sale or transfer of specifically devised property, the specific devisee has the right to the property subject to the remedies of the purchaser or transferee.

6176. If the testator after execution of the will places a charge or encumbrance on specifically devised property for the purpose of securing the payment of money or the performance of any covenant or agreement, the specific devisee has the right to the property subject to the charge or encumbrance.

6177. If the testator after execution of the will alters, but does not wholly divest, the testator's interest in specifically devised property by a conveyance, settlement, or other act, the specific devisee has the right to the remaining interest of the testator in the property.

6178. The rules stated in Sections 6172 to 6177, inclusive, are not exhaustive, and nothing in those sections is intended to increase the incidence of ademption under the law of this state.

6179. The repeal of former Sections 1050, 1051, 1052, and 1053 and the amendment of former Section 1054, by Chapter 842 of the Statutes of 1983, do not apply to cases where the decedent died before January 1, 1985. If the decedent died before January 1, 1985, the case is governed by the former provisions as they would exist had Chapter 842 of the Statutes of 1983 not been enacted.

CHAPTER 6. CALIFORNIA STATUTORY WILL

Article 1. Definitions and Rules of Construction

6200. Unless the provision or context clearly requires otherwise, these definitions and rules of construction govern the construction of this chapter.

6201. "Testator" means a person choosing to adopt a California statutory will.

6202. "Spouse" means the testator's husband or wife at the time the testator signs a California statutory will.

6203. "Executor" means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will.

6204. "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will.

6205. "Descendants" means children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in Section 6152. A reference to "descendants" in the plural includes a single descendant where the context so requires.

6206. A reference in a California statutory will to the "Uniform Gifts to Minors Act of any state" includes both the Uniform Gifts to Minors Act of any state and the Uniform Transfers to Minors Act of any state.

6207. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

6208. (a) If a California statutory will states that a person shall perform an act, the person is required to perform that act.

(b) If a California statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

6209. Whenever a distribution under a California statutory will is to be made to a person's descendants, the property shall be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave descendants then living; and each living descendant of the nearest degree shall receive one share and the share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

6210. "Person" includes individuals and institutions.

6211. A reference in a California statutory will to a person "if living" or who "survives me" means a person who survives the decedent by 120 hours. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of the California statutory will, and the beneficiaries are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be a beneficiary has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

(Added by Stats. 1990, Ch. 710, Sec. 15. Operative July 1, 1991, by Sec. 48 of chapter.)

Article 2. General Provisions

6220. Any individual of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

6221. A California statutory will shall be executed only as follows:

(a) The testator shall complete the appropriate blanks and shall sign the will.

(b) Each witness shall observe the testator's signing and each witness shall sign his or her name in the presence of the testator.

6221.5. The execution of the attestation clause provided in the California statutory will by two or more witnesses satisfies Section 8220.

6222. (a) There are two California statutory wills:

(1) A California statutory will.

(2) A California statutory will with trust.

(b) Each California statutory will includes all of the following:

(1) The contents of the appropriate California statutory will form,

including the notice set out in Section 6240 or 6241.

(2) By reference, the full texts of each of the following:

(A) The definitions and rules of construction set forth in Article 1 (commencing with Section 6200).

(B) The clause set forth in Section 6242.

(c) The property disposition clause adopted by the testator.

(d) The mandatory clauses set forth in Section 6245 and, if applicable, 6246.

6223. If more than one property disposition clause appearing in paragraph 2.3 of a California statutory will form is selected, or if none is selected, the property of a testator who signs a California statutory will shall be distributed to the testator's heirs as if the testator did not make a will.

6224. Only the texts of the property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

6225. (a) A California statutory will may be revoked and may be amended by codicil in the same manner as other wills.

(b) Any additions to or deletions from the California statutory will on the face of the California statutory will form, other than in accordance with the instructions, are ineffective and shall be disregarded.

6226. (a) If after executing a California statutory will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition of property made by the will to the former spouse and any nomination of the former spouse as executor, trustee, or guardian made by the will. If any disposition or nomination is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(b) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Provisions nominating the former spouse as executor, trustee, or guardian shall be interpreted as if the former spouse failed to survive the testator.

(c) For purposes of this section, dissolution or annulment means any dissolution or annulment that would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(d) This section applies to any California statutory will, without regard to the time when the will was executed, but this section does not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985; and, if the final judgment of dissolution or annulment of marriage occurs before January 1, 1985, the case is governed by the law that applied prior to January 1, 1985.

Article 3. Form and Full Text of Clauses

6240. The following is the California statutory will form:

CALIFORNIA STATUTORY WILL

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR THE DELETED OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

6. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS

WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.
11. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE CALIFORNIA STATUTORY WILL WITH TRUST OR ANOTHER TYPE OF WILL.

[A printed form for a California statutory will shall set forth the above notice in 10-point boldface type.]

CALIFORNIA STATUTORY WILL OF

_____

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.
2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)	AMOUNT OF GIFT $ _____ AMOUNT WRITTEN OUT: _____ Dollars
	_____ Signature of Testator

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I

fail to sign in any box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. ☐

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. _____ ☐

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. _____ ☐

Article 3. Nominations of Executor and Guardian

3.1. EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. _____ ☐

SECOND EXECUTOR. _____ ☐

THIRD EXECUTOR. _____

3.2. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. _____

FIRST GUARDIAN OF THE PROPERTY. _____

SECOND GUARDIAN OF THE PERSON. _____

SECOND GUARDIAN OF THE PROPERTY. _____

THIRD GUARDIAN OF THE PERSON. _____

THIRD GUARDIAN OF THE PROPERTY. _____ ☐

3.3. BOND. My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor or guardian. Bond premiums are paid out of your estate.)

☐

I sign my name to this California Statutory Will on _____ at _____, _____.
Date City State

_____
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

6241. The following is the California statutory will with trust form:

CALIFORNIA STATUTORY WILL WITH TRUST

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR DESCENDANTS. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

3. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

4. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

5. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR THE DELETED OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

6. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

7. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

8. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF

THEY ARE NATURAL CHILDREN.

11. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

[A printed form for a California Statutory Will With Trust shall set forth the above notice in 10-point boldface type.]

CALIFORNIA STATUTORY WILL
WITH TRUST OF

_____

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)	AMOUNT OF GIFT $ _____ AMOUNT WRITTEN OUT: _____ Dollars
	_____ Signature of Testator

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I

fail to sign in any box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. _____ [ ]

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. ____ [ ]

Article 3. Nominations of Executor, Trustee, and Guardian

3.1. EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. _____ [ ]

SECOND EXECUTOR. _____

THIRD EXECUTOR. _____

3.2. TRUSTEE (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph 3.2 to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE. _____

SECOND TRUSTEE. _____

THIRD TRUSTEE. _____

3.3. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.3 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.3 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. _____ | |

FIRST GUARDIAN OF THE PROPERTY. _____ | |

SECOND GUARDIAN OF THE PERSON. _____ | |

SECOND GUARDIAN OF THE PROPERTY. _____ | |

THIRD GUARDIAN OF THE PERSON. _____ | |

THIRD GUARDIAN OF THE PROPERTY. _____ | |

3.4. BOND. My signature in this box means that a bond is not required for any individual named in this will as executor, trustee, or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor, trustee, or guardian. Bond premiums are paid out of your estate.)

| |

I sign my name to this California Statutory Will With Trust on _____ at _____, _____.
Date City State

_____
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses, and three witnesses would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will with trust in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

6242. The following is the full text of paragraph 2.1 of both California statutory will forms appearing in this chapter:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my spouse does not survive me, the executor shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the executor's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

6243. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California statutory will form set forth in Section 6240:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary

estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

I give all my residuary estate to my descendants who survive me. I leave nothing to my spouse, even if my spouse survives me.

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The executor shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of my death relating to intestate succession of property not acquired from a predeceased spouse.

6244. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California statutory will with trust form set forth in Section 6241:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much, or all, of the (i) principal or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much or all, of the (i) principal, or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(3) I leave nothing to my spouse, even if my spouse survives me.

6245. The mandatory clauses of all California statutory wills are as follows:

(a) INTESTATE DISPOSITION. If the testator has not made an effective disposition of the residuary estate, the executor shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of the testator's death relating to intestate succession of property not acquired from a predeceased spouse.

(b) POWERS OF EXECUTOR. (1) In addition to any powers now or hereafter conferred upon executors by law, including all powers granted under the Independent Administration of Estates Act, the executor shall have the power to: (A) sell estate assets at public or private sale, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise

distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor, or (C) a custodian, serving on behalf of the minor under the Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state.

The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is being made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) POWERS OF GUARDIAN. A guardian of the person nominated in the California statutory will shall have the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in a California statutory will shall have all of the powers conferred by law. All powers granted to guardians in this paragraph may be exercised without court authorization.

6246. In addition to the mandatory clauses contained in Section 6245, the California statutory will with trust form shall also incorporate the following mandatory clauses:

(a) INEFFECTIVE DISPOSITION. If, at the termination of any trust created in the California statutory will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect relating to intestate succession of property not acquired from a predeceased spouse.

(b) POWERS OF TRUSTEE. (1) In addition to any powers now or hereafter conferred upon trustees by law, the trustee shall have all the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9 of the Probate Code. The trustee may exercise those powers without court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisers, accountants, tax advisers, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

(B) On any distribution of assets from the trust, the trustee shall have the discretion to partition, allot, and distribute the assets (i) in

kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state.

(3) The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(c) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a California statutory will with trust:

(1) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(2) The trustee is entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(3) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the California statutory will with trust.

6247. (a) Except as specifically provided in this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

(b) Sections 6205, 6206, and 6226 apply to every California statutory will, including those executed before January 1, 1985. Section 6211 applies to every California statutory will, including those executed before July 1, 1991, except that Section 6211 does not apply if the testator died before July 1, 1991.

(c) Notwithstanding Section 6222 and except as provided in subdivision (b), a California statutory will is governed by the law that applied prior to January 1, 1985, if the California statutory will is executed on or after January 1, 1985, on a form that (1) was prepared for use under former Sections 56 to 56.14, inclusive, repealed by Chapter 842 of the Statutes of 1983, and (2) satisfied the requirements of law that applied prior to January 1, 1985.

(d) A California statutory will does not fail to satisfy the requirement of subdivision (a) merely because the will is executed on a form that incorporates the mandatory clauses of Section 6246 that refer to former Section 1120.2, repealed by Chapter 820 of the

Statutes of 1986. If the will incorporates the mandatory clauses with a reference to former Section 1120.2, the trustee has the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9.

(Amended by Stats. 1990, Ch. 710, Sec. 16. Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

6247. (a) Except as specifically provided in this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

(b) Sections 6205, 6206, 6226, 6243, 6245, and 6246 apply to every California statutory will, including those executed before January 1, 1985.

(c) Notwithstanding Section 6222 and except as provided in subdivision (b), a California statutory will is governed by the law that applied prior to January 1, 1985, if the California statutory will is executed on or after January 1, 1985, on a form that (1) was prepared for use under former Sections 56 to 56.14, inclusive, repealed by Chapter 842 of the Statutes of 1983, and (2) satisfied the requirements of law that applied prior to January 1, 1985

(d) A California statutory will does not fail to satisfy the requirement of subdivision (a) merely because the will is executed on a form that incorporates the mandatory clauses of Section 6246 that refer to former Section 1120 2, repealed by Chapter 820 of the Statutes of 1986. If the will incorporates the mandatory clauses with a reference to former Section 1120 2, the trustee has the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9

6248. Except as specifically provided in this chapter, the general law of California applies to a California statutory will.

CHAPTER 7. UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT

6300. A devise, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the trust property). The devise is not invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the death of the testator (regardless of whether made before or after the execution of the testator's will). Unless otherwise provided in the will, a revocation or termination of the trust before the death of the

testator causes the devise to lapse.

6301. This chapter does not invalidate any devise made by a will executed prior to September 17, 1965.

6303. This chapter may be cited as the Uniform Testamentary Additions to Trusts Act.

CHAPTER 8. TRUST FOR INSURANCE OR EMPLOYEE BENEFITS

6320. As used in this chapter, unless the context otherwise requires:

(a) "Contract or plan" means any of the following:

(1) An insurance, annuity, or endowment contract (including any agreement issued or entered into by the insurer in connection therewith, supplemental thereto, or in settlement thereof).

(2) A pension, retirement benefit, death benefit, stock bonus, profit-sharing or employees' saving plan, or contract created or entered into by an employer for the benefit of some or all of his or her employees.

(3) Self-employed retirement plans, and individual annuities or accounts, established or held pursuant to the Internal Revenue Code as now or hereafter amended.

(b) "Designation" means a designation made pursuant to Section 6321.

6321. A contract or plan may designate as a primary or contingent beneficiary, payee, or owner a trustee named or to be named in the will of the person entitled to designate the beneficiary, payee, or owner. The designation shall be made in accordance with the provisions of the contract or plan or, in the absence of such provisions, in a manner approved by the insurer if an insurance, annuity, or endowment contract is involved, and by the trustee, custodian, or person or entity administering the contract or plan, if any. The designation may be made before or after the execution of the designator's will and is not required to comply with the formalities for execution of a will.

6322. The designation is ineffective unless the designator's will contains provisions creating the trust or makes a disposition valid under Section 6300.

6323. Subject to the provisions of Section 6325, the benefits or rights resulting from the designation are payable or transferable directly to the trustee, without becoming subject to administration, upon or at any time after admission of the designator's will to probate. A designation pursuant to this chapter does not have the effect of naming a trustee of a separate inter vivos trust but the rights and benefits or the proceeds thereof when paid to the trustee are, or become a part of, the testamentary trust or trusts established pursuant to the designator's will or shall be added to an inter vivos trust or trusts if the disposition is governed by Section 6300.

6324. Except as otherwise provided in the designator's will, the rights and benefits and their proceeds paid or transferred to the

trustee are not subject to the debts of the designator to any greater extent than if they were paid or transferred to a named beneficiary, payee, or owner other than the estate of the designator.

6325. (a) The court in which the proceedings are pending for administration of the estate of the decedent has jurisdiction, before or after payment or transfer of benefits and rights or their proceeds to the trustee, to:

(1) Determine the validity of the trust.

(2) Determine the terms of the trust.

(3) Fill vacancies in the office of trustee.

(4) Require a bond of a trustee in its discretion and in such amount as the court may determine for the faithful performance of duties as trustee, subject to the provisions of Article 3 (commencing with Section 1540) of Chapter 12 of Division 1 of the Financial Code and Section 15602 of this code.

(5) Grant additional powers to the trustee, as provided in Section 16201.

(6) Instruct the trustee.

(7) Fix or allow payment of compensation of a trustee as provided in Sections 15680 to 15683, inclusive.

(8) Hear and determine adverse claims to the trust property by the personal representative, surviving spouse, or other third person.

(9) Determine the identity of the trustee and the trustee's acceptance or rejection of the office and, upon request, furnish evidence of trusteeship to a trustee.

(10) Order postponement of the payment or transfer of the benefits and rights or their proceeds.

(11) Authorize or direct removal of the trust or trust property to another jurisdiction pursuant to the procedure provided in Chapter 5 (commencing with Section 17400) of Part 5 of Division 9.

(12) Make any order incident to the foregoing or to the accomplishment of the purposes of this chapter.

(b) The personal representative of the designator's estate, any trustee named in the will or designation or successor to such trustee, or any person interested in the estate or trust may petition the court for an order under this section. Notice of hearing of the petition shall be given in the manner provided in Section 17203, except as the court may otherwise order.

6326. As to matters not specifically provided in Section 6325, the provisions of Division 9 (commencing with Section 15000) apply to the trust.

6327. An appeal may be taken from any of the following:

(a) Any order described in Section 7240 made pursuant to this chapter.

(b) An order making or refusing to make a determination specified in paragraph (1), (2), or (8) of subdivision (a) of Section 6325.

(c) As provided in Section 17207 for an order made pursuant to Section 6326.

6328. If no qualified trustee makes claim to the benefits or rights or proceeds within one year after the death of the designator, or if satisfactory evidence is furnished within such one-year period showing that no trustee can qualify to receive them, payment or transfer may be made, unless the designator has otherwise provided, by the obligor to the personal representative of the designator or to those thereafter entitled, and the obligor is discharged from liability.

6329. Enactment of this chapter does not invalidate trusts, otherwise valid, not made pursuant to the provisions of this chapter.

6330. This chapter, insofar as it is substantially the same as former Chapter 10 (commencing with Section 175) of former Division 1, repealed by Section 18 of Chapter 842 of the Statutes of 1983, shall be construed as a restatement and continuation thereof and not as a new enactment. After December 31, 1984, a reference in a written instrument to the previously existing provisions relating to the subject matter of this chapter shall be deemed to be a reference to the corresponding provisions of this chapter.

CHAPTER 9. DEVISE SUBJECT TO CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT

6341. If a testator's will provides that devised property shall be paid or delivered or transferred to a custodian subject to the California Uniform Gifts to Minors Act or the California Uniform Transfers to Minors Act:

(a) All of the provisions of the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900) of Division 4, including, but not limited to, the definitions and the provisions concerning powers, rights, and immunities contained in that act, are applicable to the devise during the period prior to distribution of the property.

(b) Unless the will clearly requires otherwise, if the person named as the beneficiary for whose benefit the custodial property is to be held attains the age at which the custodianship was to terminate prior to the order of distribution, the devise shall be deemed to be a direct devise to the person named as the beneficiary for whose benefit the custodial property was to be held.

(c) The personal representative of the testator's estate, upon entry of an order for distribution, shall make distribution pursuant to the order for distribution by transferring the devised property in the form and manner provided by the California Uniform Transfers to Minors Act.

(d) If a vacancy in the custodianship exists prior to full distribution of the devised property by the personal representative, a successor custodian shall be appointed for any undistributed property in the manner provided by the California Uniform Transfers to Minors Act.

6345. The will may provide for successor or substitute custodians and may specify the standard of compensation of the custodian.

6347. (a) Except as otherwise provided in the will or ordered by a court, each custodian designated in the will and the person for whom the property is to be held shall be deemed a devisee for the purpose of receiving notices which may be required or permitted to be sent to a devisee in the estate of the testator.

(b) Unless required by the will or ordered by the court, a custodian does not have a duty to participate in the proceedings in the estate on behalf of the minor, and in no event does the custodian have a duty to so participate until the custodian has filed a written notice of acceptance of the office of custodian with the clerk of the court in which administration of the estate of the testator is pending.

6348. Until distribution of the property pursuant to an order for distribution is completed, the court in which administration of the estate of the testator is pending has exclusive jurisdiction over all proceedings and matters concerning undistributed property, including, but not limited to, the appointment, declination, resignation, removal, bonding, and compensation of, and the delivery or transfer of the undistributed property to, a custodian. After distribution of any property is completed, the court has no further jurisdiction over the distributed property and the property shall be held subject to the California Uniform Transfers to Minors Act.

6349. (a) This chapter shall not be construed as providing an exclusive method for making devises to or for the benefit of minors.

(b) Nothing in this chapter limits any provision of the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900) of Division 4.

CHAPTER 11. UNIFORM INTERNATIONAL WILLS ACT

6380. In this chapter:

(a) "International will" means a will executed in conformity with Sections 6381 to 6384, inclusive.

(b) "Authorized person" and "person authorized to act in connection with international wills" means a person who by Section 6388, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

6381. (a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this chapter.

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This chapter does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

6382. (a) The will shall be made in writing. It need not be

written by the testator himself or herself. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge his or her signature.

(d) If the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for his or her inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

6383. (a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet shall be signed by the testator or, if the testator is unable to sign, by the person signing on his or her behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the will. If so and at the express request of the testator, the place where the testator intends to have the will kept shall be mentioned in the certificate provided for in Section 6384.

(d) A will executed in compliance with Section 6382 is not invalid merely because it does not comply with this section.

6384. The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of this chapter for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE
(Convention of October 26, 1973)

1. I, _____,
(name, address, and capacity)
a person authorized to act in connection with international wills,
2. certify that on _____ at _____
(date) (place)
3. _____
(testator) (name, address, date and place of birth)
in my presence and that of the witnesses
4. (a) _____
(name, address, date and place of birth)
(b) _____
(name, address, date and place of birth)
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
(1) the testator has signed the will or has acknowledged his signature previously affixed.
(2) following a declaration of the testator stating that he was unable to sign his will for the following reason _____, I have mentioned this declaration on the will,*
and the signature has been affixed by
_____
(name and address)*
7. (b) the witnesses and I have signed the will;
8. (c) each page of the will has been signed by _____ and numbered;*
9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
11. (f) the testator has requested me to include the following statement concerning the safekeeping of his will:*
_____

12. PLACE OF EXECUTION
13. DATE
14. SIGNATURE and, if necessary, SEAL

* to be completed if appropriate

6385. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the

instrument as a will under this chapter. The absence or irregularity of a certificate does not affect the formal validity of a will under this chapter.

6386. The international will is subject to the ordinary rules of revocation of wills.

6387. Sections 6380 to 6386, inclusive, derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this chapter, regard shall be had to its international origin and to the need for uniformity in its interpretation.

6388. Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners of this state are authorized persons in relation to international wills.

6389. The Secretary of State shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or other individual identifying number established by law, if any, address, date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Secretary of State, at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.

6390. After December 31, 1984, a reference in a written instrument, including a will, to the former law (repealed by Chapter 892 of the Statutes of 1984) shall be deemed to be a reference to the corresponding provision of this chapter.

PART 2. INTESTATE SUCCESSION

6400. Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in this part.

6401. (a) As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 100.

(b) As to quasi-community property, the intestate share of the surviving spouse is the one-half of the quasi-community property that belongs to the decedent under Section 101.

(c) As to separate property, the intestate share of the surviving spouse is as follows:

(1) The entire intestate estate if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister.

(2) One-half of the intestate estate in the following cases:

(A) Where the decedent leaves only one child or the issue of one deceased child.

(B) Where the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them.

(3) One-third of the intestate estate in the following cases:

(A) Where the decedent leaves more than one child.

(B) Where the decedent leaves one child and the issue of one or more deceased children.

(C) Where the decedent leaves issue of two or more deceased children.

6402. Except as provided in Section 6402.5, the part of the intestate estate not passing to the surviving spouse under Section 6401, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(b) If there is no surviving issue, to the decedent's parent or parents equally.

(c) If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, to the grandparent or grandparents equally, or to the issue of such grandparents if there is no surviving grandparent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(e) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by the issue of a predeceased spouse, to such issue, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(f) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, or issue of a predeceased spouse, but the decedent is survived by next of kin, to the next of kin in equal degree, but where there are two or more collateral kindred in equal degree who claim through different ancestors, those who claim through the nearest ancestor are preferred to those claiming through an ancestor more remote.

(g) If there is no surviving next of kin of the decedent and no surviving issue of a predeceased spouse of the decedent, but the decedent is survived by the parents of a predeceased spouse or the issue of such parents, to the parent or parents equally, or to the issue of such parents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

6402.5. (a) For purposes of distributing real property under this section if the decedent had a predeceased spouse who died not more than 15 years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(b) For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(c) For purposes of disposing of personal property under subdivision (b), the claimant heir bears the burden of proof to show the exact personal property to be disposed of to the heir.

(d) For purposes of providing notice under any provision of this code with respect to an estate that may include personal property subject to distribution under subdivision (b), if the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate is believed in good faith by the petitioning party to be less than ten thousand dollars ($10,000), the petitioning party need not give notice to the issue or next of kin of the predeceased spouse. If the personal property is subsequently determined to have an aggregate fair market value in excess of ten thousand dollars ($10,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law.

(e) For the purposes of disposing of property pursuant to subdivision (b), "personal property" means that personal property in which there is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more.

(f) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:

(1) One-half of the community property in existence at the time of the death of the predeceased spouse.

(2) One-half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.

(3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested

in the decedent upon the death of the predeceased spouse by right of survivorship.

(4) Any separate property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(g) For the purposes of this section, quasi-community property shall be treated the same as community property.

(h) For the purposes of this section:

(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

6403. (a) A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of intestate succession, and the heirs are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

(b) This section does not apply to the case where any of the persons upon whose time of death the disposition of property depends died before January 1, 1990, and such case continues to be governed by the law applicable before January 1, 1990.

6404. Part 4 (commencing with Section 6800) (escheat) applies if there is no taker of the intestate estate under the provisions of this part.

6406. Relatives of the halfblood inherit the same share they would inherit if they were of the whole blood.

6407. Relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

6408. (a) A relationship of parent and child is established for the purpose of determining intestate succession by, through, or from a person in the following circumstances:

(1) Except as provided in subdivisions (b), (c), and (d), the relationship of parent and child exists between a person and his or her natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between an adopted person and his or her adopting parent or parents.

(b) The relationship of parent and child does not exist between an adopted person and the person's natural parent unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to, or was cohabiting with, the other natural parent at the time the child was conceived and died before the birth of the child.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(c) Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of the child or the issue of that brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent.

(d) If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:

(1) The parent or a relative of the parent acknowledged the child.

(2) The parent or a relative of the parent contributed to the support or the care of the child.

(e) For the purpose of determining intestate succession by a person or his or her descendants from or through a foster parent or stepparent, the relationship of parent and child exists between that person and his or her foster parent or stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (2) it is established by clear and convincing evidence that the foster parent or stepparent would have adopted the person but for a legal barrier.

(f) For the purpose of determining whether a person is a "natural parent" as that term is used in this section:

(1) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

(2) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7006 of the Civil Code unless either (A) a court order was entered during the father's lifetime declaring paternity or (B) paternity is established by clear and convincing evidence that the father has openly and notoriously held out the child as his own.

(g) Nothing in this section affects or limits application of the judicial doctrine of equitable adoption for the benefit of the child or his or her descendants.

6409. (a) If a person dies intestate as to all or part of his or her estate, property the decedent gave during lifetime to an heir is treated as an advancement against that heir's share of the intestate estate only if one of the following conditions is satisfied:

(1) The decedent declares in a contemporaneous writing that the gift is to be deducted from the heir's share of the estate or that the gift is an advancement against the heir's share of the estate.

(2) The heir acknowledges in writing that the gift is to be so deducted or is an advancement.

(b) Subject to subdivision (c), the property advanced is to be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first.

(c) If the value of the property advanced is expressed in the contemporaneous writing of the decedent, or in an acknowledgment of the heir made contemporaneously with the advancement, that value is conclusive in the division and distribution of the intestate estate.

(d) If the recipient of the property advanced fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

6410. (a) A debt owed to the decedent is not charged against the intestate share of any person except the debtor.

(b) If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

6411. No person is disqualified to take as an heir because that person or a person through whom he or she claims is or has been an alien.

6412. Except to the extent provided in Section 120, the estates of dower and curtesy are not recognized.

6413. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

6414. (a) Except as provided in subdivision (b), this part does not apply where the decedent died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985.

(b) Section 6412 applies whether the decedent died before, on, or after January 1, 1985.

(c) Where any of the following provisions is applied in a case where the decedent died before January 1, 1985, any reference in that provision to this part shall be deemed to be a reference to former Division 2 (commencing with Section 200) which was repealed by Section 19 of Chapter 842 of the Statutes of 1983:

(1) Section 377 of the Code of Civil Procedure.

(2) Section 3524 of the Penal Code.

PART 3. FAMILY PROTECTION

CHAPTER 1. TEMPORARY POSSESSION OF FAMILY DWELLING AND EXEMPT PROPERTY

6500. Until the inventory is filed and for a period of 60 days thereafter, or for such other period as may be ordered by the court for good cause on petition therefor, the decedent's surviving spouse and minor children are entitled to remain in possession of the family dwelling, the wearing apparel of the family, the household furniture, and the other property of the decedent exempt from enforcement of a money judgment.

6501. A petition for an order under Section 6500 may be filed by any interested person. Notice of the hearing on the petition shall be given as provided in Section 1220.

CHAPTER 2. SETTING ASIDE EXEMPT PROPERTY OTHER THAN FAMILY DWELLING

6510. Upon the filing of the inventory or at any subsequent time during the administration of the estate, the court in its discretion may on petition therefor set apart all or any part of the property of the decedent exempt from enforcement of a money judgment, other than the family dwelling, to any one or more of the following:

(a) The surviving spouse.

(b) The minor children of the decedent.

6511. A petition for an order under Section 6510 may be filed by any interested person. Notice of the hearing on the petition shall be given as provided in Section 1220.

CHAPTER 3. SETTING ASIDE PROBATE HOMESTEAD

6520. Upon the filing of the inventory or at any subsequent time during the administration of the estate, the court in its discretion may on petition therefor select and set apart one probate homestead in the manner provided in this chapter.

6521. The probate homestead shall be set apart for the use of one or more of the following persons:

(a) The surviving spouse.

(b) The minor children of the decedent.

6522. (a) The probate homestead shall be selected out of the following property, giving first preference to the community and quasi-community property of, or property owned in common by, the decedent and the person entitled to have the homestead set apart:

(1) If the homestead is set apart for the use of the surviving spouse or for the use of the surviving spouse and minor children, out of community property or quasi-community property.

(2) If the homestead is set apart for the use of the surviving spouse or for the use of the minor children or for the use of the surviving spouse and minor children, out of property owned in common by the decedent and the persons entitled to have the homestead set apart, or out of the separate property of the decedent or, if the decedent was not married at the time of death, out of property owned by the decedent.

(b) The probate homestead shall not be selected out of property the right to possession of which is vested in a third person unless the third person consents thereto. As used in this subdivision, "third person" means a person whose right to possession of the property (1) existed at the time of the death of the decedent or came into existence upon the death of the decedent and (2) was not created by testate or intestate succession from the decedent.

(Amended by Stats 1990, Ch 710, Sec. 17. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

6522. (a) The probate homestead shall be selected out of the following property, giving first preference to the community and quasi-community property of, or property owned in common by, the decedent and the person entitled to have the homestead set apart·

(1) If the homestead is set apart for the use of the surviving spouse or for the use of the surviving spouse and minor children, out of community property or quasi-community property.

(2) If the homestead is set apart for the use of the surviving spouse or for the use of the minor children, out of property owned in common by the decedent and the person entitled to have the homestead set apart, or out of the separate property of the decedent or, if the decedent was not married at the time of death, out of property owned by the decedent.

(b) The probate homestead shall not be selected out of property the right to possession of which is vested in a third person unless the third person consents thereto. As used in this subdivision, "third person" means a person whose right to possession of the property (1) existed at the time of the death of the decedent or came into existence upon the death of the decedent and (2) was not created by testate or intestate succession from the decedent

6523. (a) In selecting and setting apart the probate homestead, the court shall consider the needs of the surviving spouse and minor children, the liens and encumbrances on the property, the claims of creditors, the needs of the heirs or devisees of the decedent, and the intent of the decedent with respect to the property in the estate and the estate plan of the decedent as expressed in inter vivos and testamentary transfers or by other means.

(b) The court, in light of subdivision (a) and other relevant considerations as determined by the court in its discretion, shall:

(1) Select as a probate homestead the most appropriate property available that is suitable for that use, including in addition to the dwelling itself such adjoining property as appears reasonable.

(2) Set the probate homestead so selected apart for such a term and upon such conditions (including, but not limited to, assignment by the homestead recipient of other property to the heirs or devisees of the property set apart as a homestead) as appear proper.

6524. The property set apart as a probate homestead shall be set apart only for a limited period, to be designated in the order, and in no case beyond the lifetime of the surviving spouse, or, as to a child, beyond its minority. Subject to the probate homestead right, the property of the decedent remains subject to administration including testate and intestate succession. The rights of the parties during the period for which the probate homestead is set apart are governed, to the extent applicable, by the Legal Estates Principal

and Income Law, Chapter 2.6 (commencing with Section 731) of Title 2 of Part 1 of Division 2 of the Civil Code.

6525. (a) A petition to select and set apart a probate homestead may be filed by any interested person.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

6526. (a) Property of the decedent set apart as a probate homestead is liable for claims against the estate of the decedent, subject to the probate homestead right. The probate homestead right in property of the decedent is liable for claims that are secured by liens and encumbrances on the property at the time of the decedent's death but is exempt to the extent of the homestead exemption as to any claim that would have been subject to a homestead exemption at the time of the decedent's death under Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(b) The probate homestead right in the property of the decedent is not liable for claims against the person for whose use the probate homestead is set apart.

(c) Property of the decedent set apart as a probate homestead is liable for claims against the testate or intestate successors of the decedent or other successors to the property after administration, subject to the probate homestead right.

6527. (a) The court may by order modify the term or conditions of the probate homestead right or terminate the probate homestead right at any time prior to entry of an order for final distribution of the decedent's estate if in the court's discretion to do so appears appropriate under the circumstances of the case.

(b) A petition for an order under this section may be filed by any of the following:

(1) The person for whose use the probate homestead is set apart.

(2) The testate or intestate successors of the decedent or other successors to the property set apart as a probate homestead.

(3) Persons having claims secured by liens or encumbrances on the property set apart as a probate homestead.

(c) Notice of the hearing on the petition shall be given to all the persons listed in subdivision (b) as provided in Section 1220.

6528. Nothing in this chapter terminates or otherwise affects a declaration of homestead by, or for the benefit of, a surviving spouse or minor child of the decedent with respect to the community, quasi-community, or common interest of the surviving spouse or minor child in property in the decedent's estate. This section is declaratory of, and does not constitute a change in, existing law.

CHAPTER 4. FAMILY ALLOWANCE

6540. (a) The following are entitled to such reasonable family allowance out of the estate as is necessary for their maintenance according to their circumstances during administration of the estate:

(1) The surviving spouse of the decedent.

(2) Minor children of the decedent.

(3) Adult children of the decedent who are physically or mentally incapacitated from earning a living and were actually dependent in whole or in part upon the decedent for support.

(b) The following may be given such reasonable family allowance out of the estate as the court in its discretion determines is necessary for their maintenance according to their circumstances during administration of the estate:

(1) Other adult children of the decedent who were actually dependent in whole or in part upon the decedent for support.

(2) A parent of the decedent who was actually dependent in whole or in part upon the decedent for support.

(c) If a person otherwise eligible for family allowance has a reasonable maintenance from other sources and there are one or more other persons entitled to a family allowance, the family allowance shall be granted only to those who do not have a reasonable maintenance from other sources.

6541. (a) The court may grant or modify a family allowance on petition of any interested person.

(b) With respect to an order for the family allowance provided for in subdivision (a) of Section 6540:

(1) Before the inventory is filed, the order may be made or modified either (A) ex parte or (B) after notice of the hearing on the petition has been given as provided in Section 1220.

(2) After the inventory is filed, the order may be made or modified only after notice of the hearing on the petition has been given as provided in Section 1220.

(c) An order for the family allowance provided in subdivision (b) of Section 6540 may be made only after notice of the hearing on the petition has been given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

6542. A family allowance commences on the date of the court's order or such other time as may be provided in the court's order, whether before or after the date of the order, as the court in its discretion determines, but the allowance may not be made retroactive to a date earlier than the date of the decedent's death.

6543. (a) A family allowance shall terminate no later than the entry of the order for final distribution of the estate or, if the estate

is insolvent, no later than one year after the granting of letters.

(b) Subject to subdivision (a), a family allowance shall continue until modified or terminated by the court or until such time as the court may provide in its order.

6544. The costs of proceedings under this chapter shall be paid by the estate as expenses of administration.

6545. Notwithstanding Chapter 2 (commencing with Section 916) of Title 13 of Part 2 of the Code of Civil Procedure, the perfecting of an appeal from an order made under this chapter does not stay proceedings under this chapter or the enforcement of the order appealed from if the person in whose favor the order is made gives an undertaking in double the amount of the payment or payments to be made to that person. The undertaking shall be conditioned that if the order appealed from is modified or reversed so that the payment or any part thereof to the person proves to have been unwarranted, the payment or part thereof shall, unless deducted from any preliminary or final distribution ordered in favor of the person, be repaid and refunded into the estate within 30 days after the court so orders following the modification or reversal, together with interest and costs.

CHAPTER 5. SPOUSE OR CHILD OMITTED FROM WILL

Article 1. Omitted Spouse

6560. Except as provided in Section 6561, if a testator fails to provide by will for the testator's surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive a share in the estate consisting of the following property in the estate:

(a) The one-half of the community property that belongs to the testator under Section 100.

(b) The one-half of the quasi-community property that belongs to the testator under Section 101.

(c) A share of the separate property of the testator equal in value to that which the spouse would have received if the testator had died intestate, but in no event is the share to be more than one-half the value of the separate property in the estate.

6561. The spouse does not receive a share of the estate under Section 6560 if any of the following is established:

(a) The testator's failure to provide for the spouse in the will was intentional and that intention appears from the will.

(b) The testator provided for the spouse by transfer outside the will and the intention that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or by other evidence.

(c) The spouse made a valid agreement waiving the right to share in the testator's estate.

6562. (a) Except as provided in subdivision (b), in satisfying a

share provided by this article:

(1) The share shall first be taken from the testator's estate not disposed of by will, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all devisees in proportion to the value they may respectively receive under the testator's will. Such value shall be determined as of the date of the decedent's death.

(b) If the obvious intention of the testator in relation to some specific devise or other provision of the will would be defeated by the application of subdivision (a), the specific devise or provision may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the testator, may be adopted.

Article 2. Omitted Children

6570. Except as provided in Section 6571, if a testator fails to provide in the will for a child of the testator born or adopted after the execution of the will, the omitted child shall receive a share in the estate equal in value to that which the child would have received if the testator had died intestate.

6571. A child does not receive a share of the estate under Section 6570 if any of the following is established:

(a) The testator's failure to provide for the child in the will was intentional and that intention appears from the will.

(b) At the time of execution of the will, the testator had one or more children and devised substantially all the estate to the other parent of the omitted child.

(c) The testator provided for the child by transfer outside the will and the intention that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or by other evidence.

6572. If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead or is unaware of the birth of the child, the child shall receive a share in the estate equal in value to that which the child would have received if the testator had died intestate.

6573. (a) Except as provided in subdivision (b), in satisfying a share provided by this article:

(1) The share shall first be taken from the testator's estate not disposed of by will, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all devisees in proportion to the value they may respectively receive under the testator's will. Such value shall be determined as of the date of the decedent's death.

(b) If the obvious intention of the testator in relation to some specific devise or other provision of the will would be defeated by the application of subdivision (a), the specific devise or provision

may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the testator, may be adopted.

Article 3. Testator's Death Before January 1, 1985

6580. This chapter does not apply where the testator died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

CHAPTER 6. SMALL ESTATE SET-ASIDE

6600. (a) Subject to subdivision (b), for the purposes of this chapter, "decedent's estate" means all the decedent's personal property, wherever located, and all the decedent's real property located in this state.

(b) For the purposes of this chapter:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, shall be excluded in determining the estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. As used in this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" have the meanings given those terms in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5.

6601. As used in this chapter, "minor child" means a child of the decedent who was under the age of 18 at the time of the decedent's death and who survived the decedent.

6602. A petition may be filed under this chapter requesting an order setting aside the decedent's estate to the decedent's surviving spouse and minor children, or one or more of them, as provided in this chapter, if the net value of the decedent's estate, over and above all liens and encumbrances at the date of death and over and above the value of any probate homestead interest set apart out of the decedent's estate under Section 6520, does not exceed twenty thousand dollars ($20,000).

6603. The petition shall be filed in the superior court of a county in which the estate of the decedent may be administered.

6604. (a) The petition shall allege that this chapter applies and request that an order be made setting aside the estate of the decedent as provided in this chapter.

(b) The petition shall include the following:

(1) If proceedings for administration of the estate are not pending, the facts necessary to determine the county in which the estate of the decedent may be administered.

(2) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, so far as known to the petitioner.

(3) A specific description and estimate of the value of the decedent's estate and a list of all liens and encumbrances at the date of death.

(4) A specific description and estimate of the value of any of the decedent's real property located outside this state that passed to the surviving spouse and minor children of the decedent, or any one or more of them, under the will of the decedent or by intestate succession.

(5) A specific description and estimate of the value of any of the decedent's property described in subdivision (b) of Section 6600 that passed to the surviving spouse and minor children of the decedent, or any one or more of them, upon the death of the decedent.

(6) A designation of any property as to which a probate homestead is set apart out of the decedent's estate under Section 6520.

(7) A statement of any unpaid liabilities for expenses of the last illness, funeral charges, and expenses of administration.

(8) The requested disposition of the estate of the decedent under this chapter and the considerations that justify the requested disposition.

6605. (a) If proceedings for the administration of the estate of the decedent are pending, a petition under this chapter shall be filed in those proceedings without the payment of an additional fee.

(b) If proceedings for the administration of the estate of the decedent have not yet been commenced, a petition under this chapter may be filed concurrently with a petition for the probate of the decedent's will or for administration of the estate of the decedent, or, if no petition for probate or for administration is being filed, a petition under this chapter may be filed independently.

(c) A petition may be filed under this chapter at any time prior to the entry of the order for final distribution of the estate.

6606. (a) A petition may be filed under this chapter by any of the following:

(1) The person named in the will of the decedent as executor.

(2) The surviving spouse of the decedent.

(3) The guardian of a minor child of the decedent.

(4) A child of the decedent who was a minor at the time the decedent died.

(5) The personal representative if a personal representative has been appointed for the decedent's estate.

(b) The guardian of a minor child of the decedent may file the petition without authorization or approval of the court in which the guardianship proceeding is pending.

6607. (a) Where proceedings for the administration of the estate

of the decedent are not pending when the petition is filed under this chapter and the petition under this chapter is not joined with a petition for the probate of the decedent's will or for administration of the estate of the decedent, the petitioner shall give notice of the hearing on the petition as provided in Section 1220 to (1) each person named as executor in the decedent's will and to (2) each heir or devisee of the decedent, if known to the petitioner. A copy of the petition shall be sent with the notice of hearing to the surviving spouse, each child, and each devisee who is not petitioning.

(b) If the petition under this chapter is filed with a petition for the probate of the decedent's will or with a petition for administration of the estate of the deceased spouse, notice of the hearing on the petition shall be given to the persons and in the manner prescribed by Section 8003 and shall be included in the notice required by that section.

(c) If proceedings for the administration of the estate of the decedent are pending when the petition is filed under this chapter and the hearing of the petition for probate of the will or administration of the estate of the decedent is set for a day more than 15 days after the filing of the petition filed under this chapter, the petition under this chapter shall be set for hearing at the same time as the petition for probate of the will or for administration of the estate, and notice of hearing on the petition filed under this chapter shall be given by the petitioner as provided in Section 1220. If the hearing of the petition for probate of the will or for administration of the estate is not set for hearing for a day more than 15 days after the filing of the petition under this chapter, (1) the petition filed under this chapter shall be set for hearing at least 15 days after the date on which it is filed, (2) notice of the hearing on the petition filed under this chapter shall be given by the petitioner as provided in Section 1220, and (3) if the petition for probate of the will or for administration of the estate has not already been heard, that petition shall be continued until that date and heard at the same time unless the court otherwise orders.

6608. If a petition is filed under this chapter, the personal representative, or the petitioner if no personal representative has been appointed, shall file with the clerk of the court, prior to the hearing of the petition, an inventory and appraisal made as provided in Part 3 (commencing with Section 8800) of Division 7. The personal representative or the petitioner, as the case may be, may appraise the assets which a personal representative could appraise under Section 8901.

6609. (a) If the court determines that the net value of the decedent's estate, over and above all liens and encumbrances at the date of death of the decedent and over and above the value of any probate homestead interest set apart out of the decedent's estate under Section 6520, does not exceed twenty thousand dollars ($20,000) as of the date of the decedent's death, the court shall make an order under this section unless the court determines that making

an order under this section would be inequitable under the circumstances of the particular case.

(b) In determining whether to make an order under this section, the court shall consider the needs of the surviving spouse and minor children, the liens and encumbrances on the property of the decedent's estate, the claims of creditors, the needs of the heirs or devisees of the decedent, the intent of the decedent with respect to the property in the estate and the estate plan of the decedent as expressed in inter vivos and testamentary transfers or by other means, and any other relevant considerations. If the surviving spouse has remarried at the time the petition is heard, it shall be presumed that the needs of the surviving spouse do not justify the setting aside of the small estate, or any portion thereof, to the surviving spouse. This presumption is a presumption affecting the burden of proof.

(c) Subject to subdivision (d), if the court makes an order under this section, the court shall assign the whole of the decedent's estate, subject to all liens and encumbrances on property in the estate at the date of the decedent's death, to the surviving spouse and the minor children of the decedent, or any one or more of them.

(d) If there are any liabilities for expenses of the last illness, funeral charges, or expenses of administration that are unpaid at the time the court makes an order under this section, the court shall make such orders as are necessary so that those unpaid liabilities are paid.

(e) Title to property in the decedent's estate vests absolutely in the surviving spouse, minor children, or any or all of them, as provided in the order, subject to all liens and encumbrances on property in the estate at the date of the decedent's death, and there shall be no further proceedings in the administration of the decedent's estate unless additional property in the decedent's estate is discovered.

6610. Upon becoming final, an order under Section 6609 shall be conclusive on all persons, whether or not they are then in being.

6611. (a) Subject to the limitations and conditions specified in this section, the person or persons in whom title vested pursuant to Section 6609 are personally liable for the unsecured debts of the decedent.

(b) The personal liability of a person under this section does not exceed the fair market value at the date of the decedent's death of the property title to which vested in that person pursuant to Section 6609, less the total of all of the following:

(1) The amount of any liens and encumbrances on that property.

(2) The value of any probate homestead interest set apart under Section 6520 out of that property.

(3) The value of any other property set aside under Section 6510 out of that property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the surviving spouse of the decedent, the child or children of the decedent, or the guardian of the minor child or

children of the decedent, may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the person liable under this section with the complaint therein prior to the expiration of the time for filing claims.

(2) Creditors who have or who secure an acknowledgment in writing of the person liable under this section that that person is liable for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

(e) Section 353 of the Code of Civil Procedure applies in an action under this section.

(Amended by Stats. 1990, Ch. 140, Sec. 4.1. Operative July 1, 1991, by Sec 20 of chapter)

[ORIGINAL SECTION]

6611 (a) Subject to the limitations and conditions specified in this section, the person or persons in whom title vested pursuant to Section 6609 are personally liable for the unsecured debts of the decedent.

(b) The personal liability of a person under this section does not exceed the fair market value at the date of the decedent's death of the property title to which vested in that person pursuant to Section 6609, less the total of all of the following:

(1) The amount of any liens and encumbrances on that property.

(2) The value of any probate homestead interest set apart under Section 6520 out of that property

(3) The value of any other property set aside under Section 6510 out of that property

(c) The personal liability under this section ceases one year after the date the court makes its order under Section 6609, except with respect to an action or proceeding then pending in court.

(d) In any action or proceeding based upon an unsecured debt of the decedent, the surviving spouse of the decedent, the child or children of the decedent, or the guardian of the minor child or children of the decedent, may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(e) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the person liable under this section with the complaint therein prior to the expiration of the time for filing claims

(2) Creditors who have or who secure an acknowledgment in writing of the person liable under this section that that person is liable for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

6612. If a petition filed under this chapter is filed with a petition for the probate of the decedent's will or for administration of the estate of the decedent and the court determines not to make an order under Section 6609, the court shall act on the petition for probate of the decedent's will or for administration of the estate of the decedent in the same manner as if no petition had been filed under this chapter, and the estate shall then be administered in the same manner as if no petition had been filed under this chapter.

6613. The attorney's fees for services performed in connection with the filing of a petition and the obtaining of a court order under this chapter shall be determined by private agreement between the attorney and the client and are not subject to approval by the court. If there is no agreement between the attorney and the client concerning the attorney's fees for services performed in connection with the filing of a petition and obtaining of a court order under this chapter and there is a dispute concerning the reasonableness of the attorney's fees for those services, a petition may be filed with the court in the same proceeding requesting that the court determine the reasonableness of the attorney's fees for those services. If there is an agreement between the attorney and the client concerning the attorney's fees for services performed in connection with the filing of a petition and obtaining a court order under this chapter and there is a dispute concerning the meaning of the agreement, a petition may be filed with the court in the same proceeding requesting that the court determine the dispute.

6614. Sections 6600 to 6613, inclusive, do not apply if the decedent died before July 1, 1987. If the decedent died before July 1, 1987, the case continues to be governed by the law applicable to the case prior to July 1, 1987.

6615. A reference in any statute of this state or in a written instrument, including a will or trust, to a provision of former Sections 640 to 647.5, inclusive, repealed by Chapter 783 of the Statutes of 1986, shall be deemed to be a reference to the comparable provisions of this chapter.

PART 4. ESCHEAT OF DECEDENT'S PROPERTY

6800. (a) If a decedent, whether or not the decedent was domiciled in this state, leaves no one to take the decedent's estate or any portion thereof by testate succession, and no one other than a government or governmental subdivision or agency to take the estate or a portion thereof by intestate succession, under the laws of this state or of any other jurisdiction, the same escheats at the time of the decedent's death in accordance with this part.

(b) Property that escheats to the state under this part, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession and is also subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil

Procedure relating to escheated estates.

6801. Real property in this state escheats to this state in accordance with Section 6800.

6802. All tangible personal property owned by the decedent, wherever located at the decedent's death, that was customarily kept in this state prior to the decedent's death, escheats to this state in accordance with Section 6800.

6803. (a) Subject to subdivision (b), all tangible personal property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration under this code escheats to this state in accordance with Section 6800.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes all of the following:

(1) The other jurisdiction is entitled to the property under its law.

(2) The decedent customarily kept the property in that jurisdiction prior to the decedent's death.

(3) This state has the right to escheat and take tangible personal property being administered as part of a decedent's estate in that jurisdiction if the decedent customarily kept the property in this state prior to the decedent's death.

6804. All intangible property owned by the decedent escheats to this state in accordance with Section 6800 if the decedent was domiciled in this state at the time of the decedent's death.

6805. (a) Subject to subdivision (b), all intangible property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration under this code escheats to this state in accordance with Section 6800 whether or not the decedent was domiciled in this state at the time of the decedent's death.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes all of the following:

(1) The other jurisdiction is entitled to the property under its laws.

(2) The decedent was domiciled in that jurisdiction at the time of the decedent's death.

(3) This state has the right to escheat and take intangible property being administered as part of a decedent's estate in that jurisdiction if the decedent was domiciled in this state at the time of the decedent's death.

6806. Notwithstanding any other provision of law, a benefit consisting of money or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement benefit, death benefit, unemployment insurance or similar benefits does not pass to or escheat to the state under this part but goes to the trust or fund from which it is distributable, subject to the provisions of Section 1521 of the Code of Civil Procedure. However, if such plan has terminated

and the trust or fund has been distributed to the beneficiaries thereof prior to distribution of such benefit from the estate, such benefit passes to the state and escheats to the state under this part.

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 1. PASSAGE OF DECEDENT'S PROPERTY

7000. Subject to Section 7001, title to a decedent's property passes on the decedent's death to the person to whom it is devised in the decedent's last will or, in the absence of such a devise, to the decedent's heirs as prescribed in the laws governing intestate succession.

7001. The decedent's property is subject to administration under this code, except as otherwise provided by law, and is subject to the rights of beneficiaries, creditors, and other persons as provided by law.

CHAPTER 2. JURISDICTION AND COURTS

Article 1. Jurisdiction and Venue

7050. (a) The superior court has jurisdiction of proceedings under this code concerning the administration of the decedent's estate.

(b) The court in proceedings under this code concerning the administration of the decedent's estate is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure.

7051. If the decedent was domiciled in this state at the time of death, the proper county for proceedings concerning administration of the decedent's estate is the county in which the decedent was domiciled, regardless of where the decedent died.

7052. If the decedent was not domiciled in this state at the time of death, the proper county for proceedings under this code concerning the administration of the decedent's estate is one of the following:

(a) If property of the nondomiciliary decedent is located in the county in which the nondomiciliary decedent died, the county in which the nondomiciliary decedent died.

(b) If no property of the nondomiciliary decedent is located in the county in which the nondomiciliary decedent died or if the nondomiciliary decedent did not die in this state, any county in

which property of the nondomiciliary decedent is located, regardless of where the nondomiciliary decedent died. If property of the nondomiciliary decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the court in that county has jurisdiction of the administration of the estate.

Article 2. Disqualification of Judge

7060. (a) In addition to any other ground provided by law for disqualification of a judge, a judge is disqualified from acting in proceedings under this code concerning the administration of the decedent's estate, except to order the transfer of a proceeding as provided in Article 3 (commencing with Section 7070), if any of the following circumstances exist:

(1) The judge is interested as a beneficiary or creditor.

(2) The judge is named as executor or trustee in the will.

(3) The judge is otherwise interested.

(b) A judge who participates in any manner in the drafting or execution of a will, including acting as a witness to the will, is disqualified from acting in any proceeding prior to and including the admission of the will to probate or in any proceeding involving its validity or interpretation.

(c) The amendments made to former Section 303 by Section 27 of Chapter 923 of the Statutes of 1987 do not apply in any proceeding commenced prior to July 1, 1988.

Article 3. Transfer of Proceedings

7070. The court or judge shall order a proceeding under this code concerning the administration of the decedent's estate transferred to another county if there is no judge of the court in which the proceeding is pending who is qualified to act. This section does not apply if a judge qualified to act is assigned by the chairman of the Judicial Council to sit in the county and hear the proceeding.

7071. Transfer of a proceeding under this article shall be to another county in which property of the decedent is located or, if there is no other county in which property of the decedent is located, to an adjoining county.

7072. Upon petition of the personal representative or other interested person before entry of the order for final distribution of the estate, a proceeding transferred under this article may be retransferred to the court in which the proceeding was originally commenced if the court determines that both of the following conditions are satisfied:

(a) Another person has become judge of the court where the proceeding was originally commenced who is not disqualified to act in the administration of the estate.

(b) The convenience of the parties interested would be promoted

by the retransfer.

CHAPTER 3. RULES OF PROCEDURE

Article 1. Trial by Jury

7200. Except as otherwise expressly provided in this code, there is no right to a jury trial in proceedings under this code concerning the administration of the decedent's estate.

Article 2. New Trials

7220. In proceedings under this code concerning the administration of the decedent's estate, a motion for a new trial may be made only in the following cases:

(a) Contest of a will or revocation of probate of a will.

(b) Cases in which a right to jury trial is expressly granted, whether or not the case was tried by a jury.

Article 3. Appeals

7240. An appeal may be taken from the making of, or the refusal to make, any of the following orders:

(a) Granting or revoking letters, but not letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Directing or authorizing the sale or conveyance or confirming the sale of property.

(g) Directing or authorizing the granting of an option to purchase property.

(h) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5.

(i) Allocating debts under Chapter 3 (commencing with Section 11440) of Part 9.

(j) Settling an account of a personal representative.

(k) Instructing or directing a personal representative.

(*l*) Directing or allowing the payment of a debt, claim, devise, or attorney's fee.

(m) Determining the persons to whom distribution should be made.

(n) Distributing property.

(o) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(p) Authorizing a personal representative to invest or reinvest

surplus money under Section 9732.

7241. (a) Except as provided in subdivisions (b) and (c), an appeal under Section 7240 stays the operation and effect of the order.

(b) Notwithstanding that an appeal is taken from the order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the personal representative, or may appoint a special administrator to exercise the powers, from time to time, as though no appeal were pending. Acts of the personal representative or special administrator pursuant to the directions of the court made under this subdivision are valid, regardless of the result of the appeal.

(c) An appeal under Section 7240 does not stay the operation and effect of the order if the court requires an undertaking, as provided in Section 917.9 of the Code of Civil Procedure, and the undertaking is not given.

7242. Notwithstanding the repeal of former Section 1297 by Chapter 1199 of the Statutes of 1988, an appeal may be taken from an order or the refusal to make an order:

(a) Determining heirship or the persons to whom distribution should be made, pursuant to former Sections 1190 to 1192, inclusive, repealed by Chapter 1199 of the Statutes of 1988.

(b) Fixing an inheritance tax or determining that none is due.

Article 3.5. Judgments and Orders

7250. (a) When a judgment or order made pursuant to the provisions of this code concerning the administration of the decedent's estate becomes final, it releases the personal representative and the sureties from all claims of the heirs or devisees and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, "order" includes an order settling an account of the personal representative, whether an interim or final account.

(b) Nothing in this section affects any order, judgment, or decree made, or any action taken, before July 1, 1988. The validity of any action taken before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this section.

Article 4. Orders and Transactions Affecting Property

7260. As used in this article, "transaction" means a transaction affecting title to property in the estate, including, but not limited to, the following:

(a) In the case of real property, a conveyance (including a sale, option, or order confirming a sale or option), a lease, the creation of a mortgage, deed of trust, or other lien or encumbrance, the setting apart of a probate homestead, or the distribution of property.

(b) In the case of personal property, a transfer of the property or

the creation of a security interest or other lien on the property.

7261. If a transaction affecting real property in the estate is executed by the personal representative in accordance with the terms of a court order, the instrument shall include a statement that the transaction is made by authority of the order authorizing or directing the transaction and shall give the date of the order.

7262. A transaction executed by the personal representative in accordance with an order authorizing or directing the transaction has the same effect as if the decedent were living at the time of the transaction and had carried it out in person while having legal capacity to do so.

7263. If an order is made setting apart a probate homestead, confirming a sale or making a distribution of real property, or determining any other matter affecting title to real property in the estate, the personal representative shall record a certified copy of the order in the office of the county recorder in each county in which any portion of the real property is located.

Article 5. United States as Interested Person

7280. Where compensation, pension, insurance, or other allowance is made or awarded by a department or bureau of the United States government to a decedent's estate, the department or bureau has the same right as an interested person to do any of the following:

(a) Request special notice.

(b) Commence and prosecute an action on the bond of a personal representative.

(c) Contest an account of a personal representative.

CHAPTER 4. PUBLIC ADMINISTRATORS

Article 1. Taking Temporary Possession or Control of Property

7600. If a public officer or employee knows of property of a decedent that is subject to loss, injury, waste, or misappropriation and that ought to be in the possession or control of the public administrator, the officer or employee shall inform the public administrator.

7600.5. If a person dies in a hospital, convalescent hospital, or board and care facility without known next of kin, the person in charge of the hospital or facility shall give immediate notice of that fact to the public administrator of the county in which the hospital or facility is located. If the notice required by this section is not given, the hospital or facility is liable for (1) any cost of interment incurred by the estate or the county as a result of the failure and (2) any loss to the estate or beneficiaries caused by loss, injury, waste, or misappropriation of property of the decedent as a result of the failure.

7601. (a) If no personal representative has been appointed, the public administrator of a county shall take prompt possession or control of property of a decedent in the county that is subject to loss, injury, waste, or misappropriation, or that the court orders into the possession or control of the public administrator after notice to the public administrator as provided in Section 1220.

(b) If property described in subdivision (a) is beyond the ability of the public administrator to take possession or control, the public administrator is not liable for failing to take possession or control of the property.

7602. (a) A public administrator who is authorized to take possession or control of property of a decedent under this article shall make a prompt search for other property, a will, and instructions for disposition of the decedent's remains.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section 8200.

(c) If instructions for disposition of the decedent's remains are found, the public administrator shall promptly deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

7603. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may issue a written certification of that fact. The written certification is effective for five days after the date of issuance.

(b) The public administrator may record a copy of the written certification in any county in which is located real property of which the public administrator is authorized to take possession or control under this article.

(c) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public administrator information concerning property held in the sole name of the decedent.

(2) Grant the public administrator access to a safe deposit box rented in the sole name of the decedent for the purpose of inspection and removal of any will or instructions for disposition of the decedent's remains. Costs and expenses incurred in drilling or forcing a safe deposit box shall be borne by the estate of the decedent.

(3) Surrender to the public administrator property of the decedent that is subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification provided by this section:

(1) Constitutes sufficient acquittance for providing information or granting access to the safe deposit box, for removal of the decedent's will and instructions for disposition of the decedent's remains, and for surrendering property of the decedent.

(2) Fully discharges the financial institution or other person from any liability for any act or omission of the public administrator with

respect to the property or the safe deposit box.

7604. If the public administrator takes possession or control of property of a decedent under this article, but another person is subsequently appointed personal representative, the public administrator is entitled to reasonable costs incurred for the preservation of the estate, together with reasonable compensation for services. The costs and compensation are a proper expense of administration.

Article 2. Appointment as Personal Representative

7620. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if no person having higher priority has petitioned for appointment.

(b) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court, whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

7621. (a) Except as otherwise provided in this section, appointment of the public administrator as personal representative shall be made, and letters issued, in the same manner and pursuant to the same procedure as for appointment of and issuance of letters to personal representatives generally.

(b) Appointment of the public administrator may be made on the court's own motion, after notice to the public administrator as provided in Section 1220.

(c) Letters may be issued to "the public administrator" of the county without naming the public administrator.

(d) The public administrator's oath and official bond are in lieu of the personal representative's oath and bond. Every estate administered under this chapter shall be charged a bond fee in the amount of twenty-five dollars ($25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars ($10,000). The amount charged is an expense of administration and that amount shall be deposited in the county treasury.

7622. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this code concerning the administration of the decedent's estate apply to administration by the public administrator.

(b) The public administrator is entitled to receive the same compensation as is granted by this division to a personal representative generally. However, the compensation of the public administrator and the public administrator's attorney shall not be less

than the compensation in effect at the time of appointment of the public administrator.

7623. (a) As used in this section, "additional compensation" means the difference between the reasonable compensation of the public administrator in administering the estate and the compensation awarded the public administrator under Chapter 1 (commencing with Section 10800) of Part 7.

(b) The public administrator may be awarded additional compensation if any of the following conditions are satisfied:

(1) A person having priority for appointment as personal representative has been given notice under Section 8110 of the public administrator's petition for appointment, and the person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of a personal representative.

7624. (a) If after final distribution of an estate any money remains in the possession of the public administrator that should be paid over to the county treasurer pursuant to Chapter 5 (commencing with Section 11850) of Part 10, the court shall order payment to be made within 60 days.

(b) Upon failure of the public administrator to comply with an order made pursuant to subdivision (a), the district attorney of the county shall promptly institute proceedings against the public administrator and the sureties on the official bond for the amount ordered to be paid, plus costs.

Article 3. Deposit of Money of Estate

7640. (a) The public administrator shall, upon receipt, deposit all money of the estate in an insured account in a financial institution or with the county treasurer of the county in which the proceedings are pending.

(b) Upon deposit under this section the public administrator is discharged from further responsibility for the money deposited until the public administrator withdraws the money.

7641. Money deposited in a financial institution or with the county treasurer under this article may be withdrawn upon the order of the public administrator when required for the purposes of administration.

7642. (a) The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit had been individually and separately deposited.

(b) Interest or dividends credited to the account of the public administrator in excess of the amount credited to the estates pursuant to subdivision (a) shall be deposited in the county general fund.

7643. (a) The county treasurer shall receive and safely keep all

money deposited with the county treasurer under this chapter and pay the money out on the order of the public administrator when required for the purposes of administration. The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(b) The county treasurer shall deliver to the State Treasurer or the Controller all money in the possession of the county treasurer belonging to the estate, if there are no beneficiaries or other persons entitled to the money, or the beneficiaries or other persons entitled to the money do not appear and claim it. Delivery shall be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

7644. (a) If a deposit in a financial institution is made under this article, money remaining unclaimed at the expiration of five years after the date of the deposit, together with the increase and proceeds of the deposit, shall be presumed abandoned in any of the following circumstances:

(1) The deposit belongs to the estate of a known decedent for which a personal representative has never been appointed.

(2) The deposit belongs to the estate of a known decedent for which a personal representative has been appointed but no order of distribution has been made due to the absence of interested persons or the failure of interested persons diligently to protect their interests by taking reasonable steps for the purpose of securing a distribution of the estate.

(b) The Controller may, at any time after the expiration of the five-year period, file a petition with the court setting forth the fact that the money has remained on deposit in a financial institution under the circumstances described in subdivision (a) for the five-year period, and requesting an order declaring that the money is presumptively abandoned and directing the holder of the money to pay the money to the State Treasurer.

(c) Upon presentation of a certified copy of a court order made under subdivision (b), the financial institution shall forthwith transmit the money to the State Treasurer for deposit in the State Treasury. The deposit shall be made as provided in Section 1310 of the Code of Civil Procedure. All money deposited in the State Treasury under the provisions of this section shall be deemed to be deposited in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure. The deposit shall be transmitted, received, accounted for, and disposed of as provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Article 4. Summary Disposition of Small Estates

7660. (a) If a public administrator takes possession or control of, or is appointed personal representative of, an estate pursuant to this

chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(2) The total value of the property in the decedent's estate does not exceed ten thousand dollars ($10,000). The authority provided by this paragraph may be exercised without court authorization.

(b) Summary disposition may be made notwithstanding the existence of the decedent's will, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this code concerning the administration of the decedent's estate.

7661. A public administrator acting under authority of this article may:

(a) Withdraw money of the decedent on deposit in a financial institution.

(b) Collect any debts owed to the decedent.

(c) Sell personal property of the decedent. Sales may be made with or without notice, as the public administrator elects. Title to the property sold passes without the need for confirmation by the court.

(d) Sell real property of the decedent, subject to Article 6 (commencing with Section 10300) of Chapter 18 of Part 5. Title to the property sold passes with the public administrator's deed.

7662. The public administrator acting under authority of this article shall pay out the money of the estate in the order prescribed in Section 11420, for expenses of administration, charges against the estate, and claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7663. A creditor whose claim is aid under this section is not liable for contribution to a creditor whose claim is presented after the payment.

(Amended by Stats. 1990, Ch. 710, Sec. 18 Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

7662. The public administrator acting under authority of this article shall pay out the money of the estate, in the order prescribed in Section 11420, for expenses of administration, charges against the estate, and claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7663. A creditor whose claim is paid under this subdivision is not liable for contribution to a creditor whose claim is presented after the payment.

7663. (a) After payment of debts pursuant to Section 7662, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public

administrator shall distribute to the decedent's beneficiaries any money or other property of the decedent remaining in the possession of the public administrator.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund of the county, subject to Article 3 (commencing with Section 50050) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. If the amount deposited exceeds ten thousand dollars ($10,000), the public administrator shall at the time of the deposit give the Controller written notice of the information specified in Section 1311 of the Code of Civil Procedure.

(Amended by Stats. 1990, Ch. 324, Sec. 2. Effective July 17, 1990 Operative July 1, 1991, by Sec 4 of Chapter.)

[ORIGINAL SECTION]

7663. (a) After payment of debts pursuant to Section 7662, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute to the decedent's beneficiaries any money or other property of the decedent remaining in the possession of the public administrator.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund of the county

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed to the person, valued as of the date of the distribution, less the amount of any liens and encumbrances on the property on that date. Section 353 of the Code of Civil Procedure applies in an action under this section.

(Amended by Stats. 1990, Ch 140, Sec 5 1 Operative July 1, 1991, by Sec 21 of chapter.)

[ORIGINAL SECTION]

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed to the person, valued as of the date of the distribution, less the amount of any liens and encumbrances on the property on that date.

7665. (a) The public administrator shall file with the clerk a statement showing the property of the decedent that came into possession of the public administrator and the disposition made of the property, together with receipts for all distributions. This subdivision does not apply to proceedings under paragraph (2) of subdivision (a) of Section 7660.

(b) The public administrator shall maintain a file of all receipts and records of expenditures for a period of three years after disposition of the property pursuant to Section 7663.

7666. (a) Except as provided in Section 7623 and in subdivision (b), the compensation payable to the public administrator and the attorney, if any, for the public administrator for the filing of an application pursuant to this article and for performance of any duty or service connected therewith is that set out in Part 7 (commencing with Section 10800).

(b) The public administrator is entitled to a minimum compensation of three hundred fifty dollars ($350).

(Amended by Stats 1990, Ch. 710, Sec. 19. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

7666 (a) Except as provided in Section 7623 and in subdivision (b), the compensation payable to the public administrator for the filing of an application pursuant to this article and for performance of any duty or service connected therewith is that set out in Part 7 (commencing with Section 10800).

(b) The public administrator is entitled to a minimum compensation of three hundred fifty dollars ($350).

PART 2. OPENING ESTATE ADMINISTRATION

CHAPTER 1. COMMENCEMENT OF PROCEEDINGS

8000. (a) At any time after a decedent's death, any interested person may commence proceedings for administration of the estate of the decedent by a petition to the court for an order determining the date and place of the decedent's death and for either or both of the following:

(1) Appointment of a personal representative.

(2) Probate of the decedent's will.

(b) A petition for probate of the decedent's will may be made regardless of whether the will is in the petitioner's possession or is lost, destroyed, or beyond the jurisdiction of the state.

8001. Unless good cause for delay is shown, if a person named in a will as executor fails to petition the court for administration of the estate within 30 days after the person has knowledge of the death of the decedent and that the person is named as executor, the person may be held to have waived the right to appointment as personal representative.

8002. (a) The petition shall contain all of the following information:

(1) The date and place of the decedent's death.

(2) The street number, street, and city, or other address, and the county, of the decedent's residence at the time of death.

(3) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, so far as known to or reasonably ascertainable by the petitioner.

(4) The character and estimated value of the property in the

estate.

(5) The name of the person for whom appointment as personal representative is petitioned.

(b) If the decedent left a will:

(1) The petitioner shall attach to the petition a photographic copy of the will. In the case of a holographic will or other will of which material provisions are handwritten, the petitioner shall also attach a typed copy of the will.

(2) If the will is in a foreign language, the petitioner shall attach an English language translation. On admission of the will to probate, the court shall certify to a correct translation into English, and the certified translation shall be filed with the will.

(3) The petition shall state whether the person named as executor in the will consents to act or waives the right to appointment.

8003. (a) The hearing on the petition shall be set for a day not less than 15 nor more than 30 days after the petition is filed. At the request of the petitioner made at the time the petition is filed, the hearing on the petition shall be set for a day not less than 30 nor more than 45 days after the petition is filed. The court may not shorten the time for giving the notice of hearing under this section.

(b) The petitioner shall serve and publish notice of the hearing in the manner prescribed in Chapter 2 (commencing with Section 8100).

8004. (a) If appointment of the personal representative is contested, the grounds of opposition may include a challenge to the competency of the personal representative or the right to appointment. If the contest asserts the right of another person to appointment as personal representative, the contestant shall also file a petition and serve notice in the manner provided in Article 2 (commencing with Section 8110) of Chapter 2, and the court shall hear the two petitions together.

(b) If a will is contested, the applicable procedure is that provided in Article 3 (commencing with Section 8250) of Chapter 3.

8005. (a) At the hearing on the petition, the court may examine and compel any person to attend as a witness concerning any of the following matters:

(1) The time, place, and manner of the decedent's death.

(2) The place of the decedent's domicile and residence at the time of death.

(3) The character and value of the decedent's property.

(4) Whether or not the decedent left a will.

(b) The following matters shall be established:

(1) The jurisdictional facts, including:

(A) The date and place of the decedent's death.

(B) That the decedent was domiciled in this state or left property in this state at the time of death.

(C) The publication of notice under Article 3 (commencing with Section 8120) of Chapter 2.

(2) The existence or nonexistence of the decedent's will.

(3) That notice of the hearing was served as provided in Article 2 (commencing with Section 8110) of Chapter 2.

8006. (a) If the court finds that the matters referred to in paragraph (1) of subdivision (b) of Section 8005 are established, the court shall make an order determining the time and place of the decedent's death and the jurisdiction of the court. Where appropriate and on satisfactory proof, the order shall admit the decedent's will to probate and appoint a personal representative. The date the will is admitted to probate shall be included in the order.

(b) If through defect of form or error the matters referred to in paragraph (1) of subdivision (b) of Section 8005 are incorrectly stated in the petition but actually are established, the court has and retains jurisdiction to correct the defect or error at any time. No such defect or error makes void an order admitting the will to probate or appointing a personal representative or an order made in any subsequent proceeding.

8007. (a) Except as provided in subdivision (b), an order admitting a will to probate or appointing a personal representative, when it becomes final, is a conclusive determination of the jurisdiction of the court and cannot be collaterally attacked.

(b) Subdivision (a) does not apply in either of the following cases:

(1) The presence of extrinsic fraud in the procurement of the court order.

(2) The court order is based on the erroneous determination of the decedent's death.

CHAPTER 2. NOTICE OF HEARING

Article 1. Contents

8100. The notice of hearing of a petition for administration of a decedent's estate, whether served under Article 2 (commencing with Section 8110) or published under Article 3 (commencing with Section 8120), shall state substantially as follows:

NOTICE OF PETITION TO ADMINISTER
ESTATE OF _____, ESTATE NO. _____

To all heirs, beneficiaries, creditors, and contingent creditors of _____ and persons who may be otherwise interested in the will or estate, or both:

A petition has been filed by _____ in the Superior Court of California, County of _____, requesting that _____ be appointed as personal representative to administer the estate of _____ [and for probate of the decedent's will, which is available for examination in the court file].

[The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the

need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. The petition will be granted unless good cause is shown why it should not be.]

The petition is set for hearing in Dept. No. _____ at _____
(Address)
on _____ at _____.
(Date of hearing) (Time of hearing)

IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court and mail a copy to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in Section 9100 of the California Probate Code. The time for filing claims will not expire before four months from the date of the hearing noticed above.

YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may request special notice of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Section 1250 of the California Probate Code.

_____
(Name and address of petitioner or petitioner's attorney)

Article 2. Service of Notice of Hearing

8110. At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons:

(a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner.

(b) Each devisee and executor named in any will being offered for probate.

8111. If the decedent's will involves or may involve a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee resident in this state, or involves or may involve a devise for charitable purposes without an identified devisee, notice of hearing accompanied by a copy of the petition and of the will shall be served on the Attorney General as provided in Section 1209.

8112. A general personal representative shall give notice of

administration of the estate of the decedent to creditors under Chapter 2 (commencing with Section 9050), and to public entities under Chapter 5 (commencing with Section 9200), of Part 4.

8113. If a citizen of a foreign country dies without leaving a will or leaves a will without naming an executor, or if it appears that property will pass to a citizen of a foreign country, notice shall be given to a recognized diplomatic or consular official of the foreign country maintaining an office in the United States.

Article 3. Publication

8120. In addition to service of the notice of hearing as provided in Article 2 (commencing with Section 8110), notice of hearing of a petition for administration of a decedent's estate shall also be published before the hearing in the manner provided in this article.

8121. (a) The first publication date of the notice shall be at least 15 days before the hearing. Three publications in a newspaper published once a week or more often, with at least five days intervening between the first and last publication dates, not counting the publication dates, are sufficient.

(b) Notice shall be published in a newspaper of general circulation in the city where the decedent resided at the time of death, or where the decedent's property is located if the court has jurisdiction under Section 7052. If there is no such newspaper, or if the decedent did not reside in a city, or if the property is not located in a city, then notice shall be published in a newspaper of general circulation in the county which is circulated within the area of the county in which the decedent resided or the property is located. If there is no such newspaper, notice shall be published in a newspaper of general circulation published in this state nearest to the county seat of the county in which the decedent resided or the property is located, and which is circulated within the area of the county in which the decedent resided or the property is located.

(c) For purposes of this section, "city" means a charter city as defined in Section 34101 of the Government Code or a general law city as defined in Section 34102 of the Government Code.

8122. The Legislature finds and declares that, to be most effective, notice of hearing should be published in compliance with Section 8121. However, the Legislature recognizes the possibility that in unusual cases due to confusion over jurisdictional boundaries or oversight such notice may inadvertently be published in a newspaper that does not satisfy Section 8121. Therefore, to prevent a minor error in publication from invalidating what would otherwise be a proper proceeding, the Legislature further finds and declares that notice published in a good faith attempt to comply with Section 8121 is sufficient to provide notice of hearing and to establish jurisdiction if the court expressly finds that the notice was published in a newspaper of general circulation published within the county and widely circulated within a true cross-section of the area of the

county in which the decedent resided or the property was located in substantial compliance with Section 8121.

8123. The caption of a notice under this article shall be in 8-point type or larger and the text shall be in 7-point type or larger.

8124. A petition for administration of a decedent's estate shall not be heard by the court unless an affidavit showing due publication of the notice of hearing has been filed with the court. The affidavit shall contain a copy of the notice and state the date of its publication.

8125. Notwithstanding Section 8100, after the notice of hearing is published and an affidavit filed, any subsequent publication of the notice ordered by the court may omit the information for creditors and contingent creditors.

CHAPTER 3. PROBATE OF WILL

Article 1. Production of Will

8200. (a) Unless a petition for probate of the will is earlier filed, the custodian of a will shall, within 30 days after having knowledge of the death of the testator, do both of the following:

(1) Deliver the will to the clerk of the superior court of the county in which the estate of the decedent may be administered. No fee shall be charged for compliance with the requirement of this paragraph.

(2) Mail a copy of the will to the person named in the will as executor, if the person's whereabouts is known to the custodian, or if not, to a person named in the will as a beneficiary, if the person's whereabouts is known to the custodian.

(b) A custodian of a will who fails to comply with the requirements of this section is liable for all damages sustained by any person injured by the failure.

(c) The clerk shall release a copy of a will delivered under this section for attachment to a petition for probate of the will or otherwise on receipt of a court order for production of the will and payment of the required fee.

8201. If, on petition to the superior court of the county in which the estate of the decedent is being or may be administered alleging that a person has possession of a decedent's will, the court is satisfied that the allegation is true, the court shall order the person to produce the will.

8202. If the will of a person who was domiciled in this state at the time of death is detained in a court of any other state or country and cannot be produced for probate in this state, a certified photographic copy of the will may be admitted to probate in this state with the same force and effect as the original will. The same proof shall be required as if the original will were produced.

Article 2. Proof of Will

8220. Unless there is a contest of a will:

(a) The will may be proved on the evidence of one of the subscribing witnesses only, if the evidence shows that the will was executed in all particulars as prescribed by law.

(b) Evidence of execution of a will may be received by an affidavit of a subscribing witness to which there is attached a photographic copy of the will, or by an affidavit in the original will that includes or incorporates the attestation clause.

(c) If no subscribing witness resides in the county, but the deposition of a witness can be taken elsewhere, the court may direct the deposition to be taken. On the examination, the court may authorize a photographic copy of the will to be made and presented to the witness, and the witness may be asked the same questions with respect to the photographic copy as if the original will were present.

8221. If no subscribing witness is available as a witness within the meaning of Section 240 of the Evidence Code, the court may, if the will on its face conforms to all requirements of law, permit proof of the will by proof of the handwriting of the testator and one of the following:

(a) Proof of the handwriting of any one subscribing witness.

(b) Receipt in evidence of one of the following documents reciting facts showing due execution of the will:

(1) A writing in the will bearing the signatures of all subscribing witnesses.

(2) An affidavit of a person with personal knowledge of the circumstances of the execution.

8222. A holographic will may be proved in the same manner as other writings.

8223. The petition for probate of a lost or destroyed will shall include a written statement of the testamentary words or their substance. If the will is proved, the provisions of the will shall be set forth in the order admitting the will to probate.

8224. The testimony of each witness in a proceeding concerning the execution or provisions of a will, the testamentary capacity of the decedent, and other issues of fact, may be reduced to writing, signed by the witness, and filed, whether or not the will is contested. The testimony so preserved, or an official reporter's transcript of the testimony, is admissible in evidence in any subsequent proceeding concerning the will if the witness has become unavailable as a witness within the meaning of Section 240 of the Evidence Code.

8225. When the court admits a will to probate, that fact shall be recorded in the minutes by the clerk and the will shall be filed.

8226. (a) If no person contests the validity of a will or petitions for revocation of probate of the will within the time provided in this chapter, admission of the will to probate is conclusive, subject to Section 8007.

(b) A will may be admitted to probate notwithstanding prior

admission to probate of another will or prior distribution of property in the proceeding. The will may not affect property previously distributed, but the court may determine how any provision of the will affects property not yet distributed and how any provision of the will affects provisions of another will.

Article 3. Contest of Will

8250. (a) When a will is contested under Section 8004, the contestant shall file an objection to probate of the will and the court clerk shall issue a summons and a copy of the objection directed to the persons required by Section 8110 to be served with notice of hearing of a petition for administration of the decedent's estate. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the contest within 30 days after service of the summons.

(b) A person named as executor in the will is under no duty to defend a contest until the person is appointed personal representative.

8251. (a) The petitioner and any other interested person may jointly or separately answer the objection or demur to the objection within the time prescribed in the summons.

(b) Demurrer may be made on any of the grounds of demurrer available in a civil action. If the demurrer is sustained, the court may allow the contestant a reasonable time, not exceeding 15 days, within which to amend the objection. If the demurrer is overruled, the petitioner and other interested persons may, within 15 days thereafter, answer the objection.

(c) If a person fails timely to respond to the summons:

(1) The case is at issue notwithstanding the failure and the case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the estate is not otherwise affected. Nothing in this paragraph precludes further participation by the petitioner.

(3) The person is bound by the decision in the proceeding.

8252. (a) At the trial, the proponents of the will have the burden of proof of due execution. The contestants of the will have the burden of proof of lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. If the will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate.

(b) The court shall try and determine any contested issue of fact that affects the validity of the will.

8253. At the trial, each subscribing witness shall be produced and examined. If no subscribing witness is available as a witness within the meaning of Section 240 of the Evidence Code, the court may admit the evidence of other witnesses to prove the due execution of

the will.

8254. The court may make appropriate orders, including orders sustaining or denying objections, and shall render judgment either admitting the will to probate or rejecting it, in whole or in part, and appointing a personal representative.

Article 4. Revocation of Probate

8270. (a) Within 120 days after a will is admitted to probate, any interested person, other than a party to a will contest and other than a person who had actual notice of a will contest in time to have joined in the contest, may petition the court to revoke the probate of the will. The petition shall include objections setting forth written grounds of opposition.

(b) Notwithstanding subdivision (a), a person who was a minor or who was incompetent and had no guardian or conservator at the time a will was admitted to probate may petition the court to revoke the probate of the will at any time before entry of an order for final distribution.

8271. (a) On the filing of the petition, the clerk shall issue a summons directed to the personal representative and to the heirs and devisees of the decedent, so far as known to the petitioner. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the petition within 30 days after service of the summons. Failure of a person timely to respond to the summons precludes the person from further participation in the revocation proceeding, but does not otherwise affect the person's interest in the estate.

(b) The summons shall be served and proceedings had as in the case of a contest of the will.

(c) If a person fails timely to respond to the summons:

(1) The case is at issue notwithstanding the failure and the case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

8272. (a) If it appears on satisfactory proof that the will should be denied probate, the court shall revoke the probate of the will.

(b) Revocation of probate of a will terminates the powers of the personal representative. The personal representative is not liable for any otherwise proper act done in good faith before the revocation, nor is any transaction void by reason of the revocation if entered into with a third person dealing in good faith and for value.

CHAPTER 4. APPOINTMENT OF PERSONAL REPRESENTATIVE

Article 1. General Provisions

8400. (a) A person has no power to administer the estate until the person is appointed personal representative and the appointment becomes effective. Appointment of a personal representative becomes effective when the person appointed is issued letters.

(b) Subdivision (a) applies whether or not the person is named executor in the decedent's will, except that a person named executor in the decedent's will may, before the appointment is made or becomes effective, pay funeral expenses and take necessary measures for the maintenance and preservation of the estate.

8401. (a) Notwithstanding Section 8400, a petitioner for appointment as personal representative may deliver property in the petitioner's possession to a trust company or financial institution for deposit, or allow a trust company or financial institution to retain on deposit property already in its possession, as provided in Chapter 3 (commencing with Section 9700) of Part 5.

(b) The petitioner shall obtain and file with the court a written receipt including the agreement of the trust company or financial institution that the property on deposit, including any earnings thereon, shall not be allowed to be withdrawn except on order of the court.

(c) In receiving and retaining property under this section, the trust company or financial institution is protected to the same extent as though it had received the property from a person who had been appointed personal representative.

8402. (a) Notwithstanding any other provision of this chapter, a person is not competent to act as personal representative in any of the following circumstances:

(1) The person is under the age of majority.

(2) The person is subject to a conservatorship of the estate or is otherwise incapable of executing, or is otherwise unfit to execute, the duties of the office.

(3) There are grounds for removal of the person from office under Section 8502.

(4) The person is not a resident of the United States.

(5) The person is a surviving partner of the decedent and an interested person objects to the appointment.

(b) Paragraphs (4) and (5) of subdivision (a) do not apply to a person named as executor or successor executor in the decedent's will.

8403. (a) Before letters are issued, the personal representative shall take and subscribe an oath to perform, according to law, the duties of the office. The oath may be taken and dated on or after the time the petition for appointment as personal representative is signed, and may be filed with the clerk at any time after the petition

is granted.

(b) The oath constitutes an acceptance of the office and shall be attached to or endorsed on the letters.

8404. (a) Before letters are issued, the personal representative (other than a trust company or a public administrator) shall file an acknowledgment of receipt of a statement of duties and liabilities of the office of personal representative. The statement shall be in the form prescribed by the Judicial Council.

(b) The court may by local rule require the acknowledgment of receipt to include the personal representative's social security number and driver's license number, if any, provided that the court ensures their confidentiality.

(c) The statement of duties and liabilities prescribed by the Judicial Council does not supersede the law on which the statement is based.

8405. Letters shall be signed by the clerk under the seal of the court and shall include:

(a) The county from which the letters are issued.

(b) The name of the person appointed as personal representative and whether the personal representative is an executor, administrator, administrator with the will annexed, or special administrator.

(c) A notation whether the personal representative is authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400) of Division 7), and if so authorized whether the independent administration authority includes or excludes the power to do any of the following:

(1) Sell real property.

(2) Exchange real property.

(3) Grant an option to purchase real property.

(4) Borrow money with the loan secured by an encumbrance upon real property.

8406. If an order appointing a personal representative is reversed on appeal for error, the person appointed is not liable for any otherwise proper act done in good faith before the reversal, nor is any transaction void by reason of the reversal if entered into with a third person dealing in good faith and for value.

Article 2. Executors

8420. The person named as executor in the decedent's will has the right to appointment as personal representative.

8421. If a person is not named as executor in a will but it appears by the terms of the will that the testator intended to commit the execution of the will and the administration of the estate to the person, the person is entitled to appointment as personal representative in the same manner as if named as executor.

8422. (a) The testator may by will confer on a person the power to designate an executor or coexecutor, or successor executor or

coexecutor. The will may provide that the persons so designated may serve without bond.

(b) A designation shall be in writing and filed with the court. Unless the will provides otherwise, if there are two or more holders of the power to designate, the designation shall be unanimous, unless one of the holders of the power is unable or unwilling to act, in which case the remaining holder or holders may exercise the power.

(c) Except as provided in this section, an executor does not have authority to name a coexecutor, or a successor executor or coexecutor.

8423. If the executor named in the will is a trust company that has sold its business and assets to, has consolidated or merged with, or is in any manner provided by law succeeded by, another trust company, the court may, and to the extent required by the Banking Law (Division 1 (commencing with Section 99) of the Financial Code) shall, appoint the successor trust company as executor.

8424. (a) If a person named as executor is under the age of majority and there is another person named as executor, the other person may be appointed and may administer the estate until the majority of the minor, who may then be appointed as coexecutor.

(b) If a person named as executor is under the age of majority and there is no other person named as executor, another person may be appointed as personal representative, but the court may revoke the appointment on the majority of the minor, who may then be appointed as executor.

8425. If the court does not appoint all the persons named in the will as executors, those appointed have the same authority to act in every respect as all would have if appointed.

Article 3. Administrators With the Will Annexed

8440. An administrator with the will annexed shall be appointed as personal representative if no executor is named in the will or if the sole executor or all the executors named in the will have waived the right to appointment or are for any reason unwilling or unable to act.

8441. (a) Except as provided in subdivision (b), persons and their nominees are entitled to appointment as administrator with the will annexed in the same order of priority as for appointment of an administrator.

(b) A person who takes under the will has priority over a person who does not, but the court in its discretion may give priority to a person who does not take under the will if the person is entitled to a statutory interest that is a substantially greater portion of the estate than the devise to the person who takes under the will and the priority appears appropriate under the circumstances. A person who takes more than 50 percent of the value of the estate under the will or the person's nominee, or the nominee of several persons who together take more than 50 percent of the value of the estate under the will, has priority over other persons who take under the will.

8442. (a) Subject to subdivision (b), an administrator with the will annexed has the same authority over the decedent's estate as an executor named in the will would have.

(b) If the will confers a discretionary power or authority on an executor that is not conferred by law and the will does not extend the power or authority to other personal representatives, the power or authority shall not be deemed to be conferred on an administrator with the will annexed, but the court in its discretion may authorize the exercise of the power or authority.

Article 4. Administrators

8460. (a) If the decedent dies intestate, the court shall appoint an administrator as personal representative.

(b) The court may appoint one or more persons as administrator.

8461. Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

(a) Surviving spouse.
(b) Children.
(c) Grandchildren.
(d) Other issue.
(e) Parents.
(f) Brothers and sisters.
(g) Issue of brothers and sisters.
(h) Grandparents.
(i) Issue of grandparents.
(j) Children of a predeceased spouse.
(k) Other issue of a predeceased spouse.
(*l*) Other next of kin.
(m) Parents of a predeceased spouse.
(n) Issue of parents of a predeceased spouse.
(o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person.
(p) Public administrator.
(q) Creditors.
(r) Any other person.

(Amended by Stats. 1990, Ch. 710, Sec. 20. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

8461 Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

(a) Surviving spouse.
(b) Children.
(c) Grandchildren.
(d) Other issue.
(e) Parents.
(f) Brothers and sisters

(g) Issue of brothers and sisters.
(h) Grandparents.
(i) Issue of grandparents.
(j) Children of a predeceased spouse.
(k) Other issue of a predeceased spouse.
(*l*) Other next of kin.
(m) Parents of a predeceased spouse.
(n) Issue of parents of a predeceased spouse.
(o) Conservator or guardian of the estate acting in that capacity at the time of death.
(p) Public administrator.
(q) Creditors.
(r) Any other person.

8462. The surviving spouse of the decedent, a relative of the decedent, or a relative of a predeceased spouse of the decedent, has priority under Section 8461 only if one of the following conditions is satisfied:

(a) The surviving spouse or relative is entitled to succeed to all or part of the estate.

(b) The surviving spouse or relative either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

8463. If the surviving spouse is a party to an action for separate maintenance, annulment, or dissolution of the marriage of the decedent and the surviving spouse, and was living apart from the decedent on the date of the decedent's death, the surviving spouse has priority next after brothers and sisters and not the priority prescribed in Section 8461.

8464. If a person otherwise entitled to appointment as administrator is a person under the age of majority or a person for whom a guardian or conservator of the estate has been appointed, the court in its discretion may appoint the guardian or conservator or another person entitled to appointment.

8465. (a) The court may appoint as administrator a person nominated by a person otherwise entitled to appointment or by the guardian or conservator of the estate of a person otherwise entitled to appointment. The nomination shall be made in writing and filed with the court.

(b) If a person making a nomination for appointment of an administrator is the surviving spouse, child, grandchild, other issue, parent, brother or sister, or grandparent of the decedent, the nominee has priority next after those in the class of the person making the nomination.

(c) If a person making a nomination for appointment of an administrator is other than a person described in subdivision (b), the court in its discretion may appoint either the nominee or a person of a class lower in priority to that of the person making the nomination, but other persons of the class of the person making the nomination have priority over the nominee.

8466. If a person whose only priority is that of a creditor claims

appointment as administrator, the court in its discretion may deny the appointment and appoint another person.

8467. If several persons have equal priority for appointment as administrator, the court may appoint one or more of them, or if such persons are unable to agree, the court may appoint the public administrator or a disinterested person in the same or the next lower class of priority as the persons who are unable to agree.

8468. If persons having priority fail to claim appointment as administrator, the court may appoint any person who claims appointment.

8469. (a) For good cause, the court may allow the priority given by Section 8461 to a conservator or guardian of the estate of the decedent serving in that capacity at the time of death that has not filed a first account, or that is acting as guardian or conservator for another person, or both.

(b) If the petition for appointment as administrator requests the court to allow the priority permitted by subdivision (a), the petitioner shall, in addition to the notice otherwise required by statute, serve notice of the hearing by mail or personal delivery on the public administrator.

(Added by Stats. 1990, Ch. 710, Sec. 21. Operative July 1, 1991, by Sec. 48 of chapter.)

Article 5. Bond

8480. (a) Except as otherwise provided by statute, every person appointed as personal representative shall, before letters are issued, give a bond approved by the court. If two or more persons are appointed, the court may require either a separate bond from each or a joint and several bond.

(b) The bond shall be for the benefit of interested persons and shall be conditioned on the personal representative's faithful execution of the duties of the office according to law.

(c) If the person appointed as personal representative fails to give the required bond, letters shall not be issued. If the person appointed as personal representative fails to give a new, additional, or supplemental bond, or to substitute a sufficient surety, under court order, the person may be removed from office.

8481. (a) A bond is not required in either of the following cases:

(1) The will waives the requirement of a bond.

(2) All beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition for appointment of a personal representative. This paragraph does not apply if the will requires a bond.

(b) Notwithstanding the waiver of a bond by a will or by all the beneficiaries, on petition of any interested person or on its own motion, the court may for good cause require that a bond be given, either before or after issuance of letters.

8482. (a) The court in its discretion may fix the amount of the

bond, but the amount of the bond shall be not more than the sum of:

(1) The estimated value of the personal property.

(2) The probable annual gross income of the estate.

(3) If independent administration is granted as to real property, the estimated value of the decedent's interest in the real property.

(b) Notwithstanding subdivision (a), if the bond is given by an admitted surety insurer, the court may establish a fixed minimum amount for the bond, based on the minimum premium required by the admitted surety insurer.

(c) If the bond is given by personal sureties, the amount of the bond shall be twice the amount fixed by the court under subdivision (a).

(d) Before confirming a sale of real property the court shall require such additional bond as may be proper, not exceeding the maximum requirements of this section, treating the expected proceeds of the sale as personal property.

8483. (a) This section applies where property in the estate has been deposited pursuant to Chapter 3 (commencing with Section 9700) of Part 5 on condition that the property, including any earnings thereon, will not be withdrawn except on authorization of the court.

(b) In a proceeding to determine the amount of the bond of the personal representative (whether at the time of appointment or subsequently), on production of a receipt showing the deposit of property of the estate in the manner described in subdivision (a), the court may order that the property shall not be withdrawn except on authorization of the court and may, in its discretion, do either of the following:

(1) Exclude the property in determining the amount of the required bond or reduce the amount of the bond to an amount the court determines is reasonable.

(2) If a bond has already been given or the amount fixed, reduce the amount to an amount the court determines is reasonable.

8484. If a personal representative petitions to have the amount of the bond reduced, the petition shall include an affidavit setting forth the condition of the estate and notice of hearing shall be given as provided in Section 1220.

8485. A personal representative who petitions for substitution or release of a surety shall file with the petition an account in the form provided in Section 10900. The court shall not order a substitution or release unless the account is approved.

8486. The personal representative shall be allowed the reasonable cost of the bond for every year it remains in force.

8487. The provisions of the Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) apply to a bond given under this division, except to the extent this division is inconsistent.

8488. No action may be maintained against the sureties on the bond of the personal representative unless commenced not later

than four years after the discharge of the personal representative.

Article 6. Removal From Office

8500. (a) Any interested person may petition for removal of the personal representative from office. A petition for removal may be combined with a petition for appointment of a successor personal representative under Article 7 (commencing with Section 8520). The petition shall state facts showing cause for removal.

(b) On a petition for removal, or if the court otherwise has reason to believe from the court's own knowledge or from other credible information, whether on the settlement of an account or otherwise, that there are grounds for removal, the court shall issue a citation to the personal representative to appear and show cause why the personal representative should not be removed. The court may suspend the powers of the personal representative and may make such orders as are necessary to deal with the property pending the hearing.

(c) Any interested person may appear at the hearing and file a written declaration showing that the personal representative should be removed or retained. The personal representative may demur to or answer the declaration. The court may compel the attendance of the personal representative and may compel the personal representative to answer questions, on oath, concerning the administration of the estate. Failure to attend or answer is cause for removal of the personal representative from office.

(d) The issues shall be heard and determined by the court. If the court is satisfied from the evidence that the citation has been duly served and cause for removal exists, the court shall remove the personal representative from office.

8501. On removal of a personal representative from office, the court shall revoke any letters issued to the personal representative, and the authority of the personal representative ceases.

8502. A personal representative may be removed from office for any of the following causes:

(a) The personal representative has wasted, embezzled, mismanaged, or committed a fraud on the estate, or is about to do so.

(b) The personal representative is incapable of properly executing the duties of the office or is otherwise not qualified for appointment as personal representative.

(c) The personal representative has wrongfully neglected the estate, or has long neglected to perform any act as personal representative.

(d) Removal is otherwise necessary for protection of the estate or interested persons.

(e) Any other cause provided by statute.

8503. (a) Subject to subdivision (b), an administrator may be removed from office on the petition of the surviving spouse or a

relative of the decedent entitled to succeed to all or part of the estate, or the nominee of the surviving spouse or relative, if such person is higher in priority than the administrator.

(b) The court in its discretion may refuse to grant the petition:

(1) Where the petition is by a person or the nominee of a person who had actual notice of the proceeding in which the administrator was appointed and an opportunity to contest the appointment.

(2) Where to do so would be contrary to the sound administration of the estate.

8504. (a) After appointment of an administrator on the ground of intestacy, the personal representative shall be removed from office on the later admission to probate of a will.

(b) After appointment of an executor or administrator with the will annexed, the personal representative shall be removed from office on admission to probate of a later will.

8505. (a) A personal representative may be removed from office if the personal representative is found in contempt for disobeying an order of the court.

(b) Notwithstanding any other provision of this article, a personal representative may be removed from office under this section by a court order reciting the facts and without further showing or notice.

Article 7. Changes in Administration

8520. A vacancy occurs in the office of a personal representative who resigns, dies, or is removed from office under Article 6 (commencing with Section 8500), or whose authority is otherwise terminated.

8521. (a) Unless the will provides otherwise or the court in its discretion orders otherwise, if a vacancy occurs in the office of fewer than all personal representatives, the remaining personal representatives shall complete the administration of the estate.

(b) The court, on the filing of a petition alleging that a vacancy has occurred in the office of fewer than all personal representatives, may order the clerk to issue appropriate amended letters to the remaining personal representatives.

8522. (a) If a vacancy occurs in the office of a personal representative and there are no other personal representatives, the court shall appoint a successor personal representative.

(b) Appointment of a successor personal representative shall be made on petition and service of notice on interested persons in the manner provided in Article 2 (commencing with Section 8110) of Chapter 2, and shall be subject to the same priority as for an original appointment of a personal representative. The personal representative of a deceased personal representative is not, as such, entitled to appointment as successor personal representative.

8523. The court may make orders that are necessary to deal with the estate of the decedent between the time a vacancy occurs in the office of personal representative and appointment of a successor.

Those orders may include appointment of a special administrator.

8524. (a) A successor personal representative is entitled to demand, sue for, recover and collect all the estate of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the former personal representative before the vacancy.

(b) No notice, process, or claim given to or served on the former personal representative need be given to or served on the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(c) Except as provided in subdivision (b) of Section 8442 (authority of administrator with will annexed) or as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had.

8525. (a) The acts of the personal representative before a vacancy occurs are valid to the same extent as if no vacancy had later occurred.

(b) The liability of a personal representative whose office is vacant, or of the surety on the bond, is not discharged, released, or affected by the vacancy or by appointment of a successor, but continues until settlement of the accounts of the personal representative and delivery of all the estate of the decedent to the successor personal representative or other person appointed by the court to receive it. The personal representative shall render an account of the administration within the time that the court directs.

Article 8. Special Administrators

8540. (a) If the circumstances of the estate require the immediate appointment of a personal representative, the court may appoint a special administrator to exercise any powers that may be appropriate under the circumstances for the preservation of the estate.

(b) The appointment may be for a specified term, to perform particular acts, or on any other terms specified in the court order.

8541. (a) Appointment of a special administrator may be made at any time without notice or on such notice to interested persons as the court deems reasonable.

(b) In making the appointment, the court shall ordinarily give preference to the person entitled to appointment as personal representative. The court may appoint the public administrator.

(c) In the case of an appointment to perform a particular act, request for approval of the act may be included in the petition for appointment, and approval may be made on the same notice and at the same time as the appointment.

(d) The court may act, if necessary, to remedy any errors made in the appointment.

8542. (a) The clerk shall issue letters to the special administrator after both of the following conditions are satisfied:

(1) The special administrator gives any bond that may be required by the court under Section 8480.

(2) The special administrator takes the usual oath attached to or endorsed on the letters.

(b) Subdivision (a) does not apply to the public administrator.

(c) The letters of a special administrator appointed to perform a particular act shall include a notation of the particular act the special administrator was appointed to perform.

8543. Subject to subdivision (b) of Section 8481, the court shall direct that no bond be given in either of the following cases:

(a) The will waives the requirement of a bond and the person named as executor in the will is appointed special administrator.

(b) All beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition for appointment of the special administrator. This paragraph does not apply if the will requires a bond.

8544. (a) Except to the extent the order appointing a special administrator prescribes terms, the special administrator has the power to do all of the following without further order of the court:

(1) Take possession of all of the real and personal property of the estate of the decedent and preserve it from damage, waste, and injury.

(2) Collect all claims, rents, and other income belonging to the estate.

(3) Commence and maintain or defend suits and other legal proceedings.

(4) Sell perishable property.

(b) Except to the extent the order prescribes terms, the special administrator has the power to do all of the following on order of the court:

(1) Borrow money, or lease, mortgage, or execute a deed of trust on real property, in the same manner as an administrator.

(2) Pay the interest due or all or any part of an obligation secured by a mortgage, lien, or deed of trust on property in the estate, where there is danger that the holder of the security may enforce or foreclose on the obligation and the property exceeds in value the amount of the obligation. This power may be ordered only on petition of the special administrator or any interested person, with any notice that the court deems proper, and shall remain in effect until appointment of a successor personal representative. The order may also direct that interest not yet accrued be paid as it becomes due, and the order shall remain in effect and cover the future interest unless and until for good cause set aside or modified by the court in the same manner as for the original order.

(3) Exercise other powers that are conferred by order of the court.

(c) Except where the powers, duties, and obligations of a general

personal representative are granted under Section 8545, the special administrator is not a proper party to an action on a claim against the decedent.

(d) A special administrator appointed to perform a particular act has no duty to take any other action to protect the estate.

8545. (a) Notwithstanding Section 8544, the court may grant a special administrator the same powers, duties, and obligations as a general personal representative where to do so appears proper. Notwithstanding Section 8541, if letters have not previously been issued to a general personal representative, the grant shall be on the same notice required under Section 8003 for appointment of a personal representative.

(b) Subject to Section 8543, the court may require as a condition of the grant that the special administrator give any additional bond that the court deems proper. From the time of approving and filing any required additional bond, the special administrator shall have the powers, duties, and obligations of a general personal representative.

(c) If a grant is made under this section, the letters shall recite that the special administrator has the powers, duties, and obligations of a general personal representative.

8546. (a) The powers of a special administrator cease on issuance of letters to a general personal representative or as otherwise directed by the court.

(b) The special administrator shall promptly deliver to the general personal representative:

(1) All property of the estate in the possession of the special administrator. The court may authorize the special administrator to complete a sale or other transaction affecting property in the possession of the special administrator.

(2) A list of all creditor claims of which the special administrator has knowledge. The list shall show the name and address of each creditor, the amount of the claim, and what action has been taken with respect to the claim. A copy of the list shall be filed in the court.

(c) The special administrator shall account in the same manner as a general personal representative is required to account. If the same person acts as both special administrator and general personal representative, the account of the special administrator may be combined with the first account of the general personal representative.

8547. (a) Subject to the limitations of this section, the court shall fix the compensation of the special administrator and the compensation of the attorney of the special administrator.

(b) The compensation of the special administrator shall not be allowed until the close of administration, unless the general personal representative joins in the petition for allowance of the special administrator's compensation or the court in its discretion so allows. Compensation for extraordinary services of a special administrator may be allowed on settlement of the final account of the special

administrator. The total compensation paid to the special administrator and general personal representative shall not, together, exceed the sums provided in Part 7 (commencing with Section 10800) for compensation for the ordinary and extraordinary services of a personal representative. If the same person does not act as both special administrator and general personal representative, the compensation shall be divided in such proportions as the court determines to be just or as may be agreed to by the special administrator and general personal representative.

(c) The total compensation paid to the attorneys both of the special administrator and the general personal representative shall not, together, exceed the sums provided in Part 7 (commencing with Section 10800) as compensation for the ordinary and extraordinary services of attorneys for personal representatives. When the same attorney does not act for both the special administrator and general personal representative, the compensation shall be divided between the attorneys in such proportions as the court determines to be just or as agreed to by the attorneys.

(d) Compensation of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a general personal representative, except that the award of compensation to the attorney may be made on settlement of the final account of the special administrator.

(Amended by Stats 1990, Ch. 710, Sec. 22. Operative July 1, 1991, by Sec 48 of chapter)

[ORIGINAL SECTION]

8547. (a) Subject to the limitations of this section, the court shall fix the compensation of the special administrator.

(b) The compensation of the special administrator shall not be allowed until the close of administration, unless the general personal representative joins in the petition for allowance of the special administrator's compensation or the court in its discretion so allows. Compensation for extraordinary services of a special administrator may be allowed on settlement of the final account of the special administrator. The total compensation paid to the special administrator and general personal representative shall not, together, exceed the sums provided in Part 7 (commencing with Section 10800) for compensation for the ordinary and extraordinary services of a personal representative. If the same person does not act as both special administrator and general personal representative, the compensation shall be divided in such proportions as the court determines to be just or as may be agreed to by the special administrator and general personal representative.

Article 9. Nonresident Personal Representative

8570. As used in this article, "nonresident personal representative" means a nonresident of the state appointed as personal representative, or a resident of the state appointed as personal representative who later removes from and resides without the state.

8571. Notwithstanding any other provision of this chapter and

notwithstanding a waiver of a bond, the court in its discretion may require a nonresident personal representative to give a bond in an amount determined by the court.

8572. (a) Acceptance of appointment by a nonresident personal representative is equivalent to and constitutes an irrevocable and binding appointment by the nonresident personal representative of the Secretary of State to be the attorney of the personal representative for the purpose of this article. The appointment of the nonresident personal representative also applies to any personal representative of a deceased nonresident personal representative.

(b) All lawful processes, and notices of motion under Section 385 of the Code of Civil Procedure, in an action or proceeding against the nonresident personal representative with respect to the estate or founded on or arising out of the acts or omissions of the nonresident personal representative in that capacity may be served on the Secretary of State as the attorney for service of the nonresident personal representative.

8573. A nonresident personal representative shall sign and file with the court a statement of the permanent address of the nonresident personal representative. If the permanent address is changed, the nonresident personal representative shall promptly file in the same manner a statement of the change of address.

8574. (a) Service of process or notice of a motion under Section 385 of the Code of Civil Procedure in any action or proceeding against the nonresident personal representative shall be made by delivering to and leaving with the Secretary of State two copies of the summons and complaint or notice of motion and either of the following:

(1) A copy of the statement by the nonresident personal representative under Section 8573.

(2) If the nonresident personal representative has not filed a statement under Section 8573, a copy of the letters issued to the nonresident personal representative together with a written statement signed by the party or attorney of the party seeking service that sets forth an address for use by the Secretary of State.

(b) The Secretary of State shall promptly mail by registered mail one copy of the summons and complaint or notice of motion to the nonresident personal representative at the address shown on the statement delivered to the Secretary of State.

(c) Personal service of process, or notice of motion, on the nonresident personal representative wherever found shall be the equivalent of service as provided in this section.

8575. Proof of compliance with Section 8574 shall be made in the following manner:

(a) In the event of service by mail, by certificate of the Secretary of State, under official seal, showing the mailing. The certificate shall be filed with the court from which process issued.

(b) In the event of personal service outside the state, by the return of any duly constituted public officer qualified to serve like

process, or notice of motion, of and in the jurisdiction where the nonresident personal representative is found, showing the service to have been made. The return shall be attached to the original summons, or notice of motion, and filed with the court from which process issued.

8576. (a) Except as provided in this section, service made under Section 8574 has the same legal force and validity as if made personally in this state.

(b) A nonresident personal representative served under Section 8574 may appear and answer the complaint within 30 days from the date of service.

(c) Notice of motion shall be served on a nonresident personal representative under Section 8574 not less than 30 days before the date of the hearing on the motion.

8577. (a) Failure of a nonresident personal representative to comply with Section 8573 is cause for removal from office.

(b) Nothing in this section limits the liability of, or the availability of any other remedy against, a nonresident personal representative who is removed from office under this section.

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

8800. (a) The personal representative shall file with the court clerk an inventory of property to be administered in the decedent's estate together with an appraisal of property in the inventory. An inventory and appraisal shall be combined in a single document.

(b) The inventory and appraisal shall be filed within four months after letters are first issued to a general personal representative. The court may allow such further time for filing an inventory and appraisal as is reasonable under the circumstances of the particular case.

(c) The personal representative may file partial inventories and appraisals where appropriate under the circumstances of the particular case, but all inventories and appraisals shall be filed before expiration of the time allowed under subdivision (b).

8801. If the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in a prior inventory and appraisal, the personal representative shall file a supplemental inventory and appraisal of the property in the manner prescribed for an original inventory and appraisal. The supplemental inventory and appraisal shall be filed within four months after the personal representative acquires knowledge of the property. The court may allow such further time for filing a supplemental inventory and appraisal as is reasonable under the circumstances of the particular case.

8802. The inventory and appraisal shall separately list each item and shall state the fair market value of the item at the time of the

decedent's death in monetary terms opposite the item.

8803. On the filing of an inventory and appraisal or a supplemental inventory and appraisal, the personal representative shall, pursuant to Section 1252, mail a copy to each person who has requested special notice.

8804. If the personal representative refuses or negligently fails to file an inventory and appraisal within the time allowed under this chapter, upon petition of an interested person:

(a) The court may compel the personal representative to file an inventory and appraisal pursuant to the procedure prescribed in Chapter 4 (commencing with Section 11050) of Part 8.

(b) The court may remove the personal representative from office.

(c) The court may impose on the personal representative personal liability for injury to the estate or to an interested person that directly results from the refusal or failure. The liability may include attorney's fees, in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative, if any.

CHAPTER 2. INVENTORY

Article 1. General Provisions

8850. (a) The inventory, including partial and supplemental inventories, shall include all property to be administered in the decedent's estate.

(b) The inventory shall particularly specify the following property:

(1) Money owed to the decedent, including debts, bonds, and notes, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates. The inventory shall also specify security for the payment of money to the decedent, including mortgages and deeds of trust. If security for the payment of money is real property, the inventory shall include the recording reference or, if not recorded, a legal description of the real property.

(2) A statement of the interest of the decedent in a partnership, appraised as a single item.

(3) All money and other cash items, as defined in Section 8901, of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

8851. The discharge or devise in a will of any debt or demand of the testator against the executor or any other person is not valid against creditors of the testator, but is a specific devise of the debt or demand. The debt or demand shall be included in the inventory.

If necessary, the debt or demand shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the debt or demand shall be distributed in the same manner and proportion as other specific devises.

8852. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of the property to be administered in the decedent's estate of which the personal representative has knowledge, and particularly of money of the decedent and debts or demands of the decedent against the personal representative. The oath shall be endorsed upon or attached to the inventory.

(b) If there is more than one personal representative, each shall take and subscribe the oath. If the personal representatives are unable to agree as to property to be included in the inventory, any personal representative may petition for a court order determining whether the property is to be administered in the decedent's estate. The determination shall be made pursuant to the procedure provided in Chapter 11 (commencing with Section 9860) of Part 5 or, if there is an issue of property belonging or passing to the surviving spouse, pursuant to Chapter 5 (commencing with Section 13650) of Part 2 of Division 8.

Article 2. Discovery of Property of Decedent

8870. (a) On petition by the personal representative or an interested person, the court may order that a citation be issued to a person to answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations:

(1) The person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) The person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.

(B) A claim of the decedent.

(C) A lost will of the decedent.

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a citation under this section.

(c) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

8871. Interrogatories may be put to a person cited to answer interrogatories pursuant to Section 8870. The interrogatories and answers shall be in writing. The answers shall be signed under penalty of perjury by the person cited. The interrogatories and answers shall be filed with the court.

8872. (a) At an examination witnesses may be produced and examined on either side.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts to the personal representative.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses, including a reasonable attorney's fee, shall be charged against the petitioner or allowed out of the estate, in the discretion of the court.

8873. (a) On petition by the personal representative, the court may issue a citation to a person who has possession or control of property in the decedent's estate to appear before the court and make an account under oath of the property and the person's actions with respect to the property.

(b) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

8874. A person who, in bad faith, has wrongfully taken, concealed, or disposed of property in the estate of the decedent is liable for twice the value of the property, recoverable in an action by the personal representative for the benefit of the estate.

CHAPTER 3. APPRAISAL

Article 1. Procedure

8900. The appraisal of property in the inventory shall be made by the personal representative, probate referee, or independent expert as provided in this chapter.

8901. The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value of the property:

(a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued on or before the date of the decedent's death that can be immediately converted to cash.

(b) The following checks issued after the date of the decedent's death:

(1) Checks for wages earned before death.

(2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments.

(c) Accounts (as defined in Section 21) in financial institutions.

(d) Cash deposits and money market funds or accounts, whether in a financial institution or otherwise, including a brokerage cash account.

(e) Proceeds of life and accident insurance policies and retirement plans and annuities payable on death in lump sum amounts.

8902. Except as otherwise provided by statute:

(a) The personal representative shall deliver the inventory to the probate referee designated by the court, together with necessary supporting data to enable the probate referee to make an appraisal of the property in the inventory to be appraised by the probate referee.

(b) The probate referee shall appraise all property other than that appraised by the personal representative.

8903. (a) The court may, for good cause, waive appraisal by a probate referee in the manner provided in this section.

(b) The personal representative may apply for a waiver together with the petition for appointment of the personal representative or together with another petition, or may apply for a waiver in a separate petition filed in the administration proceedings, but the application may not be made later than the time the personal representative delivers the inventory to the probate referee, if a probate referee has been designated. A copy of the proposed inventory and appraisal and a statement that sets forth the good cause that justifies the waiver shall be attached to the petition.

(c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. Notice of the hearing on the petition, together with a copy of the petition and a copy of the proposed inventory and appraisal, shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the waiver.

(3) Each known devisee whose interest in the estate would be affected by the waiver.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the waiver.

(5) The probate referee, if a probate referee has been designated.

(d) A probate referee to whom notice is given under this section may oppose the waiver. If the opposition fails and the court determines the opposition was made without substantial justification, the court shall award litigation expenses, including reasonable attorney's fees, against the probate referee. If the opposition succeeds, the court may designate a different probate referee to appraise property in the estate.

(e) If the petition is granted, the inventory and appraisal attached to the petition shall be filed pursuant to Section 8800.

8904. (a) A unique, artistic, unusual, or special item of tangible personal property that would otherwise be appraised by the probate referee may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item.

(b) The personal representative shall make the election provided in subdivision (a) by a notation on the inventory delivered to the probate referee indicating the property to be appraised by an

independent expert. The probate referee may, within five days after delivery of the inventory, petition for a court determination whether the property to be appraised by an independent expert is a unique, artistic, unusual, or special item of tangible personal property. If the petition fails and the court determines that the petition was made without substantial justification, the court shall award litigation expenses, including reasonable attorney's fees, against the probate referee.

8905. A person who appraises property, whether a personal representative, probate referee, or independent expert, shall sign the appraisal as to property appraised by that person, and shall take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability.

8906. (a) At any time before the hearing on the petition for final distribution of the estate, the personal representative or an interested person may file with the court a written objection to the appraisal.

(b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the date set for the hearing.

(d) The person objecting to the appraisal has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders that appear appropriate. If the court determines the objection was filed without reasonable cause or good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the appraisal be made a charge against the person filing the objection.

8907. The personal representative is not entitled to receive compensation for extraordinary services by reason of appraising any property in the estate.

8908. A probate referee who appraises property in the estate shall, upon demand by the personal representative or by a beneficiary:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise an item of property. The probate referee shall not disclose any information that is required by law to be confidential. The probate referee shall provide the appraisal report or backup data without charge. The cost of providing the appraisal report or backup data shall not be allowed as an expense of appraisal but is included in the commission for services of the probate referee.

(b) Justify the appraisal of an item of property if the appraisal is contested, whether by objection pursuant to Section 8906, by tax audit, or otherwise. The probate referee may be entitled to an additional fee for services provided to justify the appraisal, to be

agreed upon by the personal representative or beneficiary and referee. If the personal representative or beneficiary and the probate referee are unable to agree, the court shall determine what fee, if any, is appropriate.

8909. A probate referee who appraises property in an estate shall retain possession of all appraisal reports and backup data used by the referee to appraise the property for a period of three years after the appraisal is filed. The probate referee shall, during the three-year period, offer the personal representative the reports and data used by the referee to appraise the property and deliver the reports and data to the personal representative on request. Any reports and data not requested by the personal representative may be destroyed at the end of the three-year period without further notice.

Article 2. Designation and Removal of Probate Referee

8920. The probate referee, when designated by the court, shall be among the persons appointed by the Controller to act as a probate referee for the county. If there is no person available who is able to act or if, pursuant to authority of Section 8922 or otherwise, the court does not designate a person appointed for the county, the court may designate a probate referee from another county.

8921. The court may designate a person requested by the personal representative as probate referee, on a showing by the personal representative of good cause for the designation. The following circumstances are included within the meaning of good cause, as used in this section:

(a) The probate referee has recently appraised the same property that will be appraised in the administration proceeding.

(b) The probate referee will be making related appraisals in another proceeding.

(c) The probate referee has recently appraised similar property in another proceeding.

8922. The court has authority and discretion not to designate a particular person as probate referee even though appointed by the Controller to act as a probate referee for the county.

8923. The court may not designate as probate referee any of the following persons:

(a) The court clerk.

(b) A partner or employee of the judge or commissioner who orders the designation.

(c) The spouse of the judge or commissioner who orders the designation.

(d) A person, or the spouse of a person, who is related within the third degree either (1) to the judge or commissioner who orders the designation or (2) to the spouse of the judge or commissioner who orders the designation.

8924. (a) The court shall remove the designated probate referee in any of the following circumstances:

(1) The personal representative shows cause, including incompetence or undue delay in making the appraisal, that in the opinion of the court warrants removal of the probate referee. The showing shall be made at a hearing on petition of the personal representative. The personal representative shall mail notice of the hearing on the petition to the probate referee at least 15 days before the date set for the hearing.

(2) The personal representative has the right to remove the first probate referee who is designated by the court. No cause need be shown for removal under this paragraph. The personal representative may exercise the right at any time before the personal representative delivers the inventory to the probate referee. The personal representative shall exercise the right by filing an affidavit or declaration under penalty of perjury with the court and mailing a copy to the probate referee. Thereupon, the court shall remove the probate referee without any further act or proof.

(3) Any other cause provided by statute.

(b) Upon removal of the probate referee, the court shall designate another probate referee in the manner prescribed in Section 8920.

Article 3. Time for Probate Referee Appraisal

8940. (a) The probate referee shall promptly and with reasonable diligence appraise the property scheduled for appraisal by the probate referee in the inventory that the personal representative delivers to the referee.

(b) The probate referee shall, not later than 60 days after delivery of the inventory, do one of the following:

(1) Return the completed appraisal to the personal representative.

(2) Make a report of the status of the appraisal. The report shall show the reason why the property has not been appraised and an estimate of the time needed to complete the appraisal. The report shall be delivered to the personal representative and filed with the court.

8941. (a) The court shall, on petition of the personal representative or probate referee, or may, on the court's own motion, hear the report of the status of the appraisal. The court may issue a citation to compel the personal representative or the probate referee to attend the hearing.

(b) If the probate referee does not make the report of the status of the appraisal within the time required by this article or prescribed by the court, the court shall, on petition of the personal representative or may, on its own motion, cite the probate referee to appear before the court and show the reason why the property has not been appraised.

(c) Upon the hearing, the court may order any of the following:

(1) That the appraisal be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced by an amount the court deems appropriate, regardless of whether the commission otherwise allowable under the provisions of Sections 8960 to 8964 would be reasonable compensation for the services rendered.

(4) That the personal representative deliver to the probate referee all information necessary to allow the probate referee to complete the appraisal. Failure to comply with such an order is grounds for removal of the personal representative.

(5) Such other orders as may be appropriate.

Article 4. Commission and Expenses of Probate Referee

8960. (a) The commission and expenses provided by this article as compensation for the services of the probate referee shall be paid from the estate.

(b) The probate referee may not withhold the appraisal until the commission and expenses are paid, but shall deliver the appraisal to the personal representative promptly upon completion.

(c) The commission and expenses of the probate referee are an expense of administration, entitled to the priority for payment provided by Section 11420, and shall be paid in the course of administration.

8961. As compensation for services the probate referee shall receive all of the following:

(a) A commission of one-tenth of one percent of the total value of the property for each estate appraised, subject to Section 8963. The commission shall be computed excluding property appraised by the personal representative pursuant to Section 8901 or by an independent expert pursuant to Section 8904.

(b) Actual and necessary expenses for each estate appraised. The referee shall file with, or list on, the inventory and appraisal a verified account of the referee's expenses.

8963. (a) Notwithstanding Section 8961 and subject to subdivision (b), the commission of the probate referee shall in no event be less than seventy-five dollars ($75) nor more than ten thousand dollars ($10,000) for any estate appraised.

(b) Upon application of the probate referee, the court may allow a commission in excess of ten thousand dollars ($10,000) if the court determines that the reasonable value of the referee's services exceeds that amount. Notice of the hearing under this subdivision shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(5) Each person who has requested special notice of petitions filed in the proceeding.

8964. If more than one probate referee appraises or participates in the appraisal of property in the estate, each is entitled to the share of the commission agreed upon by the referees or, absent an agreement, that the court allows. In no case shall the total commission for all referees exceed the maximum commission that would be allowable for a single referee.

Article 5. Transitional Provision

8980. If an inventory is delivered to a probate referee for appraisal before July 1, 1989, all matters relating to the appraisal by the referee, including the property to be included in the appraisal, waiver of the appraisal, and compensation of the referee, are governed by the applicable law in effect before July 1, 1989, and are not governed by this chapter.

PART 4. CREDITOR CLAIMS

CHAPTER 1. GENERAL PROVISIONS

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent's death, whether assessed before or after the decedent's death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

9001. (a) The publication of notice under Section 8120 and the giving of notice of administration of the estate of the decedent under Chapter 2 (commencing with Section 9050) constitute notice to creditors of the requirements of this part.

(b) Nothing in subdivision (a) affects a notice or request to a public entity required by Chapter 5 (commencing with Section 9200).

9002. Except as otherwise provided by statute:

(a) All claims shall be filed in the manner and within the time

provided in this part.

(b) A claim that is not filed as provided in this part is barred.

9003. A claim that is established under this part shall be included among the debts to be paid in the course of administration.

9004. (a) This part does not apply in any proceeding for administration of a decedent's estate commenced before July 1, 1988.

(b) The applicable law in effect before July 1, 1988, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1988, notwithstanding its repeal by Chapter 923 of the Statutes of 1987.

CHAPTER 2. NOTICE TO CREDITORS

9050. (a) If a general personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication of the notice under Section 8120.

(Amended by Stats. 1990, Ch. 140, Sec 6.1. Operative July 1, 1991, by Sec. 22 of chapter.)

[ORIGINAL SECTION]

9050. (a) Subject to Section 9054, if, within four months after the date letters are first issued to a general personal representative, the personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication of the notice under Section 8120.

9051. (a) Except as provided in subdivision (b) or (c), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

(c) If the personal representative first has knowledge of a creditor after expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

(Amended by Stats 1990, Ch. 140, Sec 7 1 Operative July 1, 1991, by Sec. 23 of chapter.)

[ORIGINAL SECTION]

9051. (a) Except as provided in subdivision (b), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor within 30 days

before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____, DECEDENT

Notice to creditors:

Administration of the estate of _____ (deceased) has been commenced by _____ (personal representative) in Estate No. _____ in the Superior Court of California, County of _____. You must file your claim with the court and mail or deliver a copy to the personal representative within the last to occur of four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, as provided in Section 9100 of the California Probate Code, or you must petition to file a late claim as provided in Section 9103 of the California Probate Code. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

(Date of mailing this notice)	(Name and address of personal representative or attorney)

(Amended by Stats. 1990, Ch. 140, Sec. 8.1. Operative July 1, 1991, by Sec. 24 of chapter.)

[ORIGINAL SECTION]

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____, DECEDENT

Notice to creditors:

Administration of the estate of _____ (deceased) has been commenced by _____ (personal representative) in Estate No. _____ in the Superior Court of California, County of _____. You must file your claim with the court and mail or deliver a copy to the personal representative within the last to occur of four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, as provided in Section 9100 of the California Probate Code. A claim form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

(Date of mailing this notice)	(Name and address of personal representative or attorney)

9053. (a) If the personal representative believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, the personal representative is not liable

to any person for giving the notice, whether or not required by this chapter.

(b) If the personal representative fails to give notice required by this chapter, the personal representative is not liable to any person for the failure, unless a creditor establishes all of the following:

(1) The failure was in bad faith.

(2) Neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate before the court made an order for final distribution, and payment would have been made on the creditor's claim in the course of administration if the claim had been properly filed.

(3) Within 16 months after letters were first issued to a general personal representative, the creditor did both of the following:

(A) Filed a petition requesting that the court in which the estate was administered make an order determining the liability of the personal representative under this subdivision.

(B) At least 30 days before the hearing on the petition, caused notice of the hearing and a copy of the petition to be served on the personal representative in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(c) Nothing in this section affects the liability of the estate, if any, for the claim of a creditor, and the personal representative is not liable for the claim to the extent it is paid out of the estate.

(d) Nothing in this chapter imposes a duty on the personal representative to make a search for creditors of the decedent.

9054. Notwithstanding Section 9050, the personal representative need not give notice to a creditor even though the personal representative has knowledge of the creditor if any of the following conditions is satisfied:

(a) The creditor has filed a claim as provided in this part.

(b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9154.

CHAPTER 3. TIME FOR FILING CLAIMS

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Thirty days after the date notice of administration is given to the creditor, if notice is given within the time provided in subdivision (a) or (b) of Section 9051.

(b) Notwithstanding Section 9103, a reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a), unless the provision or context requires otherwise.

(Amended by Stats 1990, Ch 140, Sec. 9.1. Operative July 1, 1991, by Sec. 25 of

chapter.)

[ORIGINAL SECTION]

9100 (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Thirty days after the date notice of administration is given to the creditor, if notice is given within the time provided in Section 9051

(b) Notwithstanding Section 9103, a reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a), unless the provision or context requires otherwise.

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for filing a claim does not extend the time.

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time.

9103. (a) Upon petition by a creditor and notice of hearing given as provided in Section 1220, the court may allow a claim to be filed after expiration of the time for filing a claim if the creditor establishes that either of the following conditions is satisfied:

(1) Neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had actual knowledge of the administration whichever occurred first.

(2) Neither the creditor nor the attorney representing the creditor in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had knowledge of the existence of the claim whichever occurred first.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the time letters are first issued to a general personal representative. Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 353 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the creditor's petition if a preliminary distribution to beneficiaries or a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among beneficiaries or creditors.

(d) Regardless of whether the claim is later established in whole or in part, property distributed under court order and payments

otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Section 9392 and subject to Section 9053, the personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(Amended by Stats 1990, Ch 140, Sec 10 1 Operative July 1, 1991, by Sec. 26 of chapter.)

[ORIGINAL SECTION]

9103. (a) Upon petition by a creditor and notice of hearing given as provided in Section 1220, the court may allow a claim to be filed after expiration of the time for filing a claim if the creditor establishes that either of the following conditions is satisfied:

(1) Neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had actual knowledge of the administration whichever occurred first.

(2) Neither the creditor nor the attorney representing the creditor in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had knowledge of the existence of the claim whichever occurred first.

(b) This section applies only to a claim that relates to an action or proceeding pending against the decedent at the time of death or, if no action or proceeding is pending, to a cause of action that does not arise out of the creditor's conduct of a trade, business, or profession in this state

(c) The court shall not allow a claim to be filed under this section after the earlier of the following times·

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the time letters are first issued to a general personal representative.

(d) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the creditor's petition if a preliminary distribution to beneficiaries or a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among beneficiaries or creditors.

(e) Regardless of whether the claim is later established in whole or in part, property distributed under court order and payments otherwise properly made before a claim is filed under this section are not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

9104. (a) Subject to subdivision (b), if a claim is filed within the time provided in this chapter, the creditor may later amend or revise the claim. The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision to specify the amount of a claim that, at the time of filing, was not due, was contingent, or was not yet ascertainable, is not an increase in the amount of the claim within the meaning of this subdivision.

(c) An amendment or revision may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order for final distribution of the

estate.

(2) One year after letters are first issued to a general personal representative.

CHAPTER 4. FILING OF CLAIMS

9150. (a) A claim may be filed by the creditor or a person acting on behalf of the creditor.

(b) A claim shall be filed with the court and a copy shall be mailed to the personal representative. Failure to mail a copy to the personal representative does not invalidate a properly filed claim, but any loss that results from the failure shall be borne by the creditor.

9151. (a) A claim shall be supported by the affidavit of the creditor or the person acting on behalf of the creditor stating:

(1) The claim is a just claim.

(2) If the claim is due, the facts supporting the claim, the amount of the claim, and that all payments on and offsets to the claim have been credited.

(3) If the claim is not due or contingent, or the amount is not yet ascertainable, the facts supporting the claim.

(4) If the affidavit is made by a person other than the creditor, the reason it is not made by the creditor.

(b) The personal representative may require satisfactory vouchers or proof to be produced to support the claim. An original voucher may be withdrawn after a copy is provided. If a copy is provided, the copy shall be attached to the claim.

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court or judge on demand unless it is lost or destroyed, in which case the fact that it is lost or destroyed shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is located, it is sufficient to describe the mortgage, deed of trust, or lien and the recording reference for the instrument that created the mortgage, deed of trust, or other lien.

9153. A claim form adopted by the Judicial Council shall inform the creditor that the claim must be filed with the court and a copy mailed or delivered to the personal representative. The claim form shall include a proof of mailing or delivery of a copy of the claim to the personal representative, which may be completed by the creditor.

9154. (a) Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within four months after the date letters are first issued to a general personal representative, the personal representative may waive formal defects and elect to treat the demand as a claim that is filed and

established under this part by paying the amount demanded before the expiration of 30 days after the four-month period if all of the following conditions are satisfied:

(1) The debt was justly due.

(2) The debt was paid in good faith.

(3) The amount paid was the true amount of the indebtedness over and above all payments and offsets.

(4) The estate is solvent.

(b) Nothing in this section limits application of (1) the doctrines of waiver, estoppel, laches, or detrimental reliance or (2) any other equitable principle.

CHAPTER 5. CLAIMS BY PUBLIC ENTITIES

9200. (a) Except as provided in this chapter, a claim by a public entity shall be filed within the time otherwise provided in this part. A claim not so filed is barred, including any lien imposed for the claim.

(b) As used in this chapter, "public entity" has the meaning provided in Section 811.2 of the Government Code, and includes an officer authorized to act on behalf of the public entity.

9201. (a) Notwithstanding any other statute, if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

(1) The public entity may provide a form to be used for the written notice or request to the public entity required by this chapter. Where appropriate, the form may require the decedent's social security number, if known.

(2) The claim is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the remedies, and is barred at the time, otherwise provided in the law, act, or code.

(b)

Law, Act, or Code	Applicable Section
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code

Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

(Amended by Stats. 1990, Ch 140, Sec 11.1. Operative July 1, 1991, by Sec. 27 of chapter.)

[ORIGINAL SECTION]

9201 (a) Notwithstanding any other provision of this part, if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

(1) The public entity may provide a form to be used for the written notice or request to the public entity required by this chapter Where appropriate, the form may require the decedent's social security number, if known

(2) The claim is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the remedies, and is barred at the time, otherwise provided in the law, act, or code.

(b)

Law, Act, or Code	Applicable Section
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code

Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

9202. Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative or estate attorney shall give the Director of Health Services notice of the decedent's death in the manner provided in Section 215 if the general personal representative knows or has reason to believe that the decedent received health care 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. The director has four months after notice is given in which to file a claim.

9203. (a) Failure of a person to give the written notice or request required by this chapter does not affect the validity of any proceeding under this code concerning the administration of the decedent's estate.

(b) If property in the estate is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less. The public entity's claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim by the public entity, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

9204. Nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

9205. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect representation, or a forged or unauthorized

endorsement.

CHAPTER 6. ALLOWANCE AND REJECTION OF CLAIMS

9250. (a) When a claim is filed, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the court clerk and give notice to the creditor as provided in Section 1215, together with a copy of the allowance or rejection.

(c) The allowance or rejection shall contain the following information:

(1) The name of the creditor.

(2) The total amount of the claim.

(3) The date of issuance of letters.

(4) The date of the decedent's death.

(5) The estimated value of the decedent's estate.

(6) The amount allowed or rejected by the personal representative.

(7) Whether the personal representative is authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400)).

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

(e) This section does not apply to a demand the personal representative elects to treat as a claim under Section 9154.

9251. If the personal representative is not authorized to act under the Independent Administration of Estates Act (Part 6 (commencing with Section 10400)):

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court or judge for approval or rejection.

(b) On presentation of a claim and allowance, the court or judge may, in its discretion, examine the creditor and others on oath and receive any evidence relevant to the validity of the claim. The court or judge shall endorse on the claim whether the claim is approved or rejected and the date.

9252. (a) If the personal representative or the attorney for the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection. The court or judge may in its discretion require the creditor to file a petition and give notice of hearing.

(b) If the court or judge approves the claim, the claim is established and shall be included with other established claims to be paid in the course of administration.

(c) If the court or judge rejects the claim, the personal representative or attorney may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

9253. A claim barred by the statute of limitations may not be allowed by the personal representative or approved by the court or judge.

9254. (a) The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the report or account of the personal representative in which it is first reported as an allowed or approved claim. The burden of proof is on the contestant, except where the personal representative has acted under the Independent Administration of Estates Act (Part 6 (commencing Section 10400)), in which case the burden of proof is on the personal representative.

(b) Subdivision (a) does not apply to a claim established by a judgment.

9255. (a) The personal representative may allow a claim, or the court or judge may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A creditor who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner provided in Chapter 8 (commencing with Section 9350). The creditor may not recover costs in the action unless the creditor recovers an amount greater than that allowed or approved.

9256. If within 30 days after a claim is filed the personal representative or the court or judge has refused or neglected to act on the claim, the refusal or neglect may, at the option of the creditor, be deemed equivalent to giving a notice of rejection on the 30th day.

CHAPTER 7. CLAIMS ESTABLISHED BY JUDGMENT

9300. (a) Except as provided in Section 9303, after the death of the decedent all money judgments against the decedent or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure).

(b) Subject to Section 9301, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

9301. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

9302. (a) Notwithstanding the death of the decedent, a

judgment for possession of property or a judgment for sale of property may be enforced under the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure). Nothing in this subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, a demand for money that is not satisfied from the property described in a judgment for sale of property shall be filed as a claim in the same manner as other claims and is payable in the course of administration.

9303. If property of the decedent is subject to an execution lien at the time of the decedent's death, enforcement against the property may proceed under the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure) to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

9304. (a) An attachment lien may be converted into a judgment lien on property in the estate subject to the attachment lien, with the same priority as the attachment lien, in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien, do one of the following:

(1) Serve an abstract of the judgment, and a notice that the attachment lien has become a judgment lien, on the person holding property subject to the attachment lien.

(2) Record or file, in any office where the writ of attachment and notice of attachment are recorded or filed, an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied on under the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice are served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of

exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

CHAPTER 8. CLAIMS IN LITIGATION

Article 1. Claim Where No Pending Action or Proceeding

9350. This article applies to any claim other than a claim on an action or proceeding pending against the decedent at the time of death.

9351. An action may not be commenced against a decedent's personal representative on a cause of action against the decedent unless a claim is first filed as provided in this part and the claim is rejected in whole or in part.

9352. (a) The filing of a claim tolls the statute of limitations otherwise applicable to the claim until allowance, approval, or rejection.

(b) The allowance or approval of a claim in whole or in part further tolls the statute of limitations during the administration of the estate as to the part allowed or approved.

9353. (a) Regardless of whether the statute of limitations otherwise applicable to a claim will expire before or after the following times, a claim rejected in whole or in part is barred as to the part rejected unless, within the following times, the creditor commences an action on the claim or the matter is referred to a referee or to arbitration:

(1) If the claim is due at the time the notice of rejection is given, three months after the notice is given.

(2) If the claim is not due at the time the notice of rejection is given, three months after the claim becomes due.

(b) The time during which there is a vacancy in the office of the personal representative shall be excluded from the period determined under subdivision (a).

9354. (a) In addition to any other county in which an action may be commenced, an action on the claim may be commenced in the county in which the proceeding for administration of the decedent's estate is pending.

(b) The plaintiff shall file a notice of the pendency of the action with the court clerk in the estate proceeding, together with proof of giving a copy of the notice to the personal representative as provided in Section 1215. Personal service of a copy of the summons and complaint on the personal representative is equivalent to the filing and giving of the notice. Any property distributed under court order, or any payment properly made, before the notice is filed and given is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(c) The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing

party shall be awarded reasonable litigation expenses, including attorney's fees.

Article 2. Claim Where Action or Proceeding Pending

9370. (a) An action or proceeding pending against the decedent at the time of death may not be continued against the decedent's personal representative unless all of the following conditions are satisfied:

(1) A claim is first filed as provided in this part.

(2) The claim is rejected in whole or in part.

(3) Within three months after the notice of rejection is given, the plaintiff applies to the court in which the action or proceeding is pending for an order to substitute the personal representative in the action or proceeding. This paragraph applies only if the notice of rejection contains a statement that the plaintiff has three months within which to apply for an order for substitution.

(b) No recovery shall be allowed in the action against property in the decedent's estate unless proof is made of compliance with this section.

Article 3. Litigation Where No Claim Required

9390. (a) An action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued under Section 550, and a judgment in the action may be enforced against the insurer, without first filing a claim as provided in this part.

(b) Unless a claim is first made as provided in this part, an action to establish the decedent's liability for damages outside the limits or coverage of the insurance may not be commenced or continued under Section 550.

(c) If the insurer seeks reimbursement under the insurance contract for any liability of the decedent, including, but not limited to, deductible amounts in the insurance coverage and costs and attorney's fees for which the decedent is liable under the contract, an insurer defending an action under Section 550 shall file a claim as provided in this part. Failure to file a claim is a waiver of reimbursement under the insurance contract for any liability of the decedent.

(Amended by Stats. 1990, Ch. 710, Sec 23 Operative July 1, 1991, by Sec 48 of chapter.)

[ORIGINAL SECTION]

9390. (a) An action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued under Section 550, and a judgment in the action may be enforced against the insurer, without first filing a claim as provided in this part

(b) Unless a claim is first made as provided in this part, an action to establish the decedent's liability for damages outside the limits or coverage of the insurance may not be commenced or continued under Section 550.

(c) If the insurer seeks reimbursement under the insurance contract for any liability of the decedent, including, but not limited to, deductible amounts in the insurance coverage and costs and attorney's fees, an insurer defending an action under Section 550 shall file a claim as provided in this part. Failure to file a claim is a waiver of reimbursement under the insurance contract for any liability of the decedent.

9391. The holder of a mortgage or other lien on property in the decedent's estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 353 of the Code of Civil Procedure does not apply to an action under this section.

(Amended by Stats. 1990, Ch. 140, Sec. 12 1. Operative July 1, 1991, by Sec 28 of chapter.)

[ORIGINAL SECTION]

9391. The holder of a mortgage or other lien on property in the decedent's estate, including but not limited to a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate.

9392. (a) Subject to subdivision (b), a person to whom property is distributed is personally liable for the claim of a creditor, without a claim first having been filed, if all of the following conditions are satisfied:

(1) The identity of the creditor was known to, or reasonably ascertainable by, a general personal representative within four months after the date letters were first issued to the personal representative, and the claim of the creditor was not merely conjectural.

(2) Notice of administration of the estate was not given to the creditor under Chapter 2 (commencing with Section 9050) and neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate brfore the time the court made an order for final distribution of the property.

(3) The statute of limitations applicable to the claim under Section 353 of the Code of Civil Procedure has not expired at the time of commencement of an action under this section.

(b) Personal liability under this section is applicable only to the extent the claim of the creditor cannot be satisfied out of the decedent and is limited to the extent of the fair market value of the property on the date of the order for distribution, less the amount of any liens and encumbrances on the property at that time. Personal liability under this section is joint and several, based on the principles stated in Part 4 (commencing with Section 21400) of Division 11 (abatement).

(c) Nothing in this section affects the rights of a purchaser or encumbrancer of property in good faith and for value from a person who is personally liable under this section.

(Added by Stats. 1990, Ch 79, Sec. 20. See section of same number, as added by Stats.

1990, Ch. 140, Sec. 13.1, below.)

9392. (a) Subject to subdivision (b), a person to whom property is distributed is personally liable for the claim of a creditor, without a claim first having been filed, if all of the following conditions are satisfied:

(1) The identity of the creditor was known to, or reasonably ascertainable by, a general personal representative within four months after the date letters were first issued to the personal representative, and the claim of the creditor was not merely conjectural.

(2) Notice of administration of the estate was not given to the creditor under Chapter 2 (commencing with Section 9050) and neither the creditor nor the attorney representing the creditor in the matter has actual knowledge of the administration of the estate before the time the court made an order for final distribution of the property.

(3) The statute of limitations applicable to the claim under Section 353 of the Code of Civil Procedure has not expired at the time of commencement of an action under this section.

(b) Personal liability under this section is applicable only to the extent the claim of the creditor cannot be satisfied out of the estate of the decedent and is limited to a pro rata portion of the claim of the creditor, based on the proportion that the value of the property distributed to the person out of the estate bears to the total value of all property distributed to all persons out of the estate. Personal liability under this section for all claims of all creditors shall not exceed the value of the property distributed to the person out of the estate. As used in this section, the value of property is the fair market value of the property on the date of the order for distribution, less the amount of any liens and encumbrances on the property at that time.

(c) Nothing in this section affects the rights of a purchaser or encumbrancer of property in good faith and for value from a person who is personally liable under this section.

(Added by Stats. 1990, Ch. 140, Sec. 13.1. Operative July 1, 1991, by Sec 29 of chapter. See section of same number, as added by Stats 1990, Ch. 79, Sec 20, above)

Article 4. Transitional Provision

9399. (a) This chapter does not apply to an action commenced before July 1, 1989.

(b) The applicable law in effect before July 1, 1989, continues to apply to an action commenced before July 1, 1989, notwithstanding its repeal by Chapter 1199 of the Statutes of 1988.

PART 5. ESTATE MANAGEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Duties and Liabilities of Personal Representative

9600. (a) The personal representative has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The personal representative:

(1) Shall exercise a power to the extent that ordinary care and diligence require that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence require that the power not be exercised.

9601. (a) If a personal representative breaches a fiduciary duty, the personal representative is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the decedent's estate resulting from the breach of duty, with interest.

(2) Any profit made by the personal representative through the breach of duty, with interest.

(3) Any profit that would have accrued to the decedent's estate if the loss of profit is the result of the breach of duty.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.

9602. If the personal representative is liable for interest pursuant to Section 9601, the personal representative is liable for the greater of the following amounts:

(a) The amount of interest that accrues at the legal rate on judgments.

(b) The amount of interest actually received.

9603. The provisions of Sections 9601 and 9602 for liability of a personal representative for breach of a fiduciary duty do not prevent resort to any other remedy available against the personal representative under the statutory or common law.

9604. No personal representative is chargeable upon a special promise to answer in damages for a liability of the decedent or to pay a debt of the decedent out of the personal representative's own estate unless the agreement for that purpose, or some memorandum or note thereof, is in writing and is signed by one of the following:

(a) The personal representative.

(b) Some other person specifically authorized by the personal representative in writing to sign the agreement or the memorandum or note.

9605. Appointment of a person as personal representative does not discharge any claim the decedent has against the person.

9606. Unless otherwise provided in the instrument or in this division, a personal representative is not personally liable on an

instrument, including but not limited to a note, mortgage, deed of trust, or other contract, properly entered into in the personal representative's fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal the personal representative's representative capacity or identify the estate in the instrument.

Article 2. Court Supervision

9610. Unless this part specifically provides a proceeding to obtain court authorization or requires court authorization, the powers and duties set forth in this part may be exercised by the personal representative without court authorization, instruction, approval, or confirmation. Nothing in this section precludes the personal representative from seeking court authorization, instructions, approval, or confirmation.

9611. (a) In all cases where no other procedure is provided by statute, upon petition of the personal representative, the court may authorize and instruct the personal representative, or approve and confirm the acts of the personal representative, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith. Section 9613 does not preclude a petition for instructions under this section.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

9613. (a) On petition of any interested person, and upon a showing that if the petition is not granted the estate will suffer great or irreparable injury, the court may direct the personal representative to act or not to act concerning the estate. The order may include terms and conditions the court determines are appropriate under the circumstances.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

9614. (a) On petition of an interested person, the court may suspend the powers of the personal representative in whole or in part, for a time, as to specific property or circumstances or as to specific duties of the office, or may make any other order to secure proper performance of the duties of the personal representative, if it appears to the court that the personal representative otherwise may take some action that would jeopardize unreasonably the interest of the petitioner. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within 10 days unless the parties agree otherwise. Notice as the court directs shall be given to the personal representative and attorney of record, if any, and to any other parties named in the petition.

(c) The court may, in its discretion, if it determines that the

petition was brought unreasonably and for the purpose of hindering the personal representative in the performance of the duties of the office, assess attorney's fees against the petitioner and make the assessment a charge against the interest of the petitioner.

Article 3. Summary Determination of Disputes

9620. If there is a dispute relating to the estate between the personal representative and a third person, the personal representative may do either of the following:

(a) Enter into an agreement in writing with the third person to refer the dispute to a temporary judge designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The temporary judge shall proceed promptly to hear and determine the matter in controversy by summary procedure, without pleadings or discovery. The decision of the designated person is subject to Section 632 of the Code of Civil Procedure. Judgment shall be entered on the decision and shall be as valid and effective as if rendered by a judge of the court in an action against the personal representative or the third person commenced by ordinary process.

(b) Enter into an agreement in writing with the third person that a judge, pursuant to the agreement and with the written consent of the judge, both filed with the clerk within the time specified in Section 9353 for bringing an independent suit on the matter in dispute, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

9621. If there is a dispute relating to the estate between the personal representative and a third person, the personal representative may enter into an agreement in writing with the third person to submit the dispute to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. The agreement is not effective unless it is first approved by the court and a copy of the approved agreement is filed with the court. Notice of the hearing on the petition for approval of the agreement shall be given as provided in Section 1220. The order approving the agreement may be made ex parte.

Article 4. Joint Personal Representatives

9630. (a) Subject to subdivisions (b), (c), and (d):

(1) Where there are two personal representatives, both must concur to exercise a power.

(2) Where there are more than two personal representatives, a majority must concur to exercise a power.

(b) If one of the joint personal representatives dies or is removed or resigns, the powers and duties continue in the remaining joint personal representatives as if they were the only personal

representatives until further appointment is made by the court.

(c) Where joint personal representatives have been appointed and one or more are (1) absent from the state and unable to act, or (2) otherwise unable to act, or (3) legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint personal representatives to act as to all matters embraced within its order.

(d) Where there are two or more personal representatives, any of them may:

(1) Oppose a petition made by one or more of the other personal representatives or by any other person.

(2) Petition the court for an order requiring the personal representatives to take a specific action for the benefit of the estate or directing the personal representatives not to take a specific action. If a procedure is provided by statute for a petition to authorize the specific action by the personal representatives, the petitioner shall file the petition under the provision relating to that procedure. Otherwise, the petitioner shall file the petition under Section 9611.

9631. (a) Except as provided in subdivision (b), where there is more than one personal representative, one personal representative is not liable for a breach of fiduciary duty committed by another of the personal representatives.

(b) Where there is more than one personal representative, one personal representative is liable for a breach of fiduciary duty committed by another of the personal representatives under any of the following circumstances:

(1) Where the personal representative participates in a breach of fiduciary duty committed by the other personal representative.

(2) Where the personal representative improperly delegates the administration of the estate to the other personal representative.

(3) Where the personal representative approves, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other personal representative.

(4) Where the personal representative's negligence enables the other personal representative to commit a breach of fiduciary duty.

(5) Where the personal representative knows or has information from which the personal representative reasonably should have known of the breach of fiduciary duty by the other personal representative and fails to take reasonable steps to compel the other personal representative to redress the breach.

(c) The liability of a personal representative for a breach of fiduciary duty committed by another of the personal representatives that occurred before July 1, 1988, is governed by prior law and not by this section.

Article 5. Independent Administration

9640. Nothing in this part limits or restricts any authority granted to a personal representative under the Independent Administration

of Estates Act (Part 6 (commencing with Section 10400)) to administer the estate under that part.

Article 6. Transitional Provision

9645. (a) Subject to subdivisions (b) and (c), any petition or other matter filed or commenced before July 1, 1988, shall be continued under this part, so far as applicable, except where the court determines that application of a particular provision of this part would substantially interfere with the rights of the parties or other interested persons, in which case the particular provision of this part does not apply and the applicable law in effect before July 1, 1988, applies.

(b) Nothing in this part affects any order, judgment, or decree made, or any action taken, before July 1, 1988.

(c) Notwithstanding the enactment of this part:

(1) An order, judgment, or decree made before July 1, 1988, shall continue in full force and effect in accordance with its terms or until modified or terminated by the court.

(2) The validity of an order, judgment, or decree made before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this part.

(3) The validity of any action taken before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this part.

CHAPTER 2. ESTATE MANAGEMENT GENERALLY

9650. (a) Except as provided by statute and subject to subdivision (c):

(1) The personal representative has the right to, and shall take possession or control of, all the property of the decedent to be administered in the decedent's estate and shall collect all debts due to the decedent or the estate. The personal representative is not accountable for any debts that remain uncollected without his or her fault.

(2) The personal representative is entitled to receive the rents, issues, and profits from the real and personal property in the estate until the estate is distributed.

(b) The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his or her possession.

(c) Real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The person holding the property shall surrender it to the personal representative on request by the personal representative.

9651. (a) A personal representative who in good faith takes into possession real or personal property, and reasonably believes that the property is part of the estate of the decedent, is not:

(1) Criminally liable for so doing.

(2) Civilly liable to any person for so doing.

(b) The personal representative shall make reasonable efforts to determine the true nature of, and title to, the property so taken into possession.

(c) During his or her possession, the personal representative is entitled to receive all rents, issues, and profits of the property. If the property is later determined not to be part of the estate of the decedent, the personal representative shall deliver the property, or cause it to be delivered, to the person legally entitled to it, together with all rents, issues, and profits of the property received by the personal representative, less any expenses incurred in protecting and maintaining the property and in collecting rents, issues, and profits. The personal representative may request court approval before delivering the property pursuant to this subdivision.

(d) The court may allow the personal representative reasonable compensation for services rendered in connection with the duties specified in this section as to property later determined not to be part of the estate of the decedent, if the court makes one of the following findings:

(1) The services were of benefit to the estate. If the court makes this finding, the compensation and the expenses and costs of litigation, including attorney's fees of the attorney hired by the personal representative to handle the matter, are a proper expense of administration.

(2) The services were essential to preserve, protect, and maintain the property. If the court makes this finding, the court shall award compensation and the expenses and costs of litigation, including attorney's fees of the attorney hired by the personal representative to handle the matter, as an expense deductible from the rents, issues, and profits received by the personal representative, or, if these are insufficient, as a lien against the property.

9652. (a) Except as provided in subdivisions (b) and (c), the personal representative shall keep all cash in his or her possession invested in interest-bearing accounts or other investments authorized by law.

(b) The requirement of subdivision (a) does not apply to the amount of cash that is reasonably necessary for orderly administration of the estate.

(c) The requirement of subdivision (a) does not apply to the extent that the testator's will otherwise provides.

9653. (a) On application of a creditor of the decedent or the estate, the personal representative shall commence and prosecute an action for the recovery of real or personal property of the decedent for the benefit of creditors if the personal representative has insufficient assets to pay creditors and the decedent during lifetime

did either of the following:

(1) Made a conveyance of the property, or any right or interest in the property, that is fraudulent as to creditors under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

(2) Made a gift of the property in view of death.

(b) A creditor making application under this section shall pay such part of the costs and expenses of the suit and attorney's fees, or give an undertaking to the personal representative for that purpose, as the personal representative and the creditor agree, or, absent an agreement, as the court or judge orders.

(c) The property recovered under this section shall be sold for the payment of debts in the same manner as if the decedent had died seized or possessed of the property. The proceeds of the sale shall be applied first to payment of the costs and expenses of suit, including attorney's fees, and then to payment of the debts of the decedent in the same manner as other property in possession of the personal representative. After all the debts of the decedent have been paid, the remainder of the proceeds shall be paid to the person from whom the property was recovered. The property may be sold in its entirety or in such portion as necessary to pay the debts.

9654. The heirs or devisees may themselves, or jointly with the personal representative, maintain an action for possession of property or to quiet title to property against any person except the personal representative.

9655. With respect to a share of stock of a domestic or foreign corporation held in the estate, a membership in a nonprofit corporation held in the estate, or other property held in the estate, a personal representative may do any one or more of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to the share, membership, or other property.

(b) Waive notice of a meeting or give consent to the holding of a meeting.

(c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

9656. The personal representative may insure the property of the estate against damage or loss and may insure himself or herself against liability to third persons.

9657. The personal representative shall not make profit by the increase, nor suffer loss by the decrease or destruction without his or her fault, of any part of the estate.

CHAPTER 2.5. HIRING AND PAYING ATTORNEYS, ADVISERS, AND OTHERS

CHAPTER 3. DEPOSIT OF MONEY AND PERSONAL PROPERTY WITH FINANCIAL INSTITUTIONS

9700. The personal representative may deposit money of the estate in an insured account in a financial institution in this state. Unless otherwise provided by court order, the money may be withdrawn without order of the court.

9701. The personal representative may deposit personal property of the estate with a trust company for safekeeping. Unless otherwise provided by court order, the personal property may be withdrawn without order of the court.

9702. (a) A trust company serving as personal representative may deposit securities that constitute all or part of the estate in a securities depository as provided in Section 775 of the Financial Code.

(b) If securities have been deposited with a trust company by a personal representative pursuant to Section 9701, the trust company may deposit the securities in a securities depository as provided in Section 775 of the Financial Code.

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

9703. (a) Upon application of the personal representative, the court may, with or without notice, order that money or other personal property be deposited pursuant to Section 9700 or 9701 and be subject to withdrawal only upon authorization of the court.

(b) The personal representative shall deliver a copy of the court order to the financial institution or trust company at the time the deposit is made.

(c) No financial institution or trust company accepting a deposit pursuant to Section 9700 or 9701 shall be on notice of the existence of an order that the money or other property is subject to withdrawal only upon authorization of the court unless it has actual notice of the order.

9704. When an order for distribution of money or personal property deposited pursuant to this chapter is made, the financial institution, trust company, or securities depository may deliver the property directly to the distributees and shall file receipts therefor with the clerk.

9705. (a) Subject to subdivision (b), where a trust company is a personal representative and in the exercise of reasonable judgment deposits money of the estate in an account in any department of the corporation or association of which it is a part, it is chargeable with interest thereon at the rate of interest prevailing among banks of the locality on such deposits.

(b) Where it is to the advantage of the estate, the amount of cash that is reasonably necessary for orderly administration of the estate may be deposited in a checking account that does not earn interest which is maintained in a department of the corporation or association of which the trust company is a part.

CHAPTER 4. INVESTMENTS AND PURCHASE OF PROPERTY

9730. Pending distribution of the estate, the personal representative may invest money of the estate in possession of the personal representative in any one or more of the following:

(a) Direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment.

(b) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(c) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

9731. (a) Pending distribution of the estate, upon a showing that it is to the advantage of the estate, the court may order that money of the estate in possession of the personal representative be invested in securities of the United States or of this state.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the types of securities that are proposed to be purchased and the advantage to the estate of the purchase.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9732. (a) The court may order that money of the estate in possession of the personal representative be invested in any manner provided by the will if all of the following conditions are satisfied:

(1) The time for filing claims has expired.

(2) All debts (as defined in Section 11401) have been paid or are sufficiently secured by mortgage or otherwise, or there is sufficient cash in the estate aside from the money to be invested to pay all the debts, or the court is otherwise satisfied that all the debts will be paid.

(3) The estate is not in a condition to be finally distributed.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the general condition of the estate and the types of investments that are proposed to be made.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the petitioner shall cause notice of the hearing and a copy of the petition to be mailed to all known devisees of property which is proposed to be invested. Where the property proposed to be invested is devised to a trust or trustee,

notice of the hearing and a copy of the petition shall be mailed to the trustee or, if the trustee has not yet accepted the trust, to the person named in the will as trustee. Mailing pursuant to this subdivision shall be to the person's last known address as provided in Section 1220.

(d) If no objection has been filed by an interested person, the court may make an order authorizing or directing the personal representative to invest such portion of the money of the estate as the court deems advisable in the types of investments proposed in the petition and authorized by the will. If there is no objection by an interested person and no substantial reason why some or all of the investment powers given by the will should not be exercised, the court shall make the order. The order may be for a limited period or until the administration of the estate is completed. Upon petition of the personal representative or any interested person, the order may be renewed, modified, or terminated at any time.

9733. (a) Pending distribution of the estate or at the time the court makes an order for final distribution of the estate, on petition of the personal representative or any interested person, the court may, upon good cause shown, order that the personal representative purchase an annuity from an insurer admitted to do business in this state to satisfy a devise of an annuity or other direction in the will for periodic payments to a devisee.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

9734. (a) If an asset of the estate consists of an option right, the personal representative may exercise the option after authorization by order of court upon a showing that the exercise would be to the advantage of the estate and would be in the best interest of the interested persons. The personal representative may use any funds or property in the estate to acquire the property covered by the option.

(b) A petition under this section may be filed by the personal representative or any interested person.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9735. (a) After authorization by order of court, the personal representative may purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent. The court's order shall fix the terms and conditions of purchase.

(b) A petition under this section may be filed by the personal representative or by any party to the contract. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) No notice of hearing need be given where the maximum purchase price is fixed or where the securities or commodities are to be purchased on an established stock, bond, or commodity exchange.

9736. The personal representative may hold a security in the name of a nominee or in any other form without disclosure of the

estate so that title to the security may pass by delivery.

9737. (a) If an estate by reason of owning securities also owns or receives subscription rights for the purchase of additional securities, the personal representative may exercise the subscription rights after authorization by order of court upon a showing that it is to the advantage of the estate.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the nature of the subscription rights and the advantage to the estate of exercising them.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

CHAPTER 5. OPERATION OF DECEDENT'S BUSINESS

9760. (a) As used in this section, "decedent's business" means an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of the decedent's death, but does not include a business operated by a partnership in which the decedent was a partner.

(b) If it is to the advantage of the estate and in the best interest of the interested persons, the personal representative, with or without court authorization, may continue the operation of the decedent's business; but the personal representative may not continue the operation of the decedent's business for a period of more than six months from the date letters are first issued to a personal representative unless a court order has been obtained under this section authorizing the personal representative to continue the operation of the business.

(c) The personal representative or any interested person may file a petition requesting an order (1) authorizing the personal representative to continue the operation of the decedent's business or (2) directing the personal representative to discontinue the operation of the decedent's business. The petition shall show the advantage to the estate and the benefit to the interested persons of the order requested. Notice of the hearing on the petition shall be given as provided in Section 1220.

(d) If a petition is filed under this section, the court may make an order that either:

(1) Authorizes the personal representative to continue the operation of the decedent's business to such an extent and subject to such restrictions as the court determines to be to the advantage of the estate and in the best interest of the interested persons.

(2) Directs the personal representative to discontinue the operation of the decedent's business within the time specified in, and in accordance with the provisions of, the order.

9761. If a partnership existed between the decedent and another person at the time of the decedent's death, on application of the personal representative, the court may order any surviving partner

to render an account pursuant to Section 15043, 15510, or 15634 of the Corporations Code. An order under this section may be enforced by the court's power to punish for contempt.

9762. (a) After authorization by order of court upon a showing that it would be to the advantage of the estate and in the best interest of the interested persons, the personal representative may continue as a general or a limited partner in any partnership in which the decedent was a general partner at the time of death. In its order, the court may specify any terms and conditions of the personal representative's participation as a partner that the court determines are to the advantage of the estate and in the best interest of the interested persons, but any terms and conditions that are inconsistent with the terms of any written partnership agreement are subject to the written consent of all of the surviving partners.

(b) If there is a written partnership agreement permitting the decedent's personal representative to participate as a partner, the personal representative has all the rights, powers, duties, and obligations provided in the written partnership agreement, except as otherwise ordered by the court pursuant to subdivision (a).

(c) If there is not a written partnership agreement, the personal representative has the rights, powers, duties, and obligations that the court specifies in its order pursuant to subdivision (a).

(d) To obtain an order under this section, the personal representative or any interested person shall file a petition showing that the order requested would be to the advantage of the estate and in the best interest of the interested persons. Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, unless the court otherwise orders, the petitioner, not less than 15 days before the hearing, shall cause notice of hearing and a copy of the petition to be mailed to each of the surviving general partners at his or her last known address.

9763. (a) If the decedent was a general partner, the personal representative may commence and maintain any action against the surviving partner that the decedent could have commenced and maintained.

(b) The personal representative may exercise the decedent's rights as a limited partner as provided in Section 15675 of the Corporations Code.

CHAPTER 6. ABANDONMENT OF TANGIBLE PERSONAL PROPERTY

9780. Unless the property is specifically devised, subject to the requirements of this chapter, the personal representative may dispose of or abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

9781. Unless otherwise provided in the will, subject to the requirements of this chapter, the personal representative may exercise the power provided in Section 9780 without court

authorization or approval.

9782. (a) Except as provided in Section 9785, before disposing of or abandoning property under Section 9780, the personal representative shall give notice of the proposed disposition or abandonment as provided in subdivision (c) to all of the following:

(1) Each known devisee whose interest in the estate would be affected by the proposed action.

(2) Each known heir whose interest in the estate would be affected by the proposed action.

(3) Each person who has filed a request for special notice pursuant to Section 1250.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the proposed action.

(b) The notice of the proposed disposition or abandonment shall describe the property to be disposed of or abandoned, indicate the manner in which the property is to be disposed of or abandoned, and specify the date on or after which the property will be disposed of or abandoned.

(c) The notice shall be delivered personally to each person required to be given notice or shall be sent by mail to the person at the person's last known address. If the notice is delivered personally, it shall be delivered to the person not less than five days before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. If the notice is sent by mail, it shall be deposited in the mail not less than 10 days before the date specified in the notice as the date on or after which the property will be disposed of or abandoned.

9783. A person described in Section 9782 may deliver or mail a written objection to the disposition or abandonment to the personal representative on or before the date specified in the notice as the date on or after which the property will be disposed of or abandoned. Subject to Section 9788, after receipt of the written objection, the personal representative shall not dispose of or abandon the property without authorization by order of the court obtained under Section 9611.

9784. (a) A person described in Section 9782 who objects to the disposition or abandonment of property by the personal representative under Section 9780 may apply to the court in which proceedings for administration of the estate are pending for an order restraining the personal representative from disposing of or abandoning the property without prior court authorization.

(b) The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order if the court is satisfied that the estate will not suffer any loss or unreasonable expense if the order is granted. As a condition of granting the order, the court may require the person applying for the order (1) to pay the costs of storing and protecting the property

or (2) to provide security by bond or cash deposit that the costs will be paid.

(c) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before the date specified in the notice as the date on or after which the property will be disposed of or abandoned.

9785. Notice of the proposed disposition or abandonment need not be given to any of the following:

(a) A person who consents in writing to the proposed disposition or abandonment.

(b) A person who, in writing, waives the right to notice of the proposed disposition or abandonment.

9786. A person who objects to the disposition or abandonment as provided in Section 9783, or who serves a restraining order issued under Section 9784 in the manner provided in that section, shall be given notice of any court hearing on a petition for court authorization of the disposition or abandonment of the property.

9787. (a) Except as provided in subdivision (b), a person described in Section 9782 who receives notice of the proposed disposition or abandonment as provided in Section 9782, waives the right to have the court later review the disposition or abandonment of the property unless the person does one of the following:

(1) Delivers or mails a written objection as provided in Section 9783.

(2) Serves a restraining order obtained under Section 9784 before whichever of the following is the later time:

(A) The date specified in the notice of proposed disposition or abandonment as the date on or after which the property will be disposed of or abandoned.

(B) The date the property has actually been disposed of or abandoned.

(b) Subject to Section 9785, the court may review the disposition or abandonment of the property upon the motion of a person described in subdivision (a) of Section 9782 who establishes that he or she did not actually receive notice of the proposed disposition or abandonment before the time to object expired.

9788. (a) Notwithstanding Sections 9783 and 9784, the personal representative may abandon or dispose of the property without court authorization if the person who made the objection or obtained the restraining order fails to take possession of the property at his or her expense within 10 days after the personal representative requests that the person do so.

(b) A person who takes possession of estate property pursuant to this section is liable for the safekeeping of the property until a court order is made relieving the person of this obligation.

CHAPTER 7. BORROWING, REFINANCING, AND ENCUMBERING PROPERTY

9800. (a) Subject to subdivision (c), after authorization by order of court obtained under this chapter upon a showing that it would be to the advantage of the estate, the personal representative may borrow money on a note, either unsecured or to be secured by a security interest or other lien on the personal property of the estate, or any part thereof, or to be secured by a mortgage or deed of trust on the real property of the estate, or any part thereof, and may give a security interest or other lien on the personal property of the estate, or any part thereof, or a mortgage or deed of trust on the real property of the estate, or any part thereof, in order to do any one or more of the following:

(1) Pay the debts of the decedent or the estate, devises, expenses of administration, and charges against the estate.

(2) Pay, reduce, extend, or renew a security interest or lien or mortgage or deed of trust already existing on property of the estate.

(3) Improve, use, operate, or preserve property in the estate.

(b) The personal representative shall apply the money to the purpose specified in the order.

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, the personal representative is authorized to borrow money to be secured by a mortgage or deed of trust on the community real property of the estate, or any part thereof, only with the written consent of the surviving spouse.

9801. If property of the estate consists of an undivided interest in real or personal property, or any other interest therein less than the entire ownership, upon a showing that it would be to the advantage of the estate to borrow money to improve, use, operate, or preserve the property jointly with the owners of the other interests therein, or to pay, reduce, extend, or renew a security interest, lien, mortgage, or deed of trust already existing on all of the property, the personal representative, after authorization by order of the court obtained under this chapter, may join with the owners of the other interests in borrowing money and the execution of a joint and several note and such security interest, lien, mortgage, or deed of trust as may be required to secure the payment of the note. The note may be for such sum as is required for the purpose.

9802. (a) The personal representative or any interested person may file a petition for an order under this chapter.

(b) The petition shall state the purpose for which the order is sought and the necessity for or the advantage to accrue from the order. If applicable, the petition shall also show the amount of money proposed to be borrowed, the rate of interest to be paid, the length of time the note is to run, and a general description of the property proposed to be mortgaged or subjected to the deed of trust, security interest, or other lien.

9803. Notice of the hearing on the petition shall be given as provided in Section 1220.

9804. (a) Subject to subdivision (c), if the court is satisfied that it will be to the advantage of the estate, the court shall make an order that authorizes or requires that the personal representative do any one or more of the following:

(1) Borrow money and execute a note.

(2) Execute a mortgage or deed of trust or give other security by security interest or other lien.

(3) Pay, reduce, extend, or renew a security interest or lien or mortgage or deed of trust already existing upon property of the estate.

(b) The court in its order may do any one or more of the following:

(1) Order that the amount specified in the petition, or a lesser amount, be borrowed.

(2) Prescribe the maximum rate of interest and the period of the loan.

(3) Require that the interest and the whole or any part of the principal be paid from time to time out of the whole estate or any part thereof.

(4) Require that the personal property used as security, or any buildings on real property to be mortgaged or subjected to the deed of trust, be insured for the further security of the lender and that the premiums be paid out of the estate.

(5) Specify the purpose for which the money to be borrowed is to be applied.

(6) Specify the terms and conditions of any extension or renewal agreement.

(7) Prescribe such other terms and conditions concerning the transaction as the court determines to be to the advantage of the estate.

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, an order authorizing or requiring the personal representative to borrow money to be secured by a mortgage or deed of trust upon the community real property of the estate, or any part thereof, may be made only if the written consent of the surviving spouse has been filed with the court.

9805. (a) The personal representative shall execute and deliver the mortgage or deed of trust, or execute and deliver the instrument creating the security interest, setting forth therein that it is made by authority of the order, giving the date of the order.

(b) The note and the mortgage or deed of trust or other instrument creating the security interest, if any, shall be signed by the personal representative and shall be acknowledged by the personal representative if the instrument creates a lien on real property.

9806. (a) Every mortgage, deed of trust, or security interest made pursuant to a court order obtained under this chapter is

effectual to mortgage, or to subject to the deed of trust or security interest, all of the following:

(1) All right, title, and interest which the decedent had to the property described therein at the time of the decedent's death.

(2) Any right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, since the time of the decedent's death.

(3) Any right, title, or interest in the community real property belonging to the decedent's surviving spouse whose written consent has been filed with the court and which is referred to in the court order obtained under this chapter.

(b) Jurisdiction of the court to administer the estate of the decedent vests the court with jurisdiction to make the order for the note and for the security interest, lien, mortgage, or deed of trust. This jurisdiction shall conclusively inure to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns.

(c) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the note, security interest, lien, mortgage, or deed of trust given pursuant to an order under this chapter. Subject to Section 9807, the owner of the security interest or lien, the mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns, have and possess the same rights and remedies on the note and the security interest or lien or mortgage or deed of trust as if it had been made by the decedent prior to his or her death.

9807. (a) Except as provided in subdivision (b), no judgment or claim for any deficiency shall be had or allowed against the personal representative or the estate if (1) there is a foreclosure or sale under a security interest, lien, mortgage, or deed of trust and (2) the proceeds of sale of the encumbered property are insufficient to pay the note, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale.

(b) If the note, security interest, mortgage, or deed of trust was given to pay, reduce, extend, or renew a lien, security interest, mortgage, or deed of trust existing on property of the estate at the time of death of the decedent and the indebtedness secured thereby was a claim established under Part 4 (commencing with Section 9000), the part of the indebtedness remaining unsatisfied shall be classed with other established claims.

CHAPTER 8. ACTIONS AND PROCEEDINGS BY OR AGAINST PERSONAL REPRESENTATIVE

9820. The personal representative may:

(a) Commence and maintain actions and proceedings for the benefit of the estate.

(b) Defend actions and proceedings against the decedent, the

personal representative, or the estate.

9822. The personal representative may bring an action on the bond of any former personal representative of the same estate, for the use and benefit of all interested persons.

9823. (a) If the decedent leaves an undivided interest in any property, an action for partition of the property may be brought against the personal representative.

(b) The personal representative may bring an action against the other cotenants for partition of any property in which the decedent left an undivided interest.

CHAPTER 9. COMPROMISE OF CLAIMS AND ACTIONS; EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATIONS

9830. (a) Unless this chapter or some other applicable statute requires court authorization or approval, if it is to the advantage of the estate, the personal representative may do any of the following without court authorization, instruction, approval, or confirmation:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate, including the giving of a covenant not to sue.

(2) Extend, renew, or in any manner modify the terms of an obligation owing toor in favor of the decedent or the estate.

(3) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

(b) Nothing in this section precludes the personal representative from seeking court authorization pursuant to the provisions of this chapter.

(c) Upon petition of an interested person or upon the court's own motion, the court may limit the authority of the personal representative under subdivision (a). Notice of the hearing on the petition shall be given as provided in Section 1220.

9831. Unless the time for filing creditor claims has expired, authorization by order of court is required for a compromise or settlement of a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

9832. (a) Except as provided in subdivision (b), authorization by order of court is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property.

(2) An interest in real property or a lien or encumbrance on real property.

(3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the personal representative without prior court authorization may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed five thousand dollars ($5,000) a month and the

term does not exceed one year

(2) Where the lease is from month to month, regardless of the amount of the rental.

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

(Amended by Stats. 1990, Ch. 710, Sec. 24. Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

9832. (a) Except as provided in subdivision (b), authorization by order of court is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property.

(2) An interest in real property or a lien or encumbrance on real property.

(3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the personal representative without prior court authorization may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed one year

(2) Where the lease is from month to month, regardless of the amount of the rental.

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

9833. Authorization by order of court is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars ($25,000).

9834. Authorization by order of court is required for any of the following:

(a) A compromise or settlement of a claim by the estate against the personal representative or the personal representative's attorney, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the personal representative, or the personal representative's attorney, owing to, or in favor of, the estate.

9835. Authorization by order of court is required for the compromise or settlement of a claim or right of action given to the personal representative by any law for the wrongful death or injury of the decedent, including any action brought by the personal representative in attempting enforcement of the claim or right of action. Authorization to compromise or settle the claim or right of action includes authorization to give a covenant not to sue.

9836. The court authorization required by this chapter shall be obtained from the court in which the estate is being administered.

9837. (a) A petition for an order authorizing a compromise, settlement, extension, renewal, or modification under this chapter may be filed by any of the following:

(1) The personal representative.

(2) Any interested person who has obtained the written approval of the personal representative to file the petition.

(b) The petition shall show the terms of the compromise, settlement, extension, renewal, or modification and its advantage to the estate.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9838. (a) If an order made under Section 9837 authorizes a compromise or settlement that requires the transfer of real property of the estate, the personal representative shall execute a conveyance of the real property to the person entitled thereto under the compromise or settlement. The conveyance shall refer to the order authorizing the compromise or settlement and directing that the conveyance be executed. A certified copy of the order shall be recorded in the office of the county recorder in each county in which any portion of the real property is located.

(b) A conveyance made in compliance with the court order authorizing the compromise or settlement and directing the conveyance to be executed vests in the person to whom the property is transferred both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the transfer.

9839. If the personal representative pays a claim for less than its full amount, the personal representative's accounts may be credited only for the amount actually paid.

CHAPTER 10. ACCEPTANCE OF DEED IN LIEU OF FORECLOSURE OR TRUSTEE'S SALE; GRANT OF PARTIAL SATISFACTION OR PARTIAL RECONVEYANCE

9850. (a) If it is to the advantage of the estate to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust, the personal representative may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, accept a deed conveying the property to the heirs or devisees of the decedent, subject to administration.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the advantage to the estate of accepting the deed. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) The court shall make an order under this section only if the advantage to the estate of accepting the deed is shown by clear and convincing evidence.

9851. (a) Except as provided in subdivision (c), if it is to the

advantage of the estate for the personal representative to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate, the personal representative may, after authorization by order of the court and upon such terms and conditions as may be imposed by the court, give the partial satisfaction or cause the partial reconveyance to be executed by the trustee.

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing the advantage to the estate of giving the partial satisfaction or causing the partial reconveyance. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) No authorization by the court is necessary for the personal representative to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a deed of trust held by the estate if the partial satisfaction or partial reconveyance is executed pursuant to the terms of the mortgage or deed of trust held by the estate.

CHAPTER 11. CONVEYANCE OR TRANSFER OF PROPERTY CLAIMED TO BELONG TO DECEDENT OR OTHER PERSON

9860. (a) The personal representative or any interested person may file a petition requesting that the court make an order under this chapter in any of the following cases:

(1) Where the decedent while living is bound by a contract in writing to convey real property or to transfer personal property and dies before making the conveyance or transfer and the decedent, if living, could have been compelled to make the conveyance or transfer.

(2) Where the decedent while living binds himself or herself or his or her personal representative by a contract in writing to convey real property or to transfer personal property upon or after his or her death and the contract is one which can be specifically enforced.

(3) Where the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(4) Where the decedent died having a claim to real or personal property, title to or possession of which is held by another.

(b) The petition shall set forth the facts upon which the claim is based.

9861. (a) At least 30 days prior to the day of the hearing, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on all of the following persons:

(1) The personal representative.

(2) Each person claiming an interest in, or having title to or possession of, the property.

(b) Except for those persons given notice pursuant to subdivision (a), notice of the hearing, together with a copy of the petition, shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the proposed purchase.

(3) Each known devisee whose interest in the estate would be affected by the proposed purchase.

(c) The court may not shorten the time for giving the notice of hearing under this section.

9862. An interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of these purposes.

9864. A person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if the objection is established, the court shall not grant the petition.

9865. (a) Except as provided in subdivision (b), if a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action.

(b) The court need not abate the petition if the court determines that the civil action was filed for the purpose of delay.

9866. The court shall not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.

9867. Except as provided in Sections 9864, 9865, and 9866, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative, or the other person having title to or possession of the property, to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

9868. (a) The order is prima facie evidence of the correctness of the proceedings and of the authority of the personal representative or other person to make the conveyance or transfer.

(b) After entry of an order that the personal representative or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

(c) The personal representative or other person ordered to execute a conveyance or transfer under Section 9867 shall execute the conveyance or transfer according to the terms of the order.

(d) The conveyance or transfer of the personal representative passes title to the property as fully as if the decedent had executed it while living.

CHAPTER 12. PURCHASE OF CLAIMS OR ESTATE PROPERTY BY PERSONAL REPRESENTATIVE OR PERSONAL REPRESENTATIVE'S ATTORNEY

9880. Except as provided in this chapter, neither the personal representative nor the personal representative's attorney may do any of the following:

(a) Purchase any property of the estate or any claim against the estate, directly or indirectly.

(b) Be interested in any such purchase.

9881. Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if all of the following requirements are satisfied:

(a) Written consent to the purchase is signed by (1) each known heir whose interest in the estate would be affected by the proposed purchase and (2) each known devisee whose interest in the estate would be affected by the proposed purchase.

(b) The written consents are filed with the court.

(c) The purchase is shown to be to the advantage of the estate.

9882. Upon a petition filed under Section 9883, the court may make an order under this section authorizing the personal representative or the personal representative's attorney to purchase property of the estate if the will of the decedent authorizes the personal representative or the personal representative's attorney to purchase the property.

9883. (a) The personal representative may file a petition requesting that the court make an order under Section 9881 or 9882. The petition shall set forth the facts upon which the request for the order is based.

(b) If court confirmation of the sale is required, the court may make its order under Section 9881 or 9882 at the time of the confirmation.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the proposed purchase.

(3) Each known devisee whose interest in the estate would be affected by the proposed purchase.

(d) If the court is satisfied that the purchase should be authorized, the court shall make an order authorizing the purchase upon the terms and conditions specified in the order, and the personal representative may execute a conveyance or transfer according to

the terms of the order. Unless otherwise provided in the will or in the order of the court, the sale of the property shall be made in the same manner as the sale of other estate property of the same nature.

9884. This chapter does not prohibit the purchase of property of the estate by the personal representative or the personal representative's attorney pursuant to a contract in writing made during the lifetime of the decedent if the contract is one that can be specifically enforced and the requirements of Chapter 11 (commencing with Section 9860) are satisfied.

9885. This chapter does not prevent the exercise by the personal representative or the personal representative's attorney of an option to purchase property of the estate given in the will of the decedent if the requirements of Chapter 17 (commencing with Section 9980) are satisfied.

CHAPTER 13. DEDICATION OR CONVEYANCE TO GOVERNMENTAL ENTITY; EASEMENTS AND ACCESS RIGHTS

9900. If it is to the advantage of the estate and in the best interest of the interested persons, the personal representative, after authorization by order of the court obtained under this chapter and upon such terms and conditions as the court may prescribe, may do any of the following either with or without consideration:

(a) Dedicate or convey real property of the estate for any purpose to any of the following:

(1) This state or any public entity in this state.

(2) The United States or any agency or instrumentality of the United States.

(b) Dedicate or convey an easement over real property of the estate to any person for any purpose.

(c) Convey, release, or relinquish to this state or any public entity in this state any access rights to any street, highway, or freeway from any real property of the estate.

(d) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under subdivision (a), (b), or (c) by the owner of property subject to the lien.

9901. (a) The personal representative or any interested person may file a petition for an order under this chapter.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

CHAPTER 14. EXCHANGE OF PROPERTY

9920. If it is to the advantage of the estate to exchange property of the estate for other property, the personal representative may, after authorization by order of court obtained under this chapter and upon such terms and conditions as may be prescribed by the court, exchange the property for the other property. The terms and conditions prescribed by the court may include the payment or

receipt of part cash by the personal representative.

9921. To obtain an order under this chapter, the personal representative or any interested person shall file a petition containing all of the following:

(a) A description of the property.

(b) The terms and conditions of the proposed exchange.

(c) A showing that the proposed exchange is to the advantage of the estate.

9922. (a) Except as provided in subdivision (b), notice of the hearing on the petition shall be given as provided in Section 1220.

(b) If the petition is for authorization to exchange securities as defined in Section 10200 for different securities, the court, upon a showing of good cause, may order that the notice be given for a shorter period or that the notice be dispensed with. The order provided by this subdivision may be made ex parte.

9923. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the exchange made pursuant to an order made under this chapter.

CHAPTER 15. LEASES

9940. For the purpose of this chapter:

(a) "Lease" includes, without limitation, a lease that includes an option to purchase real propery of the estate.

(b) If a lease gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

9941. If it is to the advantage of the estate, the personal representative may lease, as lessor, real property of the estate without authorization of the court in either of the following cases:

(a) Where the rental does not exceed five thousand dollars ($5,000) a month and the term does not exceed one year.

(b) Where the lease is from month to month, regardless of the amount of the rental.

(Amended by Stats. 1990, Ch. 710, Sec. 25. Operative July 1, 1991, by Sec 48 of chapter)

[ORIGINAL SECTION]

9941. If it is to the advantage of the estate, the personal representative may lease, as lessor, real property of the estate without authorization of the court in either of the following cases:

(a) Where the rental does not exceed one thousand five hundred dollars ($1,500) a month and the term does not exceed one year.

(b) Where the lease is from month to month, regardless of the amount of the rental.

9942. (a) The personal representative may lease, as lessor, real property of the estate after authorization by order of court obtained under this chapter upon a showing that the proposed lease is to the advantage of the estate.

(b) If the proposed lease includes an option to purchase real property of the estate, a petition for an order authorizing the lease shall be filed under this chapter but the applicable provisions for

court approval both in this chapter and in Chapter 16 (commencing with Section 9960) apply to the execution of the lease.

9943. (a) To obtain an order under this chapter, the personal representative or any interested person shall file a petition containing all of the following:

(1) A general description of the real property proposed to be leased.

(2) The term, rental, and general conditions of the proposed lease.

(3) A showing that the proposed lease is to the advantage of the estate.

(b) If the lease is proposed to be for a term longer than 10 years, the petition shall also state facts showing the need for the longer lease and its advantage to the estate and its benefit to the interested persons.

9944. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230.

(b) Notice of the hearing on the petition also shall be given as provided in Section 10300, but this notice is not required if the will authorizes or directs the personal representative to lease or sell property.

(c) If the lease is proposed to be for a term longer than 10 years, in addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate would be affected by the proposed lease.

(2) Each known devisee whose interest in the estate would be affected by the proposed lease.

9945. (a) At the hearing, the court shall entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms.

(b) If the court is satisfied that it will be to the advantage of the estate, and, if the lease is for more than 10 years, that it is to the benefit of interested persons, the court shall make an order authorizing the personal representative to make the lease to the person on the terms and conditions stated in the order. The court shall not make an order authorizing the personal representative to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the personal representative.

9946. (a) Subject to Section 9947, an order authorizing the execution of a lease shall set forth the minimum rental or royalty or both and the period of the lease.

(b) The order may authorize other terms and conditions of the lease, including, with respect to a lease for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, any one or more of the following provisions:

(1) A provision for the payment of rental and royalty to a

depositary.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for a community oil lease or a pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the decedent less than the entire ownership in the property, the order may authorize the lease to provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by the lease.

9947. (a) Except as provided in this section, the term of the lease shall be for such period as the court may authorize.

(b) Except as provided in subdivision (c), the court shall not authorize a lease for longer than 10 years if any heir or devisee who has an interest in the property to be leased objects at the hearing.

(c) If the lease is for the purpose of exploration for or production or removal of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy, the court may authorize that the lease be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances or geothermal energy are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

9948. (a) The personal representative shall execute, acknowledge, and deliver the lease as directed, setting forth therein that it is made by authority of the order, giving the date of the order.

(b) A lease made pursuant to an order obtained under this chapter is effectual to lease the premises described in the order at the rent, for the term, and upon the terms and conditions prescribed in the order.

(c) Jurisdiction of the court in proceedings under this code concerning the administration of the estate of the decedent vests the court with jurisdiction to make the order for the lease. This jurisdiction shall conclusively inure to the benefit of the lessee and the lessee's heirs and assigns.

(d) No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the lease made pursuant to an order made under this chapter.

CHAPTER 16. GRANTING OPTION TO PURCHASE REAL PROPERTY

9960. After authorization by order of court obtained under this chapter, the personal representative may grant an option to purchase real property of the estate for a period within or beyond the period of administration.

9961. To obtain an order under this chapter, the personal representative shall file a petition containing all of the following:

(a) A description of the real property.

(b) The terms and conditions of the proposed option.

(c) A showing that granting the option is to the advantage of the estate.

9962. The purchase price of the real property subject to the option shall be at least 90 percent of the appraised value of the real property. The appraisal shall be made in the manner provided in subdivision (c) of Section 10309 within one year prior to the hearing of the petition.

9963. Notice of the hearing on the petition shall be posted as provided in Section 1230 and given as provided in Section 1220 to all of the following persons:

(a) Each person listed in Section 1220.

(b) Each known heir whose interest in the estate would be affected by the granting of the option.

(c) Each known devisee whose interest in the estate would be affected by the granting of the option.

9964. (a) The court shall make an order authorizing the personal representative to grant the option upon the terms and conditions stated in the order if the court is satisfied as to all of the following:

(1) Good reason exists to grant the option and granting the option will be to the advantage of the estate.

(2) It does not appear that a higher offer with respect to the purchase price of the real property subject to the option may be obtained. An offer is a higher offer with respect to purchase price only if the offer satisfies the requirements of Section 10311 governing increased bids in real property sales.

(3) It does not appear that a better offer with respect to the terms of the option may be obtained. An offer is a better offer with respect to the terms of the option only if the offer is materially more advantageous to the estate.

(b) A higher offer made either for cash or on credit, whether on the same or different credit terms, or a better offer, shall be considered only if the personal representative informs the court in person or by counsel, before the court makes its order authorizing the granting of the option, that the offer is acceptable.

9965. An option granted pursuant to an order made under this

chapter, whether within or beyond the administration of the estate, is subject to Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

9966. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the granting of an option pursuant to an order made under this chapter.

CHAPTER 17. OPTION TO PURCHASE GIVEN IN WILL

9980. (a) Where an option to purchase real or personal property is given in a will, the person given the option has the right to exercise the option at any time within the time limits provided by the will. For the purposes of this section, if a time limitation in the will is measured from the death of the testator, that time shall be extended by the period between the testator's death and the issuance of letters testamentary or of administration with the will annexed or by six months, whichever is the shorter period.

(b) If the will does not provide a time limit for exercise of the option, the time limit is one year from the death of the decedent.

(c) Subject to subdivision (b), if the option given in the will is exercisable under the terms of the will after the time that the estate would otherwise be closed, the property subject to the option shall be distributed subject to the option.

9981. (a) Where an option to purchase real or personal property is given in a will admitted to probate, the court may make an order under this chapter directing the personal representative to transfer or convey the property to the person given the option upon compliance with the terms and conditions stated in the will.

(b) The personal representative or the person given the option to purchase the property may file a petition for an order pursuant to this chapter.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220.

9982. The court shall not make an order under this chapter unless one of the following requirements is satisfied:

(a) The court determines that the rights of creditors will not be impaired by the making of the order.

(b) The court requires a bond in an amount and with such surety as the court shall direct or approve.

9983. No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the transfer or conveyance made pursuant to an order made under this chapter.

CHAPTER 18. SALES

Article 1. General Provisions

10000. Subject to the limitations, conditions, and requirements of this chapter, the personal representative may sell real or personal

property of the estate in any of the following cases:

(a) Where the sale is necessary to pay debts, devises, family allowance, expenses of administration, or taxes.

(b) Where the sale is to the advantage of the estate and in the best interest of the interested persons.

(c) Where the property is directed by the will to be sold.

(d) Where authority is given in the will to sell the property.

10001. (a) If the personal representative neglects or refuses to sell the property, any interested person may petition the court for an order requiring the personal representative to sell real or personal property of the estate in any of the following cases:

(1) Where the sale is necessary to pay debts, devises, family allowance, expenses of administration, or taxes.

(2) Where the sale is to the advantage of the estate and in the best interest of the interested persons.

(3) Where the property is directed by the will to be sold.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) Notice of the hearing on the petition also shall be given to the personal representative by citation served at least five days before the hearing.

10002. (a) Subject to subdivision (b), if directions are given in the will as to the mode of selling or the particular property to be sold, the personal representative shall comply with those directions.

(b) If the court determines that it would be to the advantage of the estate and in the best interest of the interested persons, the court may make an order relieving the personal representative of the duty to comply with the directions in the will. The order shall specify the mode and the terms and conditions of selling or the particular property to be sold, or both. The personal representative or any interested person may file a petition for an order under this subdivision. Notice of the hearing on the petition shall be given as provided in Section 1220.

10003. Subject to Part 4 (commencing with Section 21400) of Division 11 and to Sections 10001 and 10002, if estate property is required or permitted to be sold, the personal representative may:

(a) Use discretion as to which property to sell first.

(b) Sell the entire interest of the estate in the property or any lesser interest therein.

(c) Sell the property either at public auction or private sale.

10004. (a) Where the personal representative determines in his or her discretion that, by use or relationship, any assets of the estate, whether real or personal, constitute a unit for purposes of sale, the personal representative may cause the property to be appraised as a unit.

(b) Whether or not the property is appraised as a unit, the personal representative may sell all the assets described in subdivision (a) as a unit and under one bid if the court finds the sale of the assets as a unit to be to the advantage of the estate.

(c) No private sale of the assets as a unit may be made for less than 90 percent of the sum of the appraised values of the personal property and the sum of the appraised values of the real property, appraised separately, or for less than 90 percent of the appraised value if appraised as a unit.

(d) If the assets to be sold as a unit include any real property, the sale shall be made in the manner provided for the sale of real property, and the bid and sale are subject to the limitations and restrictions established for the sale of real property. If the assets to be sold as a unit are entirely personal property, the property shall be sold in the manner provided for the sale of personal property.

10005. (a) If any property in the estate is sold for more than the appraised value, the personal representative shall account for the proceeds of sale, including the excess over the appraised value.

(b) If any property in the estate is sold for less than the appraised value and the sale has been made in accordance with law, the personal representative is not responsible for the loss.

10006. If property in the estate is to be sold as an undivided interest in a cotenancy, the other cotenants may file in the estate proceeding written consent to have their interests sold pursuant to this chapter. Thereafter, the court's orders made pursuant to this chapter are as binding on the consenting cotenants as on the personal representative.

Article 2. Contract With Agent, Broker, or Auctioneer

10150. (a) The personal representative may enter into a written contract with either or both of the following:

(1) A licensed real estate broker to secure a purchaser for any real property of the estate. The broker may associate other licensed real estate brokers for this purpose, including use of a multiple listing service as defined in Section 1087 of the Civil Code.

(2) One or more agents or brokers to secure a purchaser for any personal property of the estate. If the particular property to be sold or the particular manner of sale requires that the agent or broker be licensed, the contract may be made only with an agent or broker that is so licensed.

(b) The contract may provide for payment of a fee, commission, or other compensation out of the proceeds of sale, but the contract is binding and valid as against the estate only for such amount as the court allows pursuant to Article 3 (commencing with Section 10160). No liability of any kind is incurred by the estate under the contract or a sale unless the sale is confirmed by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(c) The contract may grant an exclusive right to sell property for

a period not in excess of 90 days if, prior to execution of the contract granting an exclusive right to sell, the personal representative obtains permission of the court to enter into the contract upon a showing of necessity and advantage to the estate. The court may grant the permission when the personal representative is appointed or at any subsequent time upon ex parte application. The personal representative may execute one or more extensions of the contract granting an exclusive right to sell property, each extension being for a period not to exceed 90 days, if for each extension the personal representative obtains permission of the court upon ex parte application to extend the contract upon a showing of necessity and advantage to the estate of the extension.

10151. (a) The personal representative may enter into a written contract with any of the following:

(1) Where the public auction sale will be held in this state, an auctioneer who holds a valid license under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code to conduct a public auction sale and to secure purchasers by that method for any personal property of the estate to the extent authorized under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code.

(2) Where the public auction sale will be held outside this state pursuant to an order made under Section 10254, an auctioneer who is legally permitted in the jurisdiction where the sale will be held to conduct a public auction sale and to secure purchasers by that method for the personal property authorized to be sold by public auction sale in that jurisdiction under the court order.

(b) The contract shall be one that is legally enforceable under the law of the jurisdiction where made.

(c) The contract may provide for payment to the auctioneer of a fee, commission, or other compensation out of the proceeds of sale and for reimbursement of expenses, but the contract is binding and valid as against the estate only for such amounts as the court allows pursuant to Section 10167. No liability of any kind is incurred by the estate under the contract or a sale unless the sale is approved by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(d) The contract may provide that personal property of two or more estates being administered by the same personal representative may be sold at the same public auction sale. Items of personal property may be sold separately or in a lot with other items from the same estate. A sale pursuant to the contract shall be with reserve. The auctioneer shall comply with the instructions of the personal representative with respect to withdrawal of items, risk of loss, place of delivery, warranties, and other matters.

Article 3. Compensation of Agent, Broker, or Auctioneer

10160. The estate is not liable to an agent, broker, or auctioneer under a contract for the sale of property or for any fee, commission, or other compensation or expenses in connection with a sale of property unless the following requirements are satisfied:

(a) An actual sale is made.

(b) If court confirmation or approval is required, the sale is confirmed or approved by the court as required.

(c) The sale is consummated.

10160.5. The estate is not liable to an agent or broker under a contract for the sale of property or for any fee, commission, or other compensation or expenses in connection with sale of the property in either of the following cases:

(a) Where the agent or broker, directly or indirectly, is the purchaser of the property.

(b) Where the agent or broker representing the purchaser to whom the sale is confirmed has any interest in the purchaser.

10161. (a) Subject to the provisions of this article, whether or not the agent or broker has a contract with the personal representative, the fee, commission, or other compensation of an agent or broker in connection with a sale of property shall be the amount the court, in its discretion, determines to be a reasonable compensation for the services of the agent or broker to the estate.

(b) Unless the agent or broker holds a contract granting an exclusive right to sell the property, an agent or broker is not entitled to any fee, commission, or other compensation for services to the estate in connection with a sale except in the following cases:

(1) Where the agent or broker produces the original bid which is returned to the court for confirmation.

(2) Where the property is sold on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by the agent or broker.

(c) If the agent or broker has a contract with the personal representative, the amount of the compensation of the agent or broker in connection with the sale of property shall not exceed the amount provided for in the contract.

10162. (a) Subject to subdivision (b), where the bid returned to the court for confirmation is made by a person who is not represented by an agent or broker and the successful bidder is represented by an agent or broker, the compensation of the agent or broker who procured the purchaser to whom the sale is confirmed shall not exceed one-half of the difference between the amount of the bid in the original return and the amount of the successful bid.

(b) This section does not limit the compensation of the agent or broker who holds a contract under Section 10150 granting him or her the exclusive right to sell the property.

10162.3. (a) This section applies if all of the following circumstances exist:

(1) There is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(2) The bid returned to court for confirmation is made by a purchaser represented by an agent or broker.

(3) The court confirms the sale to that purchaser either on the bid returned to court for confirmation or on an increased bid made at the time of the hearing on the petition for confirmation.

(b) If all the circumstances described in subdivision (a) exist, the court shall allow the agent or broker who procured the purchaser to whom the sale is confirmed the compensation determined under Section 10161 on the full amount for which the sale is confirmed.

10162.5. Subject to Section 10162.6, where an agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property, the court shall allow to the agent or broker holding the contract the compensation determined under Section 10161 on:

(a) The full amount for which the sale is confirmed in either of the following circumstances:

(1) The bid returned to the court for confirmation is made by a purchaser who is not represented by an agent or broker and the court confirms the sale to that purchaser on that bid.

(2) The bid returned to the court for confirmation is made by a purchaser who is represented by the agent or broker holding the contract and the court confirms the sale to that purchaser on an increased bid made at the time of the hearing on the petition for confirmation.

(b) The amount of the original bid if both of the following circumstances exist:

(1) The bid returned to court for confirmation is made by a purchaser who is not represented by an agent or broker or who is represented by the agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(2) The court confirms the sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser who was not procured by a bona fide agent or broker.

10162.6. (a) This section applies if both of the following circumstances exist:

(1) An agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property.

(2) The contract provides that no compensation is payable to the agent or broker holding the contract if sale is confirmed to a particular purchaser named in the contract.

(b) If the court confirms the sale to the purchaser named in the contract, whether on an original bid returned to the court or on an increased bid made at the time of the hearing on the petition for confirmation, the compensation of any agents or brokers involved in the sale is determined as provided in this article, except that no compensation is payable to the agent or broker holding the contract.

(c) If the court confirms the sale to a purchaser other than the person named in the contract, whether on an original bid returned

to the court or on an increased bid made at the time of the hearing on the petition for confirmation, the compensation of the agent or broker holding the contract, and of any other agents or brokers involved in the sale, is determined under this article as if the limitation in the contract did not exist.

10162.7. (a) Subject to Section 10162.6, this section applies if all of the following circumstances exist:

(1) There is an agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(2) The bid returned to court for confirmation is made by a purchaser procured by another agent or broker.

(3) The court confirms the sale to that purchaser either on the bid returned to court for confirmation or on an increased bid made at the time of the hearing on the petition for confirmation.

(b) If all the circumstances described in subdivision (a) exist, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed. The compensation allowed by the court shall be divided between the agent or broker holding the contract and the other agent or broker as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the compensation on the amount of the original bid returned to the court shall be divided equally between the agent or broker holding the contract and the other agent or broker and, if the sale is confirmed on an increased bid, the other agent or broker shall be paid all of the compensation on the difference between the original bid and the amount for which the sale is confirmed.

10163. Subject to Sections 10162 and 10162.6, where the original bid returned to the court for confirmation was made by a purchaser who was not procured by an agent or broker, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed to the agent or broker who procured the purchaser to whom the sale is confirmed if either of the following conditions is satisfied:

(a) The court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by an agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property.

(b) There is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property and the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by a bona fide agent or broker.

10164. (a) This section applies only where the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser who was not procured by a bona fide agent or broker.

(b) Except as provided in subdivision (c), the court shall allow the compensation determined under Section 10161 on the amount of the

original bid to the agent or broker whose original bid was returned to the court.

(c) If an agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who was procured by another agent or broker, the compensation determined under Section 10161 on the amount of the original bid shall be divided between the agent or broker holding the contract and the other agent or broker as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the compensation shall be divided equally between the agent or broker holding the contract and the other agent or broker.

10165. (a) Subject to Section 10162.6, where the court confirms a sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by a bona fide agent or broker, the court shall allow the compensation determined under Section 10161 on the full amount for which the sale is confirmed, as provided in this section, if either of the following conditions is satisfied:

(1) The original bid returned to the court for confirmation was made by a purchaser who was procured by another agent or broker.

(2) The original bid returned to the court for confirmation was made by a purchaser who was not represented by an agent or broker, and another agent or broker holds a contract under Section 10150 granting the exclusive right to sell the property.

(b) The agent or broker who procured the purchaser to whom the sale is confirmed shall be paid one-half of the compensation on the amount of the original bid and all of the compensation on the difference between the original bid and the amount for which the sale is confirmed.

(c) The other one-half of the compensation on the amount of the original bid shall be paid as follows:

(1) If the original bid returned to the court is made by a purchaser who was procured by the agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to that agent or broker.

(2) If the original bid returned to the court is made by a purchaser who was procured by a bona fide agent or broker and there is no agent or broker holding a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to that agent or broker.

(3) If there is an agent or broker who holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who was procured by another agent or broker, the one-half of the compensation on the amount of the original bid shall be divided

between the agent or broker holding the contract granting the exclusive right to sell the property and the other agent or broker whose original bid was returned to the court for confirmation as is provided in any agreement between the agent or broker holding the contract and the other agent or broker. If there is no agreement, the one-half of the compensation on the amount of the original bid shall be divided equally between the agent or broker holding the contract and the other agent or broker whose original bid was returned to the court for confirmation.

(4) If there is an agent or broker who holds a contract under Section 10150 granting the exclusive right to sell the property and the original bid returned to the court is made by a purchaser who is not represented by an agent or broker and the court confirms the sale on an increased bid, made at the time of the hearing on the petition for confirmation, to a purchaser procured by another agent or broker, the entire one-half of the compensation on the original bid shall be paid to the agent or broker holding the contract.

(5) If the agent or broker compensated under subdivision (b) holds a contract under Section 10150 granting the exclusive right to sell the property, the entire one-half of the compensation on the original bid shall be paid to the other agent or broker who procured the original bid returned to the court.

10166. Notwithstanding that a bid contains a condition that a certain amount of the bid shall be paid to an agent or broker by the personal representative, only such compensation as is proper under this article shall be allowed. Acceptance of the bid by the court binds the bidder even though the compensation allowed by the court is less than that specified by the condition.

10167. (a) Subject to subdivision (b), whether or not the auctioneer has a contract with the personal representative, the fees, compensation, and expenses of an auctioneer in connection with a sale of property shall be the amount the court, in its discretion, determines to be a reasonable compensation for the services of the auctioneer to the estate.

(b) If the auctioneer has a contract with the personal representative, the amount of the compensation of the auctioneer in connection with the sale of property shall not exceed the amount provided for in the contract.

10168. This article does not supersede any agreement cooperating agents or brokers may have among themselves to divide the compensation payable under this article.

(Added by Stats 1990, Ch 710, Sec 26 Operative July 1, 1991, by Sec. 48 of chapter.)

Article 4. Special Provisions Applicable to Particular Types of Property

10200. (a) As used in this section, "securities" means "security" as defined in Section 70, land trust certificates, certificates of beneficial interest in trusts, investment trust certificates, mortgage

participation certificates, or certificates of deposit for any of the foregoing, but does not include notes secured by a mortgage or deed of trust unless the note or notes have been authorized or permitted to be issued by the Commissioner of Corporations or have been 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).

(b) After authorization by order of court, securities may be sold or may be surrendered for redemption or conversion. Title to the securities sold or surrendered as authorized by an order obtained under this section passes without the need for subsequent court confirmation.

(c) To obtain an order under this section, the personal representative or any interested person shall file a petition stating the terms and conditions and the advantage to the estate of the proposed sale or redemption or conversion. If the court authorizes the sale, redemption, or conversion, the court's order shall fix the terms and conditions of sale, redemption, or conversion.

(d) Notice of the hearing on the petition shall be given as provided in Section 1220 and posted as provided in Section 1230, but the court may order that the notice be given for a shorter period or dispensed with.

(e) No notice of sale or of the redemption or conversion need be given if any of the following conditions are satisfied:

(1) The minimum selling price is fixed by the court.

(2) The securities are to be sold on an established stock or bond exchange.

(3) The securities to be sold are securities designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(4) The securities are to be surrendered for redemption or conversion.

10201. (a) For purposes of this section:

(1) "Federal association" is defined in Section 5102 of the Financial Code.

(2) "Mutual capital certificate" is defined in Section 5111 of the Financial Code.

(3) "Savings account" is defined in Section 5116 of the Financial Code.

(4) "Savings association" is defined in Section 5102 of the Financial Code.

(5) "Withdrawal value" is defined in Section 5124 of the Financial Code.

(b) Notwithstanding Section 10200, savings accounts and mutual capital certificates of a savings association or federal association may be sold or surrendered for withdrawal by the personal

representative, and title thereto passed, without notice of sale, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon the sale or withdrawal not less than the withdrawal value of the savings account or the value of the mutual capital certificate.

(c) Notwithstanding Section 10200, credit union share accounts and certificates for funds may be sold or withdrawn by the personal representative, and title thereto passed, without notice of sale, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon the sale or withdrawal not less than the withdrawal value of the share account or the value of the certificate for funds.

10202. Notwithstanding Section 10200, if an estate by reason of owning securities, also owns or receives subscription rights for the purchase of additional securities, the personal representative may sell all or part of the subscription rights without notice of sale, prior order of court, or subsequent confirmation by the court.

10203. (a) Except as provided in subdivision (b), where property to be sold consists of a leasehold interest, the sale shall be made as in the case of the sale of personal property of the estate.

(b) The sale of a leasehold interest shall be made as in the case of the sale of real property of the estate if the interest to be sold consists of any of the following:

(1) A leasehold interest in real property with an unexpired term of 10 years or longer. For this purpose, the leasehold interest shall be considered to have an unexpired term of 10 years or longer if the lessee has the right to extend the term and the term, if extended, would exceed 10 years.

(2) A leasehold interest in real property together with an option to purchase the leased property or some part thereof.

(3) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, or geothermal energy.

10204. Property of the estate that consists of a partnership interest or an interest belonging to an estate by virtue of a partnership formerly existing may be sold in the same manner as other personal property.

10205. A chose in action belonging to the estate may be sold in the same manner as other personal property.

10206. (a) Except as otherwise provided in this section, if the decedent at the time of death was possessed of a contract for the purchase of real property and the decedent's interest in the property and under the contract is to be sold, the sale shall be made as in the case of the sale of real property of the estate.

(b) If the decedent's interest in the property and under the contract is sold, the sale shall be made subject to all payments which are due at the time of sale or which may thereafter become due on the contract. Except as provided in subdivision (d), if there are any payments due or to become due, the court shall not confirm the sale until the purchaser executes a bond to the personal representative

that satisfies the requirements of subdivision (c).

(c) The bond shall be for the benefit and indemnity of the personal representative and the persons entitled to the interest of the decedent in the real property contracted for. The amount of the bond shall be equal to the amount of payments then due and thereafter to become due on the contract, with such sureties as the court may approve. The bond shall be conditioned that the purchaser will (1) make all payments for the property which are then due or which become due after the date of the sale and (2) fully indemnify the personal representative and the person entitled to the interest of the decedent against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in the contract.

(d) The bond need not be given in either of the following cases:

(1) Where no claim has been made against the estate on the contract and the time for filing claims has expired.

(2) Where the person entitled to payment under the contract waives all recourse to the assets of the estate for payment and releases the estate and the personal representative from liability for payment.

10207. (a) Real property suitable for a shift-in-land-use loan to develop grazing or pasture facilities may be sold under this section by the personal representative to a grazing or pasture association in conformity with the federal Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921, et seq.) after authorization by order of the court.

(b) The personal representative or any interested person may file a petition for an order under this section. Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) An order for sale of property under this section may be made only if the court determines both of the following:

(1) Either the sale is made pursuant to the will of the decedent or all of the following have consented to the sale:

(A) Each known heir whose interest in the estate would be affected by the sale.

(B) Each known devisee who has an interest in the property under the decedent's will.

(2) The sale will not jeopardize the rights of creditors of the estate.

(d) If the court makes an order authorizing sale of the property, the personal representative may make the sale in accord with the terms and conditions set out in the order, subject to the following requirements:

(1) Except as provided in Sections 10002, 10301, 10303, and 10503, notice of the time and place of the sale shall be published pursuant to Section 10300.

(2) The price of the sale made shall be not less than the value of the property as established by an independent and competent appraiser mutually acceptable to the federal government, the

grazing or pasture association, and the personal representative.

(3) Except as provided in Sections 10002 and 10503, the sale shall be reported to and confirmed by the court as provided in Article 6 (commencing with Section 10300) before title to the property passes, but the sale may be made irrespective of whether a higher bid is made to the court at the hearing on the petition to confirm the sale.

Article 5. Sale of Personal Property

10250. Subject to Sections 10251 and 10252 and except as otherwise provided by statute, personal property of the estate may be sold only after notice of sale is given by one or both of the following methods, as the personal representative may determine:

(a) Posting at the county courthouse of the county in which the proceedings are pending at least 15 days before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

(b) Publication pursuant to Section 6063a of the Government Code in a newspaper in the county in which the proceedings are pending, such publication to be completed before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

10251. (a) If it is shown that it will be to the advantage of the estate, the court or judge may by order shorten the time of notice of sale to not less than five days.

(b) If the court or judge makes an order under subdivision (a), notice of sale shall be given by one or both of the following methods, as the personal representative may determine:

(1) By posting as provided in Section 10250 except that the posting shall be for at least five days instead of 15 days as required by Section 10250.

(2) By publication as provided in Section 10250 except that the publication shall be pursuant to Section 6061 of the Government Code.

10252. Personal property may be sold with or without notice, as the personal representative may determine, in any of the following cases:

(a) Where the property is directed by the will to be sold.

(b) Where authority is given in the will to sell the property.

(c) Where the property is perishable, will depreciate in value if not disposed of promptly, or will incur loss or expense by being kept.

(d) Where sale of the property is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds.

10253. (a) The notice of sale given pursuant to Section 10250 shall state all of the following:

(1) Whether the sale is to be a private sale or a public auction sale.

(2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made or, in the case of a public auction sale, the time and place of sale.

(3) A brief description of the personal property to be sold.

(b) The notice of sale may state other matters in addition to those required by subdivision (a), including terms and conditions of sale.

10254. (a) Unless the court orders otherwise pursuant to subdivision (b):

(1) A sale of personal property at a public auction sale shall be made within this state at the courthouse door, at the auction house, at some other public place, or at the residence of the decedent.

(2) No public auction sale shall be made of any tangible personal property that is not present at the time of sale.

(b) Upon petition of the personal representative or any interested person, the court may order either or both of the following:

(1) That a sale of personal property at public auction be made at any place within or without the United States.

(2) That tangible personal property need not be present at the time of sale.

(c) The personal representative may postpone a public auction sale of personal property from time to time if all of the following conditions are satisfied:

(1) The personal representative believes that the postponement is to the advantage of the estate.

(2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.

(3) The postponement, together with previous postponements of sale of the property, does not exceed three months.

10255. (a) A private sale of personal property may not be made before the day stated in the notice of sale as the day on or after which the sale will be made, nor later than one year after that day.

(b) In the case of a private sale of personal property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally or to the person specified in the notice of sale, at any time after the first publication or posting of notice of sale and before the making of the sale.

10256. Whether a sale of personal property is private or at public auction, bids shall substantially comply with any terms specified in the notice of sale.

10257. (a) Personal property may be sold for cash or on credit.

(b) Except as may otherwise be ordered by the court pursuant to Section 10258, if a sale is made on credit, not less than 25 percent of the purchase price shall be paid in cash at the time of sale, and the personal representative shall do one of the following:

(1) Take the note of the purchaser for the balance of the purchase money, with a security interest in the personal propery sold, to secure the payment of the balance.

(2) Enter into a conditional sale contract under which title is

retained until the balance is paid.

(c) The terms of the note and security interest or conditional sale contract shall be approved by the court at the time of confirmation of sale.

(d) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in personal property or any other interest therein less than the entire ownership and the owner or owners of the remaining interests therein join in the sale, the note and security interest may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the note and security interest shall be in the same interest and in the same proportions as the estate's interest in the property prior to the sale.

10258. (a) On petition of the personal representative, the court may by order authorize a sale of personal property on credit on terms providing for less than 25 percent of the purchase price to be paid in cash at the time of sale, or may waive or modify the requirement that a security interest or other lien shall be retained or taken to secure payment of the balance of the purchase price, where it is shown that the terms are to the advantage of the estate and the property to be sold is of such a nature that it is impracticable to sell the property for a larger cash payment at the time of sale or to retain a security interest or other lien in the property. The order of the court shall fix the terms and conditions of the sale.

(b) Notice of the hearing on the petition shall be posted as provided in Section 1230 and given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the sale.

(3) Each known devisee whose interest in the estate would be affected by the sale.

10259. (a) Title to the following personal property passes upon sale without the need for court confirmation or approval:

(1) Personal property which is perishable, which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept.

(2) Personal property the sale of which is necessary to provide for the payment of a family allowance pending receipt of other sufficient funds.

(b) Title to personal property sold at public auction passes without the need for court confirmation or approval upon receipt of the purchase price and:

(1) In the case of tangible personal property, the delivery of the property to the purchaser.

(2) In the case of intangible personal property, the delivery to the purchaser of the instrument that transfers the title to the property to the purchaser.

(c) The personal representative is responsible for the actual value

of the property described in subdivision (a) or (b) unless the sale is reported to and approved by the court.

10260. (a) Except as provided in Sections 10200, 10201, 10202, 10259, and 10503, all sales of personal property shall be reported to and be confirmed by the court before title to the property passes to the purchaser, notwithstanding that the property is directed by the will to be sold or authority is given in the will to sell the property.

(b) If the personal representative fails to file the report and a petition for confirmation of the sale within 30 days after the sale, the purchaser at the sale may file the report and petition for confirmation of the sale.

(c) Notice of the hearing on the petition for confirmation filed under subdivision (a) or (b) shall be given as provided in Section 1220 and posted as provided in Section 1230.

10261. (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or the advantage to the estate and the benefit to the interested persons in making the sale.

(b) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

(c) Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the court shall do both of the following:

(1) Inquire into the condition of the partnership affairs.

(2) Examine any surviving partner if that surviving partner is a resident within the state at the time of the hearing and able to be present in court. The court may issue a citation to compel the surviving partner to attend the hearing.

(d) Upon its own motion or upon the request of the personal representative, the agent or broker, or any other interested person, made at the time of the confirmation hearing or at another time, the court shall fix the compensation of the agent or broker as provided in Article 3 (commencing with Section 10160).

10262. (a) Except as provided in subdivision (b), if a written offer to purchase the property is made to the court at the hearing on the petition for confirmation of the sale and the new bid is at least 10 percent more than the amount stated in the report made to the court, the court in its discretion may accept the new bid and confirm the sale to the offeror, or may order a new sale, if all of the following conditions are satisfied:

(1) The original bid as stated in the report to the court is more than one hundred dollars ($100) or, if the original bid is less than one hundred dollars ($100), the new bid is at least one hundred dollars ($100) more than the original bid.

(2) The new bid is made by a responsible person.

(3) The new bid complies with all provisions of law.

(b) If there is more than one offer that satisfies the requirements of subdivision (a), the court shall do one of the following:

(1) Accept the highest such offer and confirm the sale to the offeror.

(2) Order a new sale.

(c) This section does not apply to a sale of property described in Section 10259.

10263. If notice of the sale was required, before an order is made confirming the sale, it shall be proved to the satisfaction of the court that notice of the sale was given as required by this article, and the order of confirmation shall show that such proof was made.

10264. No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

Article 6. Sale of Real Property

10300. (a) Except as provided in Sections 10301 to 10303, inclusive, and in Section 10503, real property of the estate may be sold only after notice of sale has been published pursuant to Section 6063a of the Government Code (1) in a newspaper published in the county in which the real property or some portion thereof is located or (2) if there is no such newspaper, in such newspaper as the court or judge may direct.

(b) The publication of notice of sale shall be completed before:

(1) In the case of a private sale, the day specified in the notice as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

10301. (a) If it appears from the inventory and appraisal that the value of the real property to be sold does not exceed five thousand dollars ($5,000), the personal representative may in his or her discretion dispense with publication of notice of sale and, in lieu of publication, post the notice of sale at the courthouse of the county in which the real property or some portion thereof is located.

(b) Except as provided in Section 10302, posting pursuant to this section shall be for at least 15 days before:

(1) In the case of a private sale, the day specified in the notice of sale as the day on or after which the sale is to be made.

(2) In the case of a public auction sale, the day of the auction.

10302. (a) If it is shown that it will be to the advantage of the estate, the court or judge may by order shorten the time of notice of sale to not less than five days.

(b) Except as provided in subdivision (c), if the court or judge makes an order under subdivision (a), notice of sale shall be published as provided in Section 10300 except that the publication shall be pursuant to Section 6061 of the Government Code.

(c) In a case described in Section 10301, if the court makes an order under subdivision (a), notice of sale shall be posted as provided

in Section 10301 except that the notice of sale shall be posted at least five days before the sale instead of 15 days as required by Section 10301.

10303. Real property may be sold with or without notice, as the personal representative may determine, in either of the following cases:

(a) Where the property is directed by the will to be sold.

(b) Where authority is given in the will to sell the property.

10304. (a) The notice of sale given pursuant to this article shall state all of the following:

(1) Whether the sale is to be a private sale or a public auction sale.

(2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made or, in the case of a public auction sale, the time and place of sale.

(3) The street address or other common designation or, if none, a legal description of the real property to be sold.

(b) The notice of sale may state other matters in addition to those required by subdivision (a), including terms and conditions of sale.

10305. (a) A sale of real property at public auction shall be made in the county in which the property is located. If the property is located in two or more counties, it may be sold in any one of them.

(b) A sale of real property at public auction shall be made between 9 a.m. and 9 p.m., and the sale shall be made on the day specified in the notice of sale unless the sale is postponed.

(c) The personal representative may postpone a public auction sale of real property from time to time if all of the following conditions are satisfied:

(1) The personal representative believes that the postponement is to the advantage of the estate.

(2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.

(3) The postponement, together with previous postponements of sale of the property, does not exceed three months in all.

10306. (a) A private sale of real property may not be made before the day stated in the notice of sale as the day on or after which the sale will be made, nor later than one year after that day.

(b) In the case of a private sale of real property, the bids or offers shall be in writing and shall be left at the place designated in the notice of sale, or be delivered to the personal representative personally or to the person specified in the notice of sale, at any time after the first publication or posting of notice of sale and before the making of the sale.

10307. Whether a sale of real property is private or at public auction, bids shall substantially comply with any terms specified in the notice of sale.

10308. (a) Except as provided in Section 10503, all sales of real property shall be reported to and be confirmed by the court before title to the property passes to the purchaser, whether the sale is a private sale or a public auction sale and notwithstanding that the

property is directed by the will to be sold or authority is given in the will to sell the property.

(b) If the personal representative fails to file the report and a petition for confirmation of the sale within 30 days after the sale, the purchaser at the sale may file the report and petition for confirmation of the sale.

(c) Notice of the hearing on the petition for confirmation filed under subdivision (a) or (b) shall be given as provided in Section 1220 and posted as provided in Section 1230.

10309. (a) Except as provided in Section 10207, no sale of real property at private sale shall be confirmed by the court unless all of the following conditions are satisfied:

(1) The real property has been appraised within one year prior to the date of the confirmation hearing.

(2) The valuation date used in the appraisal described in paragraph (1) is within one year prior to the date of the confirmation hearing.

(3) The sum offered for the property is at least 90 percent of the appraised value of the property as determined by the appraisal described in paragraph (1).

(b) An appraisal of the property may be had at any time before the sale or the confirmation of sale in any of the following cases:

(1) Where the property has not been previously appraised.

(2) Where the property has not been appraised within one year before the date of the confirmation hearing.

(3) Where the valuation date used in the latest appraisal is more than one year before the date of the confirmation hearing.

(4) Where the court is satisfied that the latest appraisal is too high or too low.

(c) A new appraisal made pursuant to subdivision (b) need not be made by a probate referee if the original appraisal of the property was made by a person other than a probate referee. If the original appraisal of the property was made by a probate referee, the new appraisal may be made by the probate referee who made the original appraisal without further order of the court or further request for the appointment of a new probate referee. If appraisal by a probate referee is required, a new probate referee shall be appointed, using the same procedure as for the appointment of an original referee, to make the new appraisal if the original probate referee is dead, has been removed, or is otherwise unable to act, or if there is other reason to appoint another probate referee.

10310. (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale of the real property, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or the advantage to the estate and benefit to the interested persons in making the sale.

(b) The court shall examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

(c) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

10311. (a) Subject to subdivisions (b), (c), (d), and (e), and except as provided in Section 10207, if a written offer to purchase the real property is made to the court at the hearing on the petition for confirmation of the sale, the court shall accept the offer and confirm the sale to the offeror if all of the following conditions are satisfied:

(1) The offer is for an amount at least 10 percent more on the first ten thousand dollars ($10,000) of the original bid and 5 percent more on the amount of the original bid in excess of ten thousand dollars ($10,000).

(2) The offer is made by a responsible person.

(3) The offer complies with all provisions of law.

(b) Subject to subdivisions (c), (d), and (e), if there is more than one offer that satisfies the requirements of subdivision (a), the court shall accept the highest such offer and confirm the sale to the person making that offer.

(c) The court may, in its discretion, decline to accept the offer that satisfies the requirements of subdivisions (a) and (b); and, in such case, the court shall order a new sale.

(d) If the sale returned for confirmation is on credit and the higher offer is for cash or on credit, whether on the same or different credit terms, or the sale returned for confirmation is for cash and the higher offer is on credit, the court may not consider the higher offer unless the personal representative informs the court in person or by counsel prior to confirmation of sale that the higher offer is acceptable.

(e) For the purpose of this section, the amount of the original bid and any higher offer shall be determined by the court without regard to any of the following:

(1) Any commission on the amount of the bid to which an agent or broker may be entitled under a contract with the personal representative.

(2) Any condition of the bid that a certain amount of the bid be paid to an agent or broker by the personal representative.

10312. If notice of the sale was required, before an order is made confirming the sale it shall be proved to the satisfaction of the court that notice of the sale was given as required by this article, and the order of confirmation shall show that the proof was made.

10313. (a) The court shall make an order confirming the sale to the person making the highest offer that satisfies the requirements of this article, and directing conveyances or assignments or both to be executed, if it appears to the court that all of the following requirements are satisfied:

(1) Either the sale was authorized or directed to be made by the

decedent's will or good reason existed for the sale.

(2) If notice of the sale was required, the proof required by Section 10312 has been made.

(3) The sale was legally made and fairly conducted.

(4) The amount for which the sale is to be confirmed is not disproportionate to the value of the property.

(5) In the case of a private sale, the sale complied with the requirements of Section 10309.

(6) If the sale is confirmed to the original bidder, it does not appear that a sum exceeding the original bid by at least 10 percent more on the first ten thousand dollars ($10,000) of the original bid and 5 percent more on the amount of the original bid in excess of ten thousand dollars ($10,000), exclusive of the expenses of a new sale, may be obtained.

(b) Upon its own motion or upon the request of the personal representative, the agent or broker, or any other interested person, made at the time of the confirmation hearing or at another time, the court shall fix the compensation of the agent or broker as provided in Article 3 (commencing with Section 10160).

(c) If it appears to the court that the requirements of subdivision (a) are not satisfied, the court shall vacate the sale and order a new sale.

(d) If the court orders a new sale under subdivision (c) of this section or under subdivision (c) of Section 10311, notice of the new sale shall be given and the new sale shall in all respects be conducted as if no previous sale had taken place.

10314. (a) Except as provided in subdivision (b), upon confirmation of the sale, the personal representative shall execute a conveyance to the purchaser which shall refer to the order confirming the sale and directing the conveyance to be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or some portion thereof is located.

(b) Upon confirmation of a sale of the decedent's interest under a contract for the purchase of real property by the decedent and after the purchaser has given a bond if one is required under Section 10206, the personal representative shall execute an assignment of the contract to the purchaser.

(c) A conveyance made in compliance with the court order confirming the sale and directing the conveyance to be executed vests in the purchaser both of the following:

(1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death.

(2) Any other or additional right, title, or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, prior to the sale.

(d) An assignment made in compliance with the court order confirming the sale of the decedent's interest under a contract for the purchase of real property by the decedent vests in the purchaser

all the right, title, and interest of the estate, or of the persons entitled to the interest of the decedent, at the time of sale in the property assigned. The purchaser of the decedent's interest under the contract for the purchase of the real property by the decedent has the same rights and remedies against the vendor of the property as the decedent would have had if living.

10315. (a) If a sale is made on credit, the personal representative shall take the note of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure payment of the note. The mortgage or deed of trust shall be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve.

(b) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in real property or any other interest therein less than the entire ownership and the owner or owners of the remaining interests therein join in the sale, the note and deed of trust or mortgage may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the note and deed of trust or mortgage shall be in the same interest and in the same proportions as the estate's interest in the property prior to the sale.

10316. No omission, error, or irregularity in the proceedings under this article shall impair or invalidate the proceedings or the sale pursuant to an order made under this article.

Article 7. Vacating Sale for Purchaser's Default; Liability of Defaulting Purchaser for Damages

10350. (a) If after court confirmation of sale of real or personal property the purchaser fails to comply with the terms of sale, the court may, on petition of the personal representative, vacate the order of confirmation and order a resale of the property.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser as directed by the court, except that notice need not be given to a defaulting purchaser whose written consent to the vacation of the order confirming sale is filed with the court before the hearing.

(c) Notice of the resale of the property shall be given as provided in this chapter for a sale of the property in the first instance.

(d) Proceedings after notice of the resale shall be as provided in this chapter for a sale of the property in the first instance.

(e) If the property is resold, the defaulting purchaser is liable to the estate for damages equal to the sum of the following:

(1) The difference between the contract price of the first sale and the amount paid by the purchaser at the resale.

(2) Expenses made necessary by the purchaser's breach.

(3) Other consequential damages.

10351. (a) The court may vacate the order of confirmation of a

sale of real or personal property and make an order confirming the sale to the new high bidder if both of the following requirements are satisfied:

(1) A petition is filed within 60 days after confirmation of the sale showing that (A) the purchaser at the sale has failed to complete the purchase and (B) a bid has been made for the property in the same or a higher amount, on the same or better terms, and in the manner prescribed in the original notice of sale.

(2) The sale has not been vacated pursuant to Section 10350.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser as directed by the court, except that notice need not be given to a defaulting purchaser whose written consent to the vacation of the order confirming the sale is filed with the court prior to the hearing.

(c) If the report and petition for confirmation of the second sale are not filed within 60 days of the confirmation of the first sale, the property may be resold only in the manner provided in Section 10350.

Article 8. Application of Sale Proceeds of Encumbered Property; Sale to Lienholder

10360. As used in this article:

(a) "Amount secured by the lien" includes interest and any costs and charges secured by the lien.

(b) "Encumbered property" means real or personal property that is subject to a lien for a secured debt which is a valid claim against the estate and which has been allowed or approved.

(c) "Lien" means a mortgage, deed of trust, or other lien.

10361. (a) If encumbered property is sold, the purchase money shall be applied in the following order:

(1) The payment and satisfaction of the amount secured by the lien on the property sold if payment and satisfaction of the lien is required under the terms of the sale.

(2) The payment of the expenses of the sale.

(3) Application in the course of administration.

(b) The application of the purchase money to the payment and satisfaction of the amount secured by the lien on the property sold shall be made without delay; and, subject to Section 10362, the property sold remains subject to the lien until the purchase money has been actually so applied.

10362. (a) If encumbered property is sold, the purchase money, or so much of the purchase money as is sufficient to pay the amount secured by the lien on the property sold and the expenses of the sale, may be paid to the clerk of the court. Upon the payment being so made, the lien on the property sold ceases.

(b) The clerk of court without delay shall use the money paid to the clerk under this section to pay the expenses of the sale and to pay and satisfy the amount secured by the lien on the property sold. The

clerk shall at once return the surplus, if any, to the personal representative unless the court, for good cause shown and after notice to the personal representative, otherwise orders.

10363. (a) At a sale of real or personal property subject to a lien, the lienholder may become the purchaser of the property, even though no claim for the amount secured by the lien on the property sold has been, or could have been, filed, allowed, or approved.

(b) Unless the property is sold subject to the lien:

(1) If the lienholder becomes the purchaser of the property and the amount secured by the lien on the property is a valid claim against the estate and has been allowed or approved, the receipt of the lienholder for the amount due the lienholder from the proceeds of the sale is a payment pro tanto.

(2) If the lienholder becomes the purchaser of the property and no claim for the amount secured by the lien on the property has been filed, allowed, or approved, the court may at the hearing on the petition for confirmation of the sale examine into the validity and enforceability of the lien and the amount secured by the lien, and the court may authorize the personal representative to accept the receipt of the lienholder for the amount secured by the lien as payment pro tanto.

(3) If the lienholder becomes the purchaser of the property and the amount for which the property is purchased is insufficient to pay the expenses of the sale and to discharge the lienholder's lien, whether or not a claim has been filed, allowed, or approved, the lienholder shall pay to the clerk of the court an amount sufficient to cover the expenses of the sale.

(c) Nothing permitted under this section shall be deemed to be an allowance or approval of a claim based upon the lien or the amount secured by the lien.

Article 9. Damages and Recovery of Property

10380. The personal representative is liable to an interested person for damages suffered by the interested person by reason of the neglect or misconduct of the personal representative in the proceedings in relation to a sale.

10381. In addition to any other damages for which the personal representative is liable, if the personal representative fraudulently sells real property of the estate contrary to or otherwise than under the provisions of this chapter, the person having an estate of inheritance in the real property may recover from the personal representative, as liquidated damages, an amount equal to double the fair market value of the real property sold on the date of sale.

10382. (a) No action for the recovery of property sold by a personal representative on the claim that the sale is void may be maintained by an heir or other person claiming under the decedent unless the action is commenced within whichever of the following is the later time:

(1) Three years after the settlement of the final account of the personal representative.

(2) Three years after the discovery of any fraud upon which the action is based.

(b) The limitation established by subdivision (a) is not tolled for any reason.

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

10400. This part shall be known and may be cited as the Independent Administration of Estates Act.

10401. As used in this part, "court supervision" means the judicial order, authorization, approval, confirmation, or instructions that would be required if authority to administer the estate had not been granted under this part.

10402. As used in this part, "full authority" means authority to administer the estate under this part that includes all the powers granted under this part.

10403. As used in this part, "limited authority" means authority to administer the estate under this part that includes all the powers granted under this part except the power to do any of the following:

(a) Sell real property.

(b) Exchange real property.

(c) Grant an option to purchase real property.

(d) Borrow money with the loan secured by an encumbrance upon real property.

10404. The personal representative may not be granted authority to administer the estate under this part if the decedent's will provides that the estate shall not be administered under this part.

10404.5. (Repealed by Stats. 1990, Ch. 710, Sec. 27. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10404.5. Notwithstanding any provision of the decedent's will, the personal representative is authorized to exercise under the provisions of this part the power granted by Section 10565, whether or not the personal representative has been granted authority to administer the estate under this part.

10405. A special administrator may be granted authority to administer the estate under this part if the special administrator is appointed with, or has been granted, the powers of a general personal representative.

10406. (a) Subject to subdivision (b), this part applies in any case where authority to administer the estate is granted under this part or where independent administration authority was granted under prior law.

(b) If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use that existing authority on and after July 1,

1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not that existing authority includes the authority to sell real property.

(Amended by Stats. 1990, Ch. 710, Sec. 28. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10406. (a) Subject to subdivision (b), this part applies in any case where authority to administer the estate is granted under this part or where independent administration authority was granted under prior law.

(b) If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use that existing authority on and after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not that existing authority includes the authority to sell real property.

(c) Sections 10404.5, 10501, 10565, and 10585.5 of the former Probate Code (repealed by the act enacting this code), as those sections existed on January 1, 1991, do not apply in any proceeding for administration of a decedent's estate commenced before January 1, 1991. Notwithstanding its repeal, Section 10501 of the former Probate Code (repealed by the act enacting this code), as that section existed on December 31, 1990, continues to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1991.

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

10450. (a) To obtain authority to administer the estate under this part, the personal representative shall petition the court for that authority either in the petition for appointment of the personal representative or in a separate petition filed in the estate proceedings.

(b) The petition may request either of the following:

(1) Full authority to administer the estate under this part.

(2) Limited authority to administer the estate under this part.

10451. (a) If the authority to administer the estate under this part is requested in the petition for appointment of the personal representative, notice of the hearing on the petition shall be given for the period and in the manner applicable to the petition for appointment.

(b) Where proceedings for the administration of the estate are pending at the time a petition is filed under Section 10450, notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

(4) Each person named as executor in the will of the decedent.

(c) The notice of hearing of the petition for authority to administer the estate under this part, whether included in the petition for appointment or in a separate petition, shall include the

substance of the following statement: "The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. Independent administration authority will be granted unless good cause is shown why it should not be."

10452. Unless an interested person objects as provided in Section 1043 to the granting of authority to administer the estate under this part and the court determines that the objecting party has shown good cause why the authority to administer the estate under this part should not be granted, the court shall grant the requested authority. If the objecting party has shown good cause why only limited authority should be granted, the court shall grant only limited authority.

10453. (a) If the personal representative is otherwise required to file a bond and has full authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property, the estimated value of the decedent's interest in the real property authorized to be sold under this part, and the probable annual gross income of the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

(b) If the personal representative is otherwise required to file a bond and has limited authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property and the probable annual gross income of the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

10454. (a) Any interested person may file a petition requesting that the court make either of the following orders:

(1) An order revoking the authority of the personal representative to continue administration of the estate under this part.

(2) An order revoking the full authority of the personal representative to administer the estate under this part and granting the personal representative limited authority to administer the estate under this part.

(b) The petition shall set forth the basis for the requested order.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220. In addition, the personal representative shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing. Service on the personal representative shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(d) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal

representative to continue administration of the estate under this part. Upon the making of the order, new letters shall be issued without the notation described in subdivision (c) of Section 8405.

(e) If the personal representative was granted full authority and the court determines that good cause has been shown, the court shall make an order revoking the full authority and granting the personal representative limited authority. Upon the making of the order, new letters shall be issued with the notation described in subdivision (c) of Section 8405 that is required where the authority granted is limited authority.

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

10500. (a) Subject to the limitations and conditions of this part, a personal representative who has been granted authority to administer the estate under this part may administer the estate as provided in this part without court supervision, but in all other respects the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate under this part.

(b) Notwithstanding subdivision (a), the personal representative may obtain court supervision as provided in this code of any action to be taken by the personal representative during administration of the estate.

10501. (a) Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Allowance of the personal representative's compensation.

(2) Allowance of compensation of the attorney for the personal representative.

(3) Settlement of accounts.

(4) Preliminary and final distributions and discharge.

(5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.

(6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(8) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate.

(9) Compromise or settlement of a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.

(10) Extension, renewal, or modification of the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

(b) Notwithstanding any other provision of this part, a personal representative who has obtained only limited authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Sale of real property.

(2) Exchange of real property.

(3) Grant of an option to purchase real property.

(4) Borrowing money with the loan secured by an encumbrance upon real property.

(c) Paragraphs (5) to (10), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied:

(1) Either (A) the personal representative is the sole beneficiary of the estate or (B) all the known heirs or devisees have consented to the transaction.

(2) The period for filing creditor claims has expired.

(3) No request for special notice is on file or all persons who filed a request for special notice have consented to the transaction.

(4) The claim of each creditor who filed a claim has been paid, settled, or withdrawn, or the creditor has consented to the transaction.

(Amended by Stats. 1990, Ch. 710, Sec. 29. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10501. (a) Notwithstanding any other provision of this part, whether the personal representative has been granted full authority or limited authority, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Allowance of the personal representative's compensation.

(2) Settlement of accounts.

(3) Preliminary and final distributions and discharge.

(4) Sale of property of the estate to the personal representative or to the attorney for the personal representative.

(5) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(6) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(7) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate.

(8) Compromise or settlement of a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.

(9) Extension, renewal, or modification of the terms of a debt or other obligation

of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

(b) Notwithstanding any other provision of this part, a personal representative who has obtained only limited authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(1) Sale of real property.

(2) Exchange of real property.

(3) Grant of an option to purchase real property

(4) Borrowing money with the loan secured by an encumbrance upon real property.

(c) Paragraphs (4) to (9), inclusive, of subdivision (a) do not apply to a transaction between the personal representative as such and the personal representative as an individual where all of the following requirements are satisfied.

(1) Either (A) the personal representative is the sole beneficiary of the estate or (B) all the known heirs or devisees have consented to the transaction

(2) The period for filing creditor claims has expired.

(3) No request for special notice is on file or all persons who filed a request for special notice have consented to the transaction.

(4) The claim of each creditor who filed a claim has been paid, settled, or withdrawn, or the creditor has consented to the transaction

(d) Subdivision (a) does not apply to the hiring and paying of persons, including the attorney for the personal representative, hired under Section 9680 to advise or assist the personal representative in the administration of the estate.

10502. (a) Subject to the conditions and limitations of this part and to Section 9600, a personal representative who has been granted authority to administer the estate under this part has the powers described in Article 2 (commencing with Section 10510), Article 3 (commencing with Section 10530), and Article 4 (commencing with Section 10550).

(b) The will may restrict the powers that the personal representative may exercise under this part.

10503. Subject to the limitations and requirements of this part, when the personal representative exercises the authority to sell property of the estate under this part, the personal representative may sell the property either at public auction or private sale, and with or without notice, for such price, for cash or on credit, and upon such terms and conditions as the personal representative may determine, and the requirements applicable to court confirmation of sales of real property (including, but not limited to, publication of notice of sale, court approval of agents' and brokers' commissions, sale at not less than 90 percent of appraised value, and court examination into the necessity for the sale, advantage to the estate and benefit to interested persons, and efforts of the personal representative to obtain the highest and best price for the property reasonably attainable), and the requirements applicable to court confirmation of sales of personal property, do not apply to the sale.

Article 2. Powers Exercisable Only After Giving Notice of Proposed Action

10510. The personal representative may exercise the powers described in this article only if the requirements of Chapter 4

(commencing with Section 10580) (notice of proposed action procedure) are satisfied.

10511. The personal representative who has full authority has the power to sell or exchange real property of the estate.

10512. The personal representative has the power to sell or incorporate any of the following:

(a) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(b) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

10513. The personal representative has the power to abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

10514. (a) Subject to subdivision (b), the personal representative has the following powers:

(1) The power to borrow.

(2) The power to place, replace, renew, or extend any encumbrance upon any property of the estate.

(b) Only a personal representative who has full authority has the power to borrow money with the loan secured by an encumbrance upon real property.

10515. The personal representative who has full authority has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

10516. If the will gives a person the option to purchase real or personal property and the person has complied with the terms and conditions stated in the will, the personal representative has the power to convey or transfer the property to the person.

10517. The personal representative has the power to convey or transfer real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

10518. The personal representative has the power to allow, compromise, or settle any of the following:

(a) A third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) The decedent's claim to real or personal property title to or possession of which is held by another.

10519. The personal representative has the power to make a disclaimer.

Article 3. Powers the Exercise of Which Requires Giving of Notice of Proposed Action Under Some Circumstances

10530. Except to the extent that this article otherwise provides, the personal representative may exercise the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

10531. (a) The personal representative has the power to manage and control property of the estate. Except as provided in subdivision

(b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where a provision of Chapter 3 (commencing with Section 10500) governing the exercise of a specific power so requires.

10532. (a) The personal representative has the power to enter into a contract in order to carry out the exercise of a specific power granted by this part, including, but not limited to, the powers granted by Sections 10531 and 10551. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the contract is one that by its provisions is not to be fully performed within two years, except that the personal representative is not required to comply with those requirements if the personal representative has the unrestricted right under the contract to terminate the contract within two years.

(c) Nothing in this section excuses compliance with the requirements of Chapter 4 (commencing with Section 10580) when the contract is made to carry out the exercise of a specific power and the provision that grants that power requires compliance with Chapter 4 (commencing with Section 10580) for the exercise of the power.

10533. (a) The personal representative has the power to do all of the following:

(1) Deposit money belonging to the estate in an insured account in a financial institution in this state.

(2) Invest money of the estate in any one or more of the following:

(A) Direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment.

(B) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations.

(C) Units of a common trust fund described in Section 1564 of the Financial Code. The common trust fund shall have as its objective investment primarily in short term fixed income obligations and shall be permitted to value investments at cost pursuant to regulations of the appropriate regulatory authority.

(D) Eligible securities for the investment of surplus state moneys

as provided for in Section 16430 of the Government Code.

(3) Invest money of the estate in any manner provided by the will.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative exercises the power to make any investment pursuant to the power granted by subparagraph (D) of paragraph (2) of subdivision (a) or paragraph (3) of subdivision (a), except that the personal representative may invest in direct obligations of the United States, or of the State of California, maturing not later than one year from the date of making the investment without complying with the requirements of Chapter 4 (commencing with Section 10580).

10534. (a) Subject to the partnership agreement and the provisions of the Uniform Partnership Act (Chapter 1 (commencing with Section 15001) of Title 2 of the Corporations Code), the personal representative has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

(b) The personal representative has the power to continue operation of any of the following:

(1) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(2) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(c) Except as provided in subdivision (d), the personal representative may exercise the powers described in subdivisions (a) and (b) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(d) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) if the personal representative continues as a general partner under subdivision (a), or continues the operation of any unincorporated business or venture under subdivision (b), for a period of more than six months from the date letters are first issued to a personal representative.

10535. (a) The personal representative has the power to pay a reasonable family allowance. Except as provided in subdivision (b), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) for all of the following:

(1) Making the first payment of a family allowance.

(2) Making the first payment of a family allowance for a period

commencing more than 12 months after the death of the decedent.

(3) Making any increase in the amount of the payment of a family allowance.

10536. (a) The personal representative has the power to enter as lessor into a lease of property of the estate for any purpose (including, but not limited to, exploration for and production or removal of minerals, oil, gas, or other hydrocarbon substances or geothermal energy, including a community oil lease or a pooling or unitization agreement) for such period, within or beyond the period of administration, and for such rental or royalty or both, and upon such other terms and conditions as the personal representative may determine. Except as provided in subdivisions (b) and (c), the personal representative may exercise this power without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of real property for a term in excess of one year. If the lease gives the lessee the right to extend the term of the lease, the lease shall be considered as if the right to extend has been exercised.

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of personal property and the lease is one described in subdivision (b) of Section 10532.

10537. (a) The personal representative has the power to sell personal property of the estate or to exchange personal property of the estate for other property upon such terms and conditions as the personal representative may determine. Except as provided in subdivision (b), the personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in exercising this power.

(b) The personal representative may exercise the power granted by subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580) in case of the sale or exchange of any of the following:

(1) A security sold on an established stock or bond exchange.

(2) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(3) Personal property referred to in Section 10202 or 10259 when sold for cash.

(4) A security described in Section 10200 surrendered for redemption or conversion.

10538. (a) The personal representative has the following powers:

(1) The power to grant an exclusive right to sell property for a

period not to exceed 90 days.

(2) The power to grant to the same broker one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative grants to the same broker an extension of an exclusive right to sell property and the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days.

Article 4. Powers Exercisable Without Giving Notice of Proposed Action

10550. The personal representative may exercise the powers described in this article without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

10551. In addition to the powers granted to the personal representative by other sections of this chapter, the personal representative has all the powers that the personal representative could exercise without court supervision under this code if the personal representative had not been granted authority to administer the estate under this part.

10552. The personal representative has the power to do all of the following:

(a) Allow, pay, reject, or contest any claim by or against the estate.

(b) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(c) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

10553. The personal representative has the power to do all of the following:

(a) Commence and maintain actions and proceedings for the benefit of the estate.

(b) Defend actions and proceedings against the decedent, the personal representative, or the estate.

10554. The personal representative has the power to extend, renew, or in any manner modify the terms of an obligation owing to or in favor of the decedent or the estate.

10555. The personal representative has the power to convey or transfer property in order to carry out the exercise of a specific power granted by this part.

10556. The personal representative has the power to pay all of the

following:

(a) Taxes and assessments.

(b) Expenses incurred in the collection, care, and administration of the estate.

10557. The personal representative has the power to purchase an annuity from an insurer admitted to do business in this state to satisfy a devise of an annuity or other direction in the will for periodic payments to a devisee.

10558. The personal representative has the power to exercise an option right that is property of the estate.

10559. The personal representative has the power to purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by the decedent.

10560. The personal representative has the power to hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery.

10561. The personal representative has the power to exercise security subscription or conversion rights.

10562. The personal representative has the power to make repairs and improvements to real and personal property of the estate.

10563. The personal representative has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

10564. The personal representative has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a deed of trust held by the estate.

10565. (Repealed by Stats. 1990, Ch. 710, Sec. 30. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10565. (a) Subject to Section 10804, the personal representative has the power to hire persons to advise or assist in the administration of the estate, including attorneys, accountants, auditors, technical advisers, investment advisers, or other experts or agents, even if they are associated or affiliated with the personal representative.

(b) The personal representative has the power to agree to and pay the compensation of the persons described in subdivision (a) out of funds of the estate unless the person is hired to assist the personal representative in the performance of services of the personal representative for which the personal representative is compensated under Part 7 (commencing with Section 10800).

CHAPTER 4. NOTICE OF PROPOSED ACTION PROCEDURE

10580. (a) A personal representative who has been granted authority to administer the estate under this part shall give notice of proposed action as provided in this chapter prior to the taking of the proposed action without court supervision if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action so requires. Nothing in

this subdivision authorizes a personal representative to take an action under this part if the personal representative does not have the power to take the action under this part.

(b) A personal representative who has been granted authority to administer the estate under this part may give notice of proposed action as provided in this chapter even if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action permits the personal representative to take the action without giving notice of proposed action. Nothing in this subdivision requires the personal representative to give notice of proposed action where not required under subdivision (a) or authorizes a personal representative to take any action that the personal representative is not otherwise authorized to take.

10581. Except as provided in Sections 10582 and 10583, notice of proposed action shall be given to all of the following:

(a) Each known devisee whose interest in the estate would be affected by the proposed action.

(b) Each known heir whose interest in the estate would be affected by the proposed action.

(c) Each person who has filed a request under Chapter 6 (commencing with Section 1250) of Part 2, of Division 3 for special notice of petitions filed in the administration proceeding.

(d) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the proposed action.

10582. Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

10583. (a) Notice of proposed action need not be given to any person who, in writing, waives the right to notice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the notice, such as the delivery, mailing, or time requirements of Section 10586, or the giving of the notice in its entirety for the particular proposed action.

(b) Notice of proposed action need not be given to any person who has executed the Statutory Waiver of Notice of Proposed Action Form prescribed by the Judicial Council and in that form has made either of the following:

(1) A general waiver of the right to notice of proposed action.

(2) A waiver of the right to notice of proposed action for all transactions of a type which includes the particular proposed action.

10584. (a) A waiver or consent may be revoked only in writing and is effective only when the writing is received by the personal representative.

(b) A copy of the revocation may be filed with the court, but the

effectiveness of the revocation is not dependent upon a copy being filed with the court.

10585. (a) The notice of proposed action shall state all of the following:

(1) The name and mailing address of the personal representative.

(2) The person and telephone number to call to get additional information.

(3) The action proposed to be taken, with a reasonably specific description of the action. Where the proposed action involves the sale or exchange of real property, or the granting of an option to purchase real property, the notice of proposed action shall state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

(4) The date on or after which the proposed action is to be taken.

(b) The notice of proposed action may be given using the most current Notice of Proposed Action form prescribed by the Judicial Council.

(c) If the most current form prescribed by the Judicial Council is not used to give notice of proposed action, the notice of proposed action shall satisfy all of the following requirements:

(1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.

(2) The notice of proposed action shall contain the statements described in subdivision (a).

(3) The notice of proposed action shall contain a form for objecting to the proposed action in substantially the form set out in the Judicial Council form.

10585.5. (Repealed by Stats. 1990, Ch. 710, Sec. 31. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10585 5. (a) If, pursuant to subdivision (b) of Section 10580, the personal representative gives notice of proposed action with respect to the exercise of the powers granted by Section 10565 (hiring and paying attorneys, advisers, and others to advise or assist in the administration of the estate):

(1) The notice of proposed action shall include, in addition to the information required by Section 10585, an estimate of the total amount of compensation to be paid to the person hired

(2) If the person hired is an attorney, each person given notice of proposed action shall also be provided with a copy of the written fee contract made pursuant to Section 6148 of the Business and Professions Code

(3) If the person hired is not an attorney, each person given notice of proposed action shall also be provided with a copy of the written contract, if any, governing the hiring and compensation.

(b) If it appears that the total amount of compensation to be paid to the person hired will exceed the amount of the last previous estimate given in a notice of proposed action, the personal representative may give another notice of proposed action stating a new estimate of the total amount of compensation to be paid to the person.

(c) Section 10590 does not apply to the extent that the compensation paid or to be paid exceeds the amount of the estimate contained in the notice of proposed action

most recently given.

10586. The notice of proposed action shall be mailed or personally delivered to each person required to be given notice of proposed action not less than 15 days before the date specified in the notice of proposed action on or after which the proposed action is to be taken. If mailed, the notice of proposed action shall be addressed to the person at the person's last known address. Sections 1215 and 1216 apply to the mailing or delivery of the notice of proposed action.

10587. (a) Any person entitled to notice of proposed action under Section 10581 may object to the proposed action as provided in this section.

(b) The objection to the proposed action is made by delivering or mailing a written objection to the proposed action to the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action either may use the Judicial Council form or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.

(c) The personal representative is deemed to have notice of the objection to the proposed action if it is delivered or received at the address stated in the notice of proposed action before whichever of the following times is the later:

(1) The date specified in the notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

10588. (a) Any person who is entitled to notice of proposed action for a proposed action described in subdivision (a) of Section 10580, or any person who is given notice of a proposed action described in subdivision (b) of Section 10580, may apply to the court having jurisdiction over the proceeding for an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order.

(b) The personal representative is deemed to have notice of the restraining order if it is served upon the personal representative in the same manner as is provided for in Section 415.10 or 415.30 of the Code of Civil Procedure, or in the manner authorized by the court, before whichever of the following times is the later:

(1) The date specified in a notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

10589. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part and the personal representative has notice of a written objection made under Section 10587 to the proposed action or a restraining order issued under Section 10588, the personal representative shall, if the personal representative desires to take the proposed

action under the provisions of this code dealing with court supervision of that kind of action.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this part but the personal representative has given notice of the proposed action and has notice of a written objection made under Section 10587 to the proposed action or a restraining order issued under Section 10588, the personal representative shall, if he or she desires to take the proposed action, (1) file a petition under Section 9684 if the proposed action involves the exercise of a power granted by Section 10565 or (2) request instructions from the court concerning the proposed action if the proposed action involves any other power. The personal representative may take the proposed action only under such order as may be entered by the court.

(c) A person who objects to a proposed action as provided in Section 10587 or serves a restraining order issued under Section 10588 in the manner provided in that section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

10590. (a) Except as provided in subdivision (c), only a person described in Section 10581 has a right to have the court review the proposed action after it has been taken or otherwise to object to the proposed action after it has been taken. Except as provided in subdivisions (b) and (c), a person described in Section 10581 waives the right to have the court review the proposed action after it has been taken, or otherwise to object to the proposed action after it has been taken, if either of the following circumstances exists:

(1) The person has been given notice of a proposed action, as provided in Sections 10580 to 10586, inclusive, and fails to object as provided in subdivision (d).

(2) The person has waived notice of or consented to the proposed action as provided in Sections 10582 to 10584, inclusive.

(b) Unless the person has waived notice of or consented to the proposed action as provided in Sections 10582 to 10584, inclusive, the court may review the action taken upon motion of a person described in Section 10581 who establishes that he or she did not actually receive the notice of proposed action before the time to object under subdivision (d) expires.

(c) The court may review the action of the personal representative upon motion of an heir or devisee who establishes all of the following:

(1) At the time the notice was given, the heir or devisee lacked capacity to object to the proposed action or was a minor.

(2) No notice of proposed action was actually received by the guardian, conservator, or other legal representative of the heir or devisee.

(3) The guardian, conservator, or other legal representative did not waive notice of proposed action.

(4) The guardian, conservator, or other legal representative did not consent to the proposed action.

(d) For the purposes of this section, an objection to a proposed action is made only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 10587 within the time specified in subdivision (c) of that section.

(2) Serving a restraining order obtained under Section 10588 in the manner prescribed and within the time specified in subdivision (b) of that section.

10591. (a) The failure of the personal representative to comply with subdivision (a) of Section 10580 and with Sections 10581, 10585, 10586, and 10589, and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons who, dealing in good faith with the personal representative, changed their position in reliance upon the action, conveyance, or transfer without actual notice of the failure of the personal representative to comply with those provisions.

(b) No person dealing with the personal representative has any duty to inquire or investigate whether or not the personal representative has complied with the provisions listed in subdivision (a).

10592. (a) In a case where notice of proposed action is required by this chapter, the court in its discretion may remove the personal representative from office unless the personal representative does one of the following:

(1) Gives notice of proposed action as provided in this chapter.

(2) Obtains a waiver of notice of proposed action as provided in this chapter.

(3) Obtains a consent to the proposed action as provided in this chapter.

(b) The court in its discretion may remove the personal representative from office if the personal representative takes a proposed action in violation of Section 10589.

PART 7. COMPENSATION OF PERSONAL REPRESENTATIVE AND ESTATE ATTORNEY

(Heading of Part 7 amended by Stats. 1990, Ch. 710, Sec. 32. Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL HEADING OF PART 7]

PART 7. COMPENSATION OF PERSONAL REPRESENTATIVE

CHAPTER 1. AMOUNT OF COMPENSATION

Article 1. Compensation of Personal Representative

(Heading of Article 1 added by Stats. 1990, Ch. 710, Sec. 33. Operative July 1, 1991, by Sec. 48 of chapter)

10800. (a) Subject to the provisions of this part, for ordinary services the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows:

(1) Four percent on the first fifteen thousand dollars ($15,000).

(2) Three percent on the next eighty-five thousand dollars ($85,000).

(3) Two percent on the next nine hundred thousand dollars ($900,000).

(4) One percent on the next nine million dollars ($9,000,000).

(5) One-half of one percent on the next fifteen million dollars ($15,000,000).

(6) For all above twenty-five million dollars ($25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.

10801. Subject to the provisions of this part, in addition to the compensation provided by Section 10800, the court may allow additional compensation for extraordinary services by the personal representative in an amount the court determines is just and reasonable.

10802. (a) Except as otherwise provided in this section, if the decedent's will makes provision for the compensation of the personal representative, the compensation provided by the will shall be the full and only compensation for the services of the personal representative.

(b) The personal representative may petition the court to be relieved from a provision of the will that provides for the compensation of the personal representative.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(d) If the court determines that it is to the advantage of the estate and in the best interest of the persons interested in the estate, the court may make an order authorizing compensation for the personal

representative in an amount greater than provided in the will.

10803. An agreement between the personal representative and an heir or devisee for higher compensation than that provided by this part is void.

10804. Unless expressly authorized by the decedent's will, a personal representative who is an attorney may receive the personal representative's compensation but not compensation for services as the estate attorney.

10805. If there are two or more personal representatives, the personal representative's compensation shall be apportioned among the personal representatives by the court according to the services actually rendered by each personal representative or as agreed to by the personal representatives.

Article 2. Compensation of Estate Attorney

(Article 2 added by Stats. 1990, Ch. 710, Sec. 34. Operative July 1, 1991, by Sec. 48 of chapter)

10810. Attorneys for personal representatives shall be allowed out of the estate, as compensation for conducting the ordinary probate proceedings, the same amounts as are allowed by Article 1 (commencing with Section 10800) as comepensation to personal representatives; and such further amount as the court may deem just and reasonable for extraordinary services.

Extraordinary services which the attorney may apply to the court for compensation include those services by any paralegal performing the extraordinary services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(Added by Stats. 1990, Ch. 710, Sec. 34. Operative July 1, 1991, by Sec. 48 of chapter.)

CHAPTER 2. ALLOWANCE OF COMPENSATION BY COURT

10830. (a) At any time after four months from the issuance of letters:

(1) The personal representative may file a petition requesting an allowance on the compensation of the personal representative.

(2) The personal representative or the attorney for the personal representative may file a petition requesting an allowance on the compensation of the attorney for the personal representative.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the payment of the compensation.

(3) Each known devisee whose interest in the estate would be affected by the payment of the compensation.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state

and its interest in the estate would be affected by the petition.

(c) On the hearing, the court may make an order allowing the portion of the compensation of the personal representative or the attorney for the personal representative, as the case may be, on account of services rendered up to that time, that the court determines is proper. The order shall authorize the personal representative to charge against the estate the amount allowed.

(Amended by Stats. 1990, Ch. 710, Sec. 35. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10830. (a) At any time after four months from the issuance of letters, the personal representative may file a petition requesting an allowance on the compensation of the personal representative.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the payment of the compensation.

(3) Each known devisee whose interest in the estate would be affected by the payment of the compensation.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(c) On the hearing, the court may make an order allowing the portion of the compensation of the personal representative, on account of services rendered up to that time, that the court determines is proper. The order shall authorize the personal representative to charge against the estate the amount allowed.

10831. (a) At the time of the filing of the final account and petition for an order for final distribution:

(1) The personal representative may petition the court for an order fixing and allowing the personal representative's compensation for all services rendered in the estate proceeding.

(2) The personal representative or the attorney for the personal representative may petition the court for an order fixing and allowing the compensation, of the attorney for all services rendered in the estate proceeding.

(b) The request for compensation may be included in the final account or the petition for final distribution or may be made in a separate petition.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the payment of the compensation.

(3) Each known devisee whose interest in the estate would be affected by the payment of the compensation.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(d) On the hearing, the court shall make an order fixing and allowing the compensation for all services rendered in the estate proceeding. In the case of an allowance to the personal

representative, the order shall authorize the personal representative to charge against the estate the amount allowed, less any amount previously charged against the estate pursuant to Section 10830. In the case of the attorney's compensation the order shall require the personal representative to pay the attorney out of the estate the amount allowed, less any amount paid to the attorney out of the estate pursuant to Section 10830.

(Amended by Stats. 1990, Ch. 710, Sec. 36. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10831. (a) At the time of the filing of the final account and petition for an order for final distribution, the personal representative may petition the court for an order fixing and allowing the personal representative's compensation for all services rendered in the estate proceeding.

(b) The request for compensation may be included in the final account or the petition for final distribution or may be made in a separate petition.

(c) Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the payment of the compensation.

(3) Each known devisee whose interest in the estate would be affected by the payment of the compensation.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(d) On the hearing, the court shall make an order fixing and allowing the compensation for all services rendered in the estate proceeding by the personal representative. The order shall authorize the personal representative to charge against the estate the amount allowed, less any amount previously charged against the estate pursuant to Section 10830.

10832. Notwithstanding Sections 10830 and 10831, the court may allow compensation to the personal representative for extraordinary services before final distribution when any of the following requirements is satisfied:

(a) It appears likely that administration of the estate will continue, whether due to litigation or otherwise, for an unusually long time.

(b) Present payment will benefit the estate or the beneficiaries of the estate.

(c) Other good cause is shown.

CHAPTER 3. APPLICATION OF PART

10850. (a) This part does not apply in any proceeding for administration of a decedent's estate commenced before July 1, 1991.

(b) Notwithstanding its repeal, the applicable law in effect before July 1, 1991, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1991.

(Amended by Stats 1990, Ch. 710, Sec 37 Operative July 1, 1991, by Sec. 48 of chapter)

[ORIGINAL SECTION]

10850. (a) This part does not apply in any proceeding for administration of a decedent's estate commenced before January 1, 1991.

(b) Notwithstanding its repeal, the applicable law in effect before January 1, 1991, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before January 1, 1991.

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include a summary statement, together with supporting schedules, of:

(1) Property in all inventories.

(2) Receipts, excluding property listed in an inventory.

(3) Gains on sales.

(4) Other acquisitions of property.

(5) Disbursements.

(6) Losses on sales.

(7) Other dispositions of property.

(8) Property remaining on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, and all other matters necessary to show the condition of the estate.

(d) The statement of liabilities in the report of administration shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

(Amended by Stats. 1990, Ch. 710, Sec. 38. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include a summary statement, together with supporting schedules, of:

(1) Property in all inventories.

(2) Receipts, excluding property listed in an inventory.

(3) Gains on sales.

(4) Other acquisitions of property.

(5) Disbursements.
(6) Losses on sales.
(7) Other dispositions of property.
(8) Property remaining on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, the hiring and payment of any persons under Section 9680 who have been or are to be paid out of funds of the estate, and all other matters necessary to show the condition of the estate.

(d) The statement of liabilities in the report of administration shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

10901. On court order, or on request by an interested person filed with the clerk and a copy served on the personal representative, the personal representative shall produce for inspection and audit by the court or interested person the documents specified in the order or request that support an account.

10902. The personal representative shall file an account when required under Chapter 2 (commencing with Section 10950) and may file an account at any other time. Whether or not the filing of the account was required, the filing of an account shall be deemed to include a petition for approval of the account.

CHAPTER 2. WHEN ACCOUNT REQUIRED

10950. (a) On its own motion or on petition of an interested person, the court may order an account at any time.

(b) The court shall order an account on petition of an interested person made more than one year after the last account was filed or, if no previous account has been filed, made more than one year after issuance of letters to the personal representative.

(c) The court order shall specify the time within which the personal representative must file an account.

10951. The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed.

10952. A personal representative who resigns or is removed from office or whose authority is otherwise terminated shall, unless the court extends the time, file an account not later than 60 days after termination of authority. If the personal representative fails to so file the account, the court may compel the account pursuant to Chapter 4 (commencing with Section 11050).

10953. (a) As used in this section:

(1) "Incapacitated" means lack of capacity to serve as personal representative.

(2) "Legal representative" means the personal representative of

a deceased personal representative or the conservator of the estate of an incapacitated personal representative.

(b) If a personal representative dies or becomes incapacitated and a legal representative is appointed for the deceased or incapacitated personal representative, the legal representative shall not later than 60 days after appointment, unless the court extends the time, file an account of the administration of the deceased or incapacitated personal representative.

(c) If a personal representative dies or becomes incapacitated and no legal representative is appointed for the deceased or incapacitated personal representative, or if the personal representative absconds, the court may compel the attorney for the deceased, incapacitated, or absconding personal representative or attorney of record in the estate proceeding to file an account of the administration of the deceased, incapacitated, or absconding personal representative.

(d) The legal representative or attorney shall exercise reasonable diligence in preparing an account under this section. Verification of the account may be made on information and belief. The court shall settle the account as in other cases. The court shall allow reasonable compensation to the legal representative or the attorney for preparing the account. The amount allowed is a charge against the estate that was being administered by the deceased, incapacitated, or absconding personal representative. Legal services for which compensation shall be allowed to the attorney under this subdivision include those services rendered by any paralegal performing the services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to distribution from the estate:

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed as follows:

(1) If the person entitled to distribution is an adult and competent, by that person.

(2) If the person entitled to distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver or acknowledgment is executed by a guardian of the estate of the minor, the waiver or acknowledgment may be executed without the need to obtain approval of the court in which the

guardianship proceeding is pending.

(3) If the person entitled to distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court. In the case of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9, the waiver or acknowledgment may be executed without the need to obtain approval of the court.

(5) If the person entitled to distribution is an estate, by the personal representative of the estate. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the estate is being administered.

(6) If the person entitled to distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to distribution, by the guardian ad litem.

(7) If the person entitled to distribution has designated an attorney in fact who has the power under the power of attorney to execute the waiver or acknowledgment, by either of the following:

(A) The person entitled to distribution if an adult and competent.

(B) The attorney in fact.

(c) Notwithstanding subdivision (a):

(1) The personal representative shall file a final report of administration at the time the final account would otherwise have been required. The final report shall include the amount of compensation paid or payable to the personal representative and to the attorney for the personal representative and shall set forth the basis for determining the amounts.

(2) A creditor whose interest has not been satisfied may petition under Section 10950 for an account.

(Amended by Stats. 1990, Ch. 710, Sec. 39. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to distribution from the estate:

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed as follows:

(1) If the person entitled to distribution is an adult and competent, by that person.

(2) If the person entitled to distribution is a minor, by a person authorized to

receive money or property belonging to the minor. If the waiver or acknowledgment is executed by a guardian of the estate of the minor, the waiver or acknowledgment may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the person entitled to distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court. In the case of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9, the waiver or acknowledgment may be executed without the need to obtain approval of the court.

(5) If the person entitled to distribution is an estate, by the personal representative of the estate. The waiver or acknowledgment may be executed without the need to obtain approval of the court in which the estate is being administered.

(6) If the person entitled to distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to distribution, by the guardian ad litem.

(7) If the person entitled to distribution has designated an attorney in fact who has the power under the power of attorney to execute the waiver or acknowledgment, by either of the following:

(A) The person entitled to distribution if an adult and competent.

(B) The attorney in fact.

(c) Notwithstanding subdivision (a):

(1) The personal representative shall file a final report of administration at the time the final account would otherwise have been required. The final report shall include the amount of compensation paid or payable to the personal representative and shall set forth the basis for determining the amount.

(2) A creditor whose interest has not been satisfied may petition under Section 10950 for an account.

CHAPTER 3. SETTLEMENT OF ACCOUNT

11000. (a) The personal representative shall give notice of the hearing as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the account.

(3) Each known devisee whose interest in the estate would be affected by the account.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest would be affected by the account.

(5) If the estate is insolvent, each creditor who has filed a claim that is allowed or approved but is unpaid in whole or in part.

(b) If the petition for approval of the account requests allowance of all or a portion of the compensation of the personal representative or the attorney for the personal representative, the notice of hearing shall so state.

(c) If the account is a final account and is filed together with a petition for an order for final distribution of the estate, the notice of hearing shall so state.

(Amended by Stats. 1990, Ch. 710, Sec. 40. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

11000. (a) The personal representative shall give notice of the hearing as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the account.

(3) Each known devisee whose interest in the estate would be affected by the account.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest would be affected by the account.

(5) If the estate is insolvent, each creditor who has filed a claim that is allowed or approved but is unpaid in whole or in part.

(b) If the petition for approval of the account requests allowance of all or a portion of the compensation of the personal representative, the notice of hearing shall so state.

(c) If the account is a final account and is filed together with a petition for an order for final distribution of the estate, the notice of hearing shall so state.

11001. All matters relating to an account may be contested for cause shown, including, but not limited to:

(a) The validity of an allowed or approved claim not reported in a previous account and not established by judgment.

(b) The value of property for purposes of distribution.

(c) Actions taken by the personal representative not previously authorized or approved by the court, subject to Section 10590 (Independent Administration of Estates Act).

11002. (a) The court may conduct any hearing that may be necessary to settle the account, and may cite the personal representative to appear before the court for examination.

(b) The court may appoint one or more referees to examine the account and make a report on the account, subject to confirmation by the court. The court may allow a reasonable compensation to the referee to be paid out of the estate.

(c) The court may make any orders that the court deems necessary to effectuate the provisions of this section.

11003. (a) If the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the compensation and costs of the personal representative and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The amount awarded is a charge against any interest of the contestant in the estate and the contestant is personally liable for any amount that remains unsatisfied.

(b) If the court determines that the opposition to the contest was without reasonable cause and in bad faith, the court may award the contestant the costs of the contestant and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the compensation or other interest of the personal representative in the estate and the personal representative is liable personally and on the bond, if any, for any amount that remains unsatisfied.

11004. The personal representative shall be allowed all necessary

expenses in the administration of the estate, including, but not limited to, necessary expenses in the care, management, preservation, and settlement of the estate.

11005. If a debt has been paid within the time prescribed in Section 9154 but without a claim having been filed and established in the manner prescribed by statute, in settling the account the court shall allow the amount paid if all of the following are proven:

(a) The debt was justly due.

(b) The debt was paid in good faith.

(c) The amount paid did not exceed the amount reasonably necessary to satisfy the indebtedness.

(d) The estate is solvent.

CHAPTER 4. COMPELLING ACCOUNT

11050. Subject to the provisions of this chapter, if the personal representative does not file a required account, the court shall compel the account by punishment for contempt.

11051. (a) A citation shall be issued, served, and returned, requiring a personal representative who does not file a required account to appear and show cause why the personal representative should not be punished for contempt.

(b) If the personal representative purposefully evades personal service of the citation, the personal representative shall be removed from office.

11052. If the personal representative does not appear and file a required account, after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

PART 9. PAYMENT OF DEBTS

CHAPTER 1. DEFINITIONS AND PRELIMINARY PROVISIONS

Article 1. Definitions

11400. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

11402. "Wage claim" means a claim for wages, not exceeding two thousand dollars ($2,000), of each employee of the decedent for work done or personal services rendered within 90 days before the death of the decedent.

Article 2. Proceedings Commenced Before July 1, 1988

11405. (a) This part does not apply in any proceeding for the administration of a decedent's estate commenced before July 1, 1988.

(b) The applicable law in effect before July 1, 1988, governing the subject matter of this part continues to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1988, notwithstanding its repeal by Chapter 923 of the Statutes of 1987.

CHAPTER 2. GENERAL PROVISIONS

11420. (a) Debts shall be paid in the following order of priority among classes of debts, except that debts owed to the United States or to this state that have preference under the laws of the United States or of this state shall be given the preference required by such laws:

(1) Expenses of administration.

(2) Funeral expenses.

(3) Expenses of last illness.

(4) Family allowance.

(5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including, but not limited to, a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

(7) General debts, including judgments not secured by a lien and all other debts not included in a prior class.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class may be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

11421. Subject to Section 11420, as soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration, the personal representative shall pay the following:

(a) Funeral expenses.

(b) Expenses of last illness.

(c) Family allowance.

(d) Wage claims.

11422. (a) Except as provided in Section 11421, the personal representative is not required to pay a debt until payment has been ordered by the court.

(b) On the settlement of any account of the personal representative after the expiration of four months after the date letters are first issued to a general personal representative, the court shall order payment of debts, as the circumstances of the estate

permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid to each creditor.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt made without prior court authorization.

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

(c) Notwithstanding subdivision (a), in the case of a debt for unpaid taxes or any other debt for which interest is expressly provided by statute, interest accrues at the rate and in accordance with the terms of the statute.

11424. The personal representative shall pay a debt to the extent of the order for payment of the debt, and is liable personally and on the bond, if any, for failure to make the payment.

11425. If a creditor whose debt is not due waives interest for the time until the debt is due, the creditor is entitled to payment of the debt.

11426. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is contingent or is payable in installments shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.

(b) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

11427. Except as otherwise provided in this part, if a debt is not due or is contingent, or if a claim is disputed, the amount of the debt or claim or the part that would be payable if the debt were due or absolute or the claim established, shall be paid into court. The amount paid into court shall remain there, to be paid to the creditor when the debt is due or absolute or the claim is established, or, if the claim is not established, to be paid or distributed as the circumstances of the estate require.

11428. (a) If an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, on affidavit or evidence taken in open court, that a debt has not been and cannot be paid because the creditor cannot be found, the court or judge shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceeding is pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court or judge in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid, whether or not included in the order for payment, has no right to require contribution from creditors who are paid or from distributees, except to the extent provided in Section 9392.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a creditor who is not paid, subject to Section 9053.

(Amended by Stats. 1990, Ch. 140, Sec. 14.1. Operative July 1, 1991, by Sec. 30 of chapter.)

[ORIGINAL SECTION]

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid, whether or not included in the order for payment, has no right to require contribution from creditors who are paid or from distributees.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a creditor who is not paid.

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

11440. If it appears that a debt of the decedent has been paid or is payable in whole or in part by the surviving spouse, or that a debt of the surviving spouse has been paid or is payable in whole or in part from property in the decedent's estate, the personal representative, the surviving spouse, or a beneficiary may, at any time before an order for final distribution is made, petition for an order to allocate the debt.

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent and surviving spouse known to the petitioner that are alleged to be subject to allocation and whether paid in whole or part or unpaid.

(b) The reason why the debts should be allocated.

(c) The proposed allocation and the basis for allocation alleged by the petitioner.

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

11443. The petitioner shall give notice of the hearing as provided in Section 1220, together with a copy of the petition and the order to show cause, if any.

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, on a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the debt shall be allocated accordingly.

11445. On making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to make payment of the amounts allocated to the estate by payment to the surviving spouse or creditors.

(b) Directs the personal representative to charge amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession or control of the personal representative. To the extent that property or interests of the surviving spouse in the possession or control of the personal representative are insufficient to satisfy the allocation, the court order shall summarily direct the surviving spouse to pay the allocation to the personal representative.

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of the decedent and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

11600. The personal representative or an interested person may petition the court under this chapter for an order for preliminary or final distribution of the decedent's estate to the persons entitled thereto.

11601. Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(a) Each person listed in Section 1220.

(b) Each known heir whose interest in the estate would be affected by the petition.

(c) Each known devisee whose interest in the estate would be affected by the petition.

(d) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(e) The Controller, if property is to be distributed to the state because there is no known beneficiary or if property is to be distributed to a beneficiary whose whereabouts is unknown. A copy of the latest account filed with the court shall be served on the Controller with the notice.

11602. The personal representative or any interested person may oppose the petition.

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including, but not limited to, an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

11604. (a) This section applies where distribution is to be made to any of the following persons:

(1) The transferee of a beneficiary.

(2) Any person other than a beneficiary under an agreement, request, or instructions of a beneficiary or the attorney in fact of a beneficiary.

(b) The court on its own motion, or on motion of the personal representative or other interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.

(c) The court may refuse to order distribution, or may order distribution on any terms that the court deems just and equitable, if the court finds either of the following:

(1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable.

(2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence.

(d) Notice of the hearing on the motion shall be served on the beneficiary and on the persons described in subdivision (a) at least 15 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure.

11605. When a court order made under this chapter becomes final, the order binds and is conclusive as to the rights of all interested persons.

Article 2. Preliminary Distribution

11620. A petition for an order for preliminary distribution of all, or a portion of, the share of a decedent's estate to which a beneficiary is entitled may not be filed unless at least two months have elapsed after letters are first issued to a general personal representative.

11621. (a) The court shall order distribution under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

(b) The order for distribution shall be stayed until any bond required by the court is filed.

11622. (a) If the court orders distribution before four months have elapsed after letters are first issued to a general personal representative, the court shall require a bond. The bond shall be in the amount of the distribution.

(b) If the court orders distribution after four months have elapsed after letters are first issued to a general personal representative, the court may require a bond. The bond shall be in the amount the court orders.

(c) Any bond required by the court shall be given by the distributee and filed with the court. The bond shall be conditioned on payment of the distributee's proper share of the debts of the estate, not exceeding the amount distributed.

11623. (a) Notwithstanding any other provision of this chapter, if authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400):

(1) The personal representative may petition the court for an order for preliminary distribution on notice as provided in Section 1220. Notwithstanding subdivision (c) of Section 1220, the court may not dispense with notice unless the time for filing creditor claims has expired.

(2) The aggregate of all property distributed under this section shall not exceed 50 percent of the net value of the estate. For the

purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

(b) Nothing in this section limits the authority of the personal representative to make preliminary distribution under other provisions of this chapter, whether or not authority is granted to administer the estate under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400).

(Amended by Stats. 1990, Ch. 710, Sec. 41. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

11623. Notwithstanding any other provision of this chapter, if authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400):

(a) The personal representative may petition the court for an order for preliminary distribution on notice as provided in Section 1220 Notwithstanding subdivision (c) of Section 1220, the court may not dispense with notice unless the time for filing creditor claims has expired.

(b) The aggregate of all property distributed under this section shall not exceed 50 percent of the net value of the estate. For the purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

11624. The costs of a proceeding under this article shall be paid by the distributee or the estate in proportions determined by the court.

Article 3. Final Distribution

11640. (a) When all debts have been paid or adequately provided for, or if the estate is insolvent, and the estate is in a condition to be closed, the personal representative shall file a petition for, and the court shall make, an order for final distribution of the estate.

(b) The court shall hear and determine and resolve in the order all questions arising under Section 6174 (ademption by satisfaction) or Section 6409 (advancements).

(c) If debts remain unpaid or not adequately provided for or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for a reasonable time, subject to Chapter 1 (commencing with Section 12200) of Part 11 (time for closing estate).

11641. When an order settling a final account and for final distribution is entered, the personal representative may immediately distribute the property in the estate to the persons entitled to

distribution, without further notice or proceedings.

11642. Any property acquired or discovered after the court order for final distribution is made shall be distributed in the following manner:

(a) If the order disposes of the property, distribution shall be made in the manner provided in the order. The court may, in an appropriate case, require a supplemental account and make further instructions relating to the property.

(b) If the order does not dispose of the property, distribution shall be made either (1) in the manner ordered by the court on a petition for instructions or (2) under Section 12252 (administration after discharge) if the personal representative has been discharged.

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

11700. At any time after letters are first issued to a general personal representative and before an order for final distribution is made, the personal representative, or any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim.

11701. Notice of the hearing on the petition shall be given as provided in Section 1220 to all of the following persons:

(a) Each person listed in Section 1220.

(b) Each known heir whose interest in the estate would be affected by the petition.

(c) Each known devisee whose interest in the estate would be affected by the petition.

(d) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

11702. (a) Any interested person may appear and, at or before the time of the hearing, file a written statement of the person's interest in the estate. The written statement may be in support of, or in opposition to, the petition. No other pleadings are necessary and the written statement of each claimant shall be deemed denied by each of the other claimants to the extent the written statements conflict.

(b) If a person fails timely to file a writen statement:

(1) The case is at issue notwithstanding the failure and the case may proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the proceeding for determination of persons entitled to distribution, but the person's interest in the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

11703. The Attorney General shall be deemed to be a person entitled to distribution of the estate for purposes of this chapter if the estate involves or may involve any of the following:

(a) A charitable trust, other than a charitable trust with a designated trustee that may lawfully accept the trust.

(b) A devise for a charitable purpose without an identified beneficiary.

(c) An escheat to the State of California.

11704. (a) The court shall consider as evidence in the proceeding any statement made in a petition filed under Section 11700 and any statement of interest filed under Section 11702. The court shall not hear or consider a petition filed after the time prescribed in Section 11700.

(b) The personal representative may file papers and otherwise participate in the proceeding as a party to assist the court.

11705. (a) The court shall make an order that determines the persons entitled to distribution of the decedent's estate and specifies their shares.

(b) When the court order becomes final it binds and is conclusive as to the rights of all interested persons.

CHAPTER 3. DISTRIBUTION OF PROPERTY IN ESTATE

11750. (a) The personal representative is responsible for distribution of the property in the estate in compliance with the terms of the court order for distribution.

(b) A distributee may demand, sue for, and recover from the personal representative or any person in possession, property to which the distributee is entitled.

(c) A distribution of property made in compliance with the terms of the court order for distribution is valid as to a person acting in good faith and for a valuable consideration.

11751. The personal representative shall obtain the receipt of the distributee for property in the estate distributed by the personal representative. In the case of real property, the personal representative shall record the court order for distribution or the personal representative's deed or both in the county in which the real property is located. Recordation of the order or deed is deemed to be a receipt of the distributee for the property.

11752. If personal property in the possession of a distributee is subject to possession by the distributee for life only, the personal representative shall demand an inventory of the property from the distributee. On receipt, the personal representative shall file the inventory with the court and deliver a copy to any distributee of the remainder.

11753. (a) Distribution in compliance with the court order entitles the personal representative to a full discharge with respect to property included in the order.

(b) The personal representative shall, before or at the time of the

petition for discharge, file receipts for all property in the estate. In the case of real property, the personal representative shall file a statement that identifies the date and place of the recording and other appropriate recording information for the court order for distribution or the personal representative's deed.

(c) The court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt and that the property has been delivered to or is in the possession of the distributee.

CHAPTER 4. DECEASED DISTRIBUTEE

11801. (a) Except as provided in subdivision (b), the share in a decedent's estate of a beneficiary who survives the decedent but who dies before distribution shall be distributed under this chapter with the same effect as though the distribution were made to the beneficiary while living.

(b) Subject to Section 21525, distribution may not be made under this chapter if the decedent's will provides that the beneficiary is entitled to take under the will only if the beneficiary survives the date of distribution or other period stated in the will and the beneficiary fails to survive the date of distribution or other period.

11802. If a beneficiary satisfies the requirement of Section 11801, the beneficiary's share in the decedent's estate shall be distributed as follows:

(a) Except as otherwise provided in this section, distribution shall be made to the personal representative of the estate of the beneficiary for the purpose of administration in the estate of the beneficiary.

(b) If the beneficiary was issue of the decedent and died intestate while under the age of majority and not having been emancipated, distribution shall be made directly to the heirs of the beneficiary without administration in the estate of the beneficiary.

(c) If a person entitled to the beneficiary's share proceeds under Division 8 (commencing with Section 13000) (disposition of estate without administration), distribution shall be made under Division 8.

CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

11850. Subject to Section 11851, the personal representative may deposit property to be distributed with the county treasurer of the county in which the proceedings are pending in the name of the distributee in any of the following cases:

(a) The property remains in the possession of the personal representative unclaimed or the whereabouts of the distributee is unknown.

(b) The distributee refuses to give a receipt for the property.

(c) The distributee is a minor or incompetent person who has no

guardian, conservator, or other fiduciary to receive the property or person authorized to give a receipt for the property.

(d) For any other reason the property cannot be distributed, and the personal representative desires discharge. Notwithstanding Section 11851, deposit may not be made under this subdivision except on court order.

11851. (a) If property authorized by Section 11850 to be deposited with the county treasurer consists of money, the personal representative may deposit the money.

(b) If property authorized by Section 11850 to be deposited with the county treasurer consists of personal property other than money, the personal representative may not deposit the personal property except on court order. If it appears to the court that sale is for the benefit of interested persons, the court shall order the personal property sold, and the proceeds of sale, less expenses of sale allowed by the court, shall be deposited in the county treasury. If it appears to the court that sale is not for the benefit of interested persons, the court shall order the personal property deposited with the Controller, to be held subject to the provisions of Chapter 6 (commencing with Section 11900).

11852. The county treasurer shall give a receipt for a deposit made under this chapter and is liable on the official bond of the county treasurer for the money deposited. The receipt has the same effect as if executed by the distributee.

11853. If money is deposited or is already on deposit with the county treasurer, the personal representative shall deliver to the county treasurer a certified copy of the order for distribution.

11854. (a) A person may claim money on deposit in the county treasury by filing a petition with the court that made the order for distribution. The petition shall show the person's claim or right to the property. The petition shall state the facts required to be stated in a petition for escheated property filed under Section 1355 of the Code of Civil Procedure. On the filing of the petition, the same proceedings shall be had as are required by that section, except that the hearing shall be ex parte unless the court orders otherwise.

(b) If so ordered by the court, a copy of the petition shall be served on the Attorney General. The Attorney General may answer the petition, at the Attorney General's discretion.

(c) If the court is satisfied that the claimant has a right to the property claimed, the court shall make an order establishing the right. On presentation of a certified copy of the order, the county auditor shall draw a warrant on the county treasurer for the amount of money covered by the order.

(d) A claim for money distributed in the estate of a deceased person made after the deposit of the property in the State Treasury is governed by the provisions of Chapter 3 (commencing with Section 1335) of Title 10 of Part 3 of the Code of Civil Procedure.

CHAPTER 6. DISTRIBUTION TO STATE

11900. (a) The court shall order property that is not ordered distributed to known beneficiaries to be distributed to the state.

(b) Insofar as practicable, any real property or tangible personal property shall be converted to money before distribution to the state.

11901. If the court orders distribution of property in the decedent's estate to the state, and the order includes words that otherwise create a trust in favor of unknown or unidentified persons as a class, the distribution shall vest in the state both legal and equitable title to the property.

11902. (a) If the court orders distribution to the state, the personal representative shall promptly:

(1) Deliver any money to the State Treasurer.

(2) Deliver any personal property other than money to the Controller for deposit in the State Treasury.

(3) Cause a certified copy of the order to be recorded in the office of the county recorder of each county in which any real property is located.

(b) At the time of making a delivery of property or recordation under this section, the personal representative shall deliver to the Controller a certified copy of the order for distribution together with a statement of the date and place of each recording and other appropriate recording information.

11903. (a) Property distributed to the state shall be held by the Treasurer for a period of five years from the date of the order for distribution, within which time any person may claim the property in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(b) A person who does not claim the property within the time prescribed in this section is forever barred, and the property vests absolutely in the state, subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

11904. No deposit of property in an estate shall be made in the county treasury by a personal representative if any other property in the estate is to be or has been distributed to the state under this chapter, but the property that would otherwise be deposited in the county treasury shall be transmitted promptly to the State Treasurer or Controller as provided in this chapter.

CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

11950. (a) If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid

the distribution of undivided interests.

(b) A proceeding under this chapter is limited to interests in the property that are subject to administration and does not include other interests except to the extent the owners of other interests in the property consent to be bound by the partition, allotment, or other division.

11951. (a) A petition under this chapter may be filed at any time before an order for distribution of the affected property becomes final.

(b) The petition shall:

(1) Describe the property.

(2) State the names of the persons having or claiming undivided interests.

(3) Describe the undivided interests, so far as known to the petitioner.

11952. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 to the personal representative and to the persons entitled to distribution of the undivided interests.

(b) At the hearing the persons entitled to distribution of the undivided interests shall be considered the parties to the proceeding whether or not they have appeared or filed a responsive pleading. No one shall be considered as a plaintiff or as a defendant.

(c) Any objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in Chapter 11 (commencing with Section 9860) of Part 5.

11953. (a) The court shall partition, allot, or otherwise divide the property so that each party receives property with a value proportionate to the value of the party's interest in the whole.

(b) The court may direct the personal representative to sell property where, under the circumstances, sale would be more equitable than partition and where the property cannot conveniently be allotted to any one party. The sale shall be conducted in the same manner as other sales made during administration of an estate.

(c) Any two or more parties may agree to accept undivided interests.

11954. (a) The court, in its discretion, may appoint one or three referees to partition property capable of being partitioned, if requested to do so by a party. The number of referees appointed must conform to the request of at least one of the parties.

(b) The referees shall have the powers and perform the duties of referees in, and the court shall have the same powers with respect to their report as in, partition actions under Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure.

11955. The expenses of partition shall be equitably apportioned by the court among the parties, but each party must pay the party's own attorney's fees. The amount charged to each party shall be included and specified in the order and, to the extent unpaid, constitutes a lien on the property allotted to the party.

11956. (a) The partition, allotment, or other division made by the court shall control in proceedings for distribution, unless modified for good cause on reasonable notice.

(b) The proceedings leading to the partition, allotment, or other division may be reviewed on appeal from the order for distribution.

CHAPTER 8. INTEREST AND INCOME ACCRUING DURING ADMINISTRATION

12000. The provisions of this chapter apply where the intention of the testator is not otherwise indicated by the will.

12001. If interest is payable under this chapter:

(a) The rate of interest is one percentage point greater than the minimum rate that would be payable on a Series EE United States savings bond purchased one year after the date of the testator's death and held to maturity. If there is no minimum rate payable on a Series EE United States savings bond, the rate of interest is three percentage points less than the legal rate on judgments in effect one year after the date of the testator's death.

(b) The rate of interest provided in subdivision (a) shall remain fixed at the applicable rate in effect one year after the date of the testator's death and shall not be recomputed in the event of a change in the applicable rate thereafter.

12002. (a) Except as provided in this section, a specific devise does not bear interest.

(b) A specific devise carries with it income on the devised property from the date of death, less expenses attributable to the devised property during administration of the estate. For purposes of this section, expenses attributable to property are expenses that result directly from the use or ownership of the property, including property tax and tax on the income from the property, but excluding estate and generation-skipping transfer taxes.

(c) If income of specifically devised property is not sufficient to pay expenses attributable to the property, the deficiency shall be paid out of the estate until the property is distributed to the devisee or the devisee takes possession of or occupies the property, whichever occurs first. To the extent a deficiency paid out of the estate is attributable to the period that commences one year after the testator's death, whether paid during or after expiration of the one year period following the date of death, the amount paid is a charge against the share of the devisee, and the personal representative has an equitable lien on the specifically devised property as against the devisee in the amount paid.

(d) If specifically devised property is sold during administration of the estate, the devisee is entitled to the net income from the property until the date of sale, and to interest on the net sale proceeds thereafter, but no interest accrues during the first year after the testator's death.

12003. If a general pecuniary devise, including a general

pecuniary devise in trust, is not distributed within one year after the testator's death, the devise bears interest thereafter.

12004. (a) An annuity commences at the testator's death and shall be paid at the end of the annual, monthly, or other specified period.

(b) If an annuity is not paid at the end of the specified period, it bears interest thereafter, but no interest accrues during the first year after the testator's death.

12005. A devisee of a devise for maintenance is entitled to interest on the amount of any unpaid accumulations of the payments held by the personal representative on each anniversary of the testator's death, computed from the date of the anniversary.

12006. Net income received during administration not paid under other provisions of this chapter and not otherwise devised shall be distributed pro rata as income among all distributees who receive either residuary or intestate property. If a distributee takes for life or for a term of years, the pro rata share of income belongs to the tenant for life or for the term of years.

12007. This chapter does not apply in cases where the decedent died before July 1, 1989. In cases where the decedent died before July 1, 1989, the applicable law in effect before July 1, 1989, continues to apply.

PART 11. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

12200. The personal representative shall either petition for an order for final distribution of the estate or make a report of status of administration not later than the following times:

(a) In an estate for which a federal estate tax return is not required, within one year after the date of issuance of letters.

(b) In an estate for which a federal estate tax return is required, within 18 months after the date of issuance of letters.

12201. If a report of status of administration is made under Section 12200:

(a) The report shall show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate.

(b) The report shall be filed with the court. Notice of hearing of the report shall be given as provided in Section 1220 to persons then interested in the estate, and shall include a statement in not less than 10-point boldface type or a reasonable equivalent thereof if printed, or in all capital letters if not printed, in substantially the following words: "YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNT UNDER SECTION 10950 OF THE CALIFORNIA PROBATE CODE."

(c) On the hearing of the report, the court may order either of the following:

(1) That the administration of the estate continue for the time and on the terms and conditions that appear reasonable, including an account under Section 10950, if the court determines that continuation of administration is in the best interests of the estate or of interested persons.

(2) That the personal representative shall petition for final distribution.

12202. (a) If the personal representative does not petition for final distribution or make a report within the time required by this chapter or prescribed by the court, the court may, on petition of any interested person or on its own motion, cite the personal representative to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) On the hearing of the citation, the court may either order the administration of the estate to continue or order the personal representative to petition for final distribution, as provided in Section 12201.

12203. (a) For purposes of this chapter, continuation of the administration of the estate in order to pay a family allowance is not in the best interests of the estate or interested persons unless the court determines both of the following:

(1) The family allowance is needed by the recipient to pay for necessaries of life, including education so long as pursued to advantage.

(2) The needs of the recipient for continued family allowance outweigh the needs of the decedent's beneficiaries whose interests would be adversely affected by continuing the administration of the estate for this purpose.

(b) Nothing in this section shall be construed to authorize continuation of a family allowance beyond the time prescribed in Section 6543.

(c) Nothing in this section limits the power of the court to order a preliminary distribution of the estate.

12204. Failure of the personal representative to comply with an order made under this chapter is grounds for removal from office.

12205. (a) The court may reduce the compensation of the personal representative or the attorney for the personal representative by an amount the court determines to be appropriate if the court makes all of the following determinations:

(1) The time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court.

(2) The time taken was within the control of the personal representative or attorney whose compensation is being reduced.

(3) The delay was not in the best interest of the estate or interested persons.

(b) An order under this section reducing compensation may be made regardless of whether the compensation otherwise allowable under Part 7 (commencing with Section 10800) would be reasonable

compensation for the services rendered by the personal representative or attorney.

(c) An order under this section may be made at any of the following hearings:

(1) The hearing for final distribution.

(2) The hearing for an allowance on the compensation of the personal representative or attorney.

(d) In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

(Amended by Stats. 1990, Ch. 710, Sec. 42. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

12205. The court may reduce the compensation of the personal representative or the attorney for the personal representative by an amount the court determines to be appropriate if the court makes all of the following determinations:

(1) The time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court.

(2) The time taken was within the control of the personal representative or attorney whose compensation is being reduced.

(3) The delay was not in the best interest of the estate or interested persons.

(b) An order under this section reducing compensation may be made regardless of either of the following conditions

(1) The compensation otherwise allowable under Part 7 (commencing with Section 10800) would be reasonable compensation for the services rendered by the personal representative.

(2) The compensation otherwise paid or to be paid to the attorney for the personal representative would be considered reasonable compensation for the services rendered by the attorney.

(c) An order under this section may be made at any of the following hearings:

(1) The hearing for final distribution.

(2) The hearing for an allowance on the compensation of the personal representative

(3) The hearing under Section 9684 to review the compensation of the attorney for the personal representative.

(d) In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

(e) If the court determines that the attorney for the personal representative has received compensation in excess of the reduced amount allowed under this section, the court shall order the attorney to make an appropriate refund. Part 7 (commencing with Section 10800) would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative and that the delay was not in the best interest of the estate or interested persons In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

12206. A limitation in a will of the time for administration of an estate is directory only and does not limit the power of the personal representative or the court to continue administration of the estate beyond the time limitation in the will if the continuation is necessary.

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

12250. (a) When the personal representative has complied with the terms of the order for final distribution and has filed the

appropriate receipts or the court has excused the filing of a receipt as provided in Section 11753, the court shall, on ex parte petition, make an order discharging the personal representative from all liability incurred thereafter.

(b) Nothing in this section precludes discharge of the personal representative for distribution made without prior court order, so long as the terms of the order for final distribution are satisfied.

12251. (a) At any time after appointment of a personal representative and whether or not letters have been issued, if it appears there is no property of any kind belonging to the estate and subject to administration, the personal representative may petition for the termination of further proceedings and for discharge of the personal representative. The petition shall state the facts required by this subdivision.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all interested persons.

(c) If it appears to the satisfaction of the court on the hearing that the facts stated in the petition are true, the court shall make an order terminating the proceeding and discharging the personal representative.

12252. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order as is directed in relation to an original appointment, except that the person who served as personal representative at the time of the order of discharge has priority.

(b) Notice of hearing of the appointment shall be given as provided in Section 1220 to the person who served as personal representative at the time of the order of discharge and to other interested persons. If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be given as provided in Section 1220 to the Controller.

PART 12. ADMINISTRATION OF ESTATES OF MISSING PERSONS PRESUMED DEAD

12400. Unless the provision or context otherwise requires, as used in this part, "missing person" means a person who is presumed to be dead under Section 12401.

12401. In proceedings under this part, a person who has not been seen or heard from for a continuous period of five years by those who are likely to have seen or heard from that person, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence

to establish that death occurred earlier.

12402. Subject to the provisions of this part, the estate of a missing person may be administered in the manner provided generally for the administration of estates of deceased persons.

12403. (a) If the missing person was a resident of this state when last seen or heard from, the superior court of the county of the person's last known place of residence has jurisdiction for the purposes of this part.

(b) If the missing person was a nonresident of this state when last seen or heard from, the superior court of a county where real property of the missing person is located, or of a county where personal property is located if the missing person has no real property in this state, has jurisdiction for the purposes of this part.

12404. (a) A petition may be filed in the court having jurisdiction under Section 12403 for the administration of the estate of a missing person.

(b) The petition may be filed by any person who may be appointed as a personal representative, other than a person described in subdivision (r) of Section 8461.

(c) In addition to the matters otherwise required in a petition for administration of the estate, the petition shall state all of the following:

(1) The last known place of residence and the last known address of the missing person.

(2) The time and circumstances when the missing person was last seen or heard from.

(3) That the missing person has not been seen or heard from for a continuous period of five years by the persons likely to have seen or heard from the missing person (naming them and their relationship to the missing person) and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(4) A description of the search or the inquiry made concerning the whereabouts of the missing person.

12405. Notice of hearing shall be served and published, and proof made, in the same manner as in proceedings for administration of the estate of a decedent, except that notice of hearing on the petition shall also be sent by registered mail to the missing person at his or her last known address.

12406. (a) At the hearing, the court shall determine whether the alleged missing person is a person who is presumed to be dead under Section 12401. The court may receive evidence and consider the affidavits and depositions of persons likely to have seen or heard from or know the whereabouts of the alleged missing person.

(b) If the court is not satisfied that a diligent search or inquiry has been made for the missing person, the court may order the petitioner to conduct a diligent search or inquiry and to report the results. The court may order the search or inquiry to be made in any manner that the court determines to be advisable, including any or all of the following methods:

(1) Inserting in one or more suitable newspapers or other periodicals a notice requesting information from any person having knowledge of the whereabouts of the missing person.

(2) Notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the missing person.

(3) Engaging the services of an investigator.

(c) The costs of a search ordered by the court pursuant to subdivision (b) shall be paid by the estate of the missing person, but if there is no administration, the court in its discretion may order the petitioner to pay the costs.

12407. (a) If the court finds that the alleged missing person is a person presumed to be dead under Section 12401, the court shall do both of the following:

(1) Appoint a personal representative for the estate of the missing person in the manner provided for the estates of deceased persons.

(2) Determine the date of the missing person's death.

(b) The personal representative shall administer the estate of the missing person in the same general manner and method of procedure, and with the same force and effect, as provided for the administration of the estates of deceased persons, except as otherwise provided in this part.

12408. (a) If the missing person reappears:

(1) The missing person may recover property of the missing person's estate in the possession of the personal representative, less fees, costs, and expenses thus far incurred.

(2) The missing person may recover from distributees any property of the missing person's estate that is in their possession, or the value of distributions received by them, to the extent that recovery from distributees is equitable in view of all the circumstances, but an action under this paragraph is forever barred five years after the time the distribution was made.

(b) The remedies available to the missing person under subdivision (a) are exclusive, except for any remedy the missing person may have by reason of fraud or intentional wrongdoing.

(c) Except as provided in subdivisions (a) and (b), the order for final distribution, when it becomes final, is conclusive as to the rights of the missing person, the rights of the beneficiaries of the missing person, and the rights of all other persons interested in the estate.

(d) If a dispute arises as to the identity of a person claiming to be a reappearing missing person, the person making the claim or any other interested person may file a petition under Section 11700, notwithstanding the limitations of time prescribed in Section 11700, for the determination of the identity of the person claiming to be the reappearing missing person.

PART 13. NONDOMICILIARY DECEDENTS

CHAPTER 1. DEFINITIONS

12500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

12501. "Ancillary administration" means proceedings in this state for administration of the estate of a nondomiciliary decedent.

12502. "Foreign nation" means a jurisdiction other than a state of the United States.

12503. "Foreign nation personal representative" means a personal representative appointed in a jurisdiction other than a state of the United States.

12504. "Local personal representative" means a nondomiciliary decedent's personal representative appointed in this state.

12505. "Nondomiciliary decedent" means a person who dies domiciled in a sister state or foreign nation.

12506. "Sister state" means a state other than this state.

12507. "Sister state personal representative" means a personal representative appointed in a sister state.

CHAPTER 2. ANCILLARY ADMINISTRATION

Article 1. Opening Ancillary Administration

12510. Any interested person, or a sister state or foreign nation personal representative, may commence an ancillary administration proceeding by a petition to the court for either or both of the following:

(a) Probate of the nondomiciliary decedent's will.

(b) Appointment of a local personal representative.

12511. The proper county for an ancillary administration proceeding under this chapter is the county determined pursuant to Section 7052.

12512. Notice of an ancillary administration proceeding shall be given and, except as provided in Article 2 (commencing with Section 12520), the same proceedings had as in the case of a petition for probate of a will or appointment of a personal representative of a person who dies domiciled in this state.

12513. If the decedent dies while domiciled in a sister state, a personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates a different person to be the personal representative in this state. The sister state personal representative may nominate another person as personal representative and the nominee has the same priority as the sister state personal representative.

Article 2. Probate of Nondomiciliary Decedent's Will Admitted to Probate in Sister State or Foreign Nation

12520. (a) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation and satisfies the requirements of this article, probate of the will in an ancillary administration proceeding is governed by this article.

(b) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation, but does not satisfy the requirements of this article, the will may be probated in an ancillary administration proceeding pursuant to Part 2 (commencing with Section 8000).

12521. (a) A petition for probate of a nondomiciliary decedent's will under this article shall include both of the following:

(1) The will or an authenticated copy of the will.

(2) An authenticated copy of the order admitting the will to probate in the sister state or foreign nation or other evidence of the establishment or proof of the will in accordance with the law of the sister state or foreign nation.

(b) As used in this section, "authenticated copy" means a copy that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

12522. If a will of a nondomiciliary decedent was admitted to probate, or established or proved, in accordance with the laws of a sister state, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, unless one or more of the following are shown:

(a) The determination in the sister state is not based on a finding that at the time of death the decedent was domiciled in the sister state.

(b) One or more interested parties were not given notice and an opportunity for contest in the proceedings in the sister state.

(c) The determination in the sister state is not final.

12523. (a) Except as provided in subdivision (b), if a will of a nondomiciliary decedent was admitted to probate, or established or proved, in accordance with the laws of a foreign nation, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, if it appears from the order admitting the will to probate in the foreign nation, or otherwise appears, that all of the following conditions are satisfied:

(1) The determination in the foreign nation is based on a finding that at the time of death the decedent was domiciled in the foreign nation.

(2) All interested parties were given notice and an opportunity for contest in the proceedings in the foreign nation.

(3) The determination in the foreign nation is final.

(b) The court may refuse to admit the will, even though it is shown to satisfy the conditions provided in subdivision (a), where the order admitting the will was made under a judicial system that

does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

12524. A nondomiciliary decedent's will admitted to probate under this article has the same force and effect as the will of a person who dies while domiciled in this state that is admitted to probate in this state.

Article 3. Application of General Provisions

12530. Except to the extent otherwise provided in this chapter, ancillary administration of a decedent's estate is subject to all other provisions of this code concerning the administration of the decedent's estate, including, but not limited to, opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration.

Article 4. Distribution of Property to Sister State Personal Representative

12540. (a) If a person dies while domiciled in a sister state, the court in an ancillary administration proceeding may make an order for preliminary or final distribution of all or part of the decedent's personal property in this state to the sister state personal representative if distribution is in the best interest of the estate or interested persons.

(b) The court order shall be made in the manner and pursuant to the procedure provided in, and is subject to the provisions of, Chapter 1 (commencing with Section 11600) of Part 10.

12541. If necessary to make distribution pursuant to this article, real property in the nondomiciliary decedent's estate may be sold and the court may order the proceeds to be distributed to the sister state personal representative. The sale shall be made in the same manner as other sales of real property of a decedent.

12542. If the nondomiciliary decedent's estate in the sister state where the decedent was domiciled is insolvent, distribution may be made only to the sister state personal representative and not to the beneficiaries.

CHAPTER 3. COLLECTION OF PERSONAL PROPERTY OF SMALL ESTATE BY SISTER STATE PERSONAL REPRESENTATIVE WITHOUT ANCILLARY ADMINISTRATION

12570. If a nondomiciliary decedent's property in this state satisfies the requirements of Section 13100, a sister state personal representative may, without petitioning for ancillary administration, use the affidavit procedure provided by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 to collect personal property of the decedent.

12571. The effect of payment, delivery, or transfer of personal property to the sister state personal representative pursuant to this chapter, and the effect of failure to do so, are governed by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8.

12572. The sister state personal representative may bring an action against a holder of the decedent's property, and may be awarded attorney's fees, as provided in subdivision (b) of Section 13105.

12573. A sister state personal representative who takes property by affidavit under this chapter is not liable as a person to whom payment, delivery, or transfer of the decedent's property is made under Section 13109 or 13110 to the extent that the sister state personal representative restores the property to the nondomiciliary decedent's estate in the sister state in compliance with Section 13111.

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

12590. A sister state personal representative or foreign nation personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by any of the following actions:

(a) Filing a petition for ancillary administration.

(b) Receiving money or other personal property pursuant to Chapter 3 (commencing with Section 12570). Jurisdiction under this subdivision is limited to the amount of money and the value of personal property received.

(c) Doing any act in this state as a personal representative that would have given this state jurisdiction over the personal representative as an individual.

12591. A sister state personal representative or foreign nation personal representative is subject to the jurisdiction of the courts of this state in a representative capacity to the same extent that the nondomiciliary decedent was subject to jurisdiction at the time of death.

DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

PART 1. COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION

CHAPTER 1. DEFINITIONS

13000. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

13002. "Holder of the decedent's property" or "holder" means, with respect to any particular item of property of the decedent, the person owing money to the decedent, having custody of tangible

personal property of the decedent, or acting as registrar or transfer agent of the evidences of a debt, obligation, interest, right, security, or chose in action belonging to the decedent.

13004. "Particular item of property" means, respectively, particular personal property of the decedent which is sought to be collected, received, or transferred by the successor of the decedent under Chapter 3 (commencing with Section 13100), or particular real property of the decedent for which the successor of the decedent seeks a court order determining succession under Chapter 4 (commencing with Section 13150) or with respect to which the successor of the decedent files an affidavit of succession under Chapter 5 (commencing with Section 13200). Subject to this section, "particular item of property" includes all interests specified in Section 62.

13006. "Successor of the decedent" means:

(a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent's will. For the purposes of this part, the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

(b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or, if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.

CHAPTER 2. GENERAL PROVISIONS

13050. (a) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. For the purposes of this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" are defined in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5.

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent

or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding five thousand dollars ($5,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

13051. For the purposes of this part:

(a) A guardian or conservator of the estate of a person entitled to any of the decedent's property may act on behalf of the person without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(b) A trustee of a trust created during the decedent's lifetime may act on behalf of the trust. In the case of a trust that is subject to continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9, the trustee may act on behalf of the trust without the need to obtain approval of the court.

(c) If the decedent's will nominates a custodian to receive a devise to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state and the nomination has not been revoked, the custodian may act on behalf of the beneficiary until such time as the custodianship terminates.

(d) A sister state personal representative may act on behalf of the beneficiaries as provided in Chapter 3 (commencing with Section 12570) of Part 13 of Division 7.

(e) The attorney in fact authorized under a durable power of attorney may act on behalf of the beneficiary giving the power of attorney.

13052. In making an appraisal for the purposes of this part, the probate referee shall use the date of the decedent's death as the date of valuation of the property.

13053. (a) Except as provided in subdivision (b), this part applies whether the decedent died before, on, or after July 1, 1987.

(b) This part does not apply and the law in effect at the time of payment, delivery, or transfer shall apply if the payment, delivery, or transfer was made prior to July 1, 1987, pursuant to former Probate

Code Sections 630 to 632, inclusive, repealed by Chapter 783 of the Statutes of 1986.

13054. A reference in any statute of this state or in a written instrument, including a will or trust, to a provision of former Sections 630 to 632, inclusive, repealed by Chapter 783, Statutes of 1986, shall be deemed to be a reference to the comparable provisions of Chapter 3 (commencing with Section 13100).

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY

13100. Excluding the property described in Section 13050, if the gross value of the decedent's real and personal property in this state does not exceed sixty thousand dollars ($60,000) and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

(a) Collect any particular item of property that is money due the decedent.

(b) Receive any particular item of property that is tangible personal property of the decedent.

(c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

(4) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(5) "The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed sixty thousand dollars ($60,000)."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate:

(A) "The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

(B) "The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

(9) "No other person has a right to the interest of the decedent in the described property."

(10) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(11) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

(d) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

13102. (a) If the decedent had evidence of ownership of the property described in the affidavit or declaration and the holder of the property would have had the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of ownership, if available, shall be presented with the affidavit or declaration to the holder of the decedent's property.

(b) If the evidence of ownership is not presented to the holder pursuant to subdivision (a), the holder may require, as a condition for the payment, delivery, or transfer of the property, that the person presenting the affidavit or declaration provide the holder with a bond or undertaking in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. Nothing in this subdivision precludes the holder and the person presenting the affidavit or declaration from dispensing with the requirement that a bond or undertaking be provided and instead entering into an agreement satisfactory to the holder concerning the duty of the person presenting the affidavit or declaration to indemnify the holder.

13103. If the estate of the decedent includes any real property in

this state, the affidavit or declaration shall be accompanied by an inventory and appraisal of the real property. The inventory and appraisal of the real property shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The appraisal shall be made by a probate referee selected by the affiant or declarant from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located.

13104. (a) Reasonable proof of the identity of each person executing the affidavit or declaration shall be provided to the holder of the decedent's property.

(b) Reasonable proof of identity is provided for the purposes of this section if both of the following requirements are satisfied:

(1) The person executing the affidavit or declaration is personally known to the holder.

(2) The person executes the affidavit or declaration in the presence of the holder.

(c) If the affidavit or declaration is executed in the presence of the holder, a written statement under penalty of perjury by a person personally known to the holder affirming the identity of the person executing the affidavit or declaration is reasonable proof of identity for the purposes of this section.

(d) If the affidavit or declaration is executed in the presence of the holder, the holder may reasonably rely on any of the following as reasonable proof of identity for the purposes of this section:

(1) An identification card or driver's license issued by the Department of Motor Vehicles of this state that is current or was issued during the preceding five years.

(2) A passport issued by the Department of State of the United States that is current or was issued during the preceding five years.

(3) Any of the following documents if the document is current or was issued during the preceding five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(A) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(B) A driver's license issued by a state other than California.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the armed forces of the United States.

(e) For the purposes of this section, a notary public's certificate of acknowledgment identifying the person executing the affidavit or declaration is reasonable proof of identity of the person executing the affidavit or declaration.

(f) Unless the affidavit or declaration contains a notary public's certificate of acknowledgment of the identity of the person, the holder shall note on the affidavit or declaration either that the person executing the affidavit or declaration is personally known or a

description of the identification provided by the person executing the affidavit or declaration.

13105. (a) If the requirements of Sections 13100 to 13104, inclusive, are satisfied:

(1) The person or persons executing the affidavit or declaration as successor of the decedent are entitled to have the property described in the affidavit or declaration paid, delivered, or transferred to them.

(2) A transfer agent of a security described in the affidavit or declaration shall change the registered ownership on the books of the corporation from the decedent to the person or persons executing the affidavit or declaration as successor of the decedent.

(b) If the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this section, the court shall award reasonable attorney's fees to the person or persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them as required by subdivision (a).

13106. (a) If the requirements of Sections 13100 to 13104, inclusive, are satisfied, receipt by the holder of the decedent's property of the affidavit or declaration constitutes sufficient acquittance for the payment of money, delivery of property, or changing registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit or declaration and has no duty to inquire into the truth of any statement in the affidavit or declaration.

(b) If the requirements of Sections 13100 to 13104, inclusive, are satisfied, the holder of the decedent's property is not liable for any taxes due to this state by reason of paying money, delivering property, or changing registered ownership of property pursuant to this chapter.

13106.5. (a) If the particular item of property transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration described in Section 13101 shall be recorded in the office of the county recorder of that county and, in addition to the contents required by Section 13101, shall include both of the following:

(1) The recording reference of the instrument creating the lien.

(2) A notary public's certificate of acknowledgment identifying each person executing the affidavit or declaration.

(b) The transfer under this chapter of the debt or obligation secured by a lien on real property has the same effect as would be

given to an assignment of the right to collect the debt or enforce the obligation. The recording of the affidavit or declaration under subdivision (a) shall be given the same effect as is given under Sections 2934 and 2935 of the Civil Code to recording an assignment of a mortgage and an assignment of the beneficial interest under a deed of trust.

(c) If a deed of trust upon the real property was given to secure the debt and the requirements of subdivision (a) and of Sections 13100 to 13103, inclusive, are satisfied:

(1) The trustee under the deed of trust may rely in good faith on the statements made in the affidavit or declaration and has no duty to inquire into the truth of any statement in the affidavit or declaration.

(2) A person acting in good faith and for a valuable consideration may rely upon a recorded reconveyance of the trustee under the deed of trust.

(d) If a mortgage upon the real property was given to secure the debt and the requirements of subdivision (a) and of Sections 13100 to 13103, inclusive, are satisfied, a person acting in good faith and for a valuable consideration may rely upon a recorded discharge of the mortgage executed by the person or persons executing the affidavit or declaration as successor of the decedent or by their successors in interest.

13107. Where the money or property claimed in an affidavit or declaration presented under this chapter is that of a deceased heir or devisee of a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit or declaration to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person or persons identified by the affidavit or declaration as the successor of the decedent to the extent that the order for distribution determines that the deceased heir or devisee was entitled to the money or property under the will or the laws of succession.

13108. (a) The procedure provided by this chapter may be used only if no proceeding for the administration of the decedent's estate is pending or has been conducted in this state.

(b) Payment, delivery, or transfer of a decedent's property pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate.

13109. A person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable, to the extent provided in Section 13112, for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had

not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 353 of the Code of Civil Procedure applies in an action under this section.

(Amended by Stats. 1990, Ch. 140, Sec. 15.1. Operative July 1, 1991, by Sec. 31 of chapter.)

[ORIGINAL SECTION]

13109. A person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable, to the extent provided in Section 13112, for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

13110. (a) Except as provided in subdivision (b), each person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable to the extent provided in Section 13112 to any person having a superior right by testate or intestate succession from the decedent.

(b) In addition to any other liability the person has under this section and Sections 13109, 13111, and 13112, any person who fraudulently secures the payment, delivery, or transfer of the decedent's property under this chapter is liable to the person having such a superior right for three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value of the property paid, delivered, or transferred to the person liable under this subdivision, valued as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter to the holder of the decedent's property, excluding any liens and encumbrances on that property at that time.

(c) An action to impose liability under this section is forever barred three years after the affidavit or declaration is presented under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

13111. (a) Subject to the provisions of this section, if proceedings for the administration of the decedent's estate are commenced in this state, each person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is liable for:

(1) The restitution of the property to the estate if the person still has the property, together with (A) the net income the person received from the property and (B) if the person encumbered the property after it was delivered or transferred to the person, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.

(2) The restitution to the estate of the fair market value of the property if the person no longer has the property, together with (A)

the net income the person received from that property and (B) interest on the fair market value of the property from the date of disposition at the rate payable on a money judgment. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, valued as of the time of the disposition of the property, of the property paid, delivered, or transferred to the person under this chapter, excluding any liens and encumbrances on the property at that time.

(b) Subject to subdivision (c) and subject to any additional liability the person has under Sections 13109 to 13112, inclusive, if the person fraudulently secured the payment, delivery, or transfer of the decedent's property under this chapter, the person is liable under this section for restitution to the decedent's estate of three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, valued as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter, of the property paid, delivered, or transferred to the person under this chapter, excluding the amount of any liens and encumbrances on the property at that time.

(c) The property and amount required to be restored to the estate under this section shall be reduced by any property or amount paid by the person to satisfy a liability under Section 13109 or 13110.

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court's judgment may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

(e) An action to enforce the liability under this section is forever barred three years after presentation of the affidavit or declaration under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(f) In the case of a nondomiciliary decedent, restitution under this section shall be made to the estate in an ancillary administration proceeding.

13112. (a) A person to whom payment, delivery, or transfer of the decedent's property has been made under this chapter is not liable under Section 13109 or 13110 if proceedings for the administration of the decedent's estate are commenced in this state, and the person satisfies the requirements of Section 13111.

(b) Except as provided in subdivision (b) of Section 13110, the aggregate of the personal liability of a person under Sections 13109 and 13110 shall not exceed the fair market value, valued as of the time the affidavit or declaration is presented under this chapter, of the property paid, delivered, or transferred to the person under this chapter, less the amount of any liens and encumbrances on that

property at that time, together with the net income the person received from the property and, if the property has been disposed of, interest on the fair market value of the property accruing from the date of disposition at the rate payable on a money judgment. For the purposes of this subdivision, "fair market value of the property" has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13111.

13113. The remedies available under Sections 13109 to 13112, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

13114. (a) A public administrator who has taken possession or control of property of a decedent under Article 1 (commencing with Section 7600) of Chapter 4 of Part 1 of Division 7 may refuse to pay money or deliver property pursuant to this chapter if payment of the costs and fees described in Section 7604 has not first been made or adequately assured to the satisfaction of the public administrator.

(b) A coroner who has property found upon the body of a decedent, or who has taken charge of property of the decedent pursuant to Section 27491.3 of the Government Code, may refuse to pay or deliver the property pursuant to this chapter if payment of the reasonable costs of holding or safeguarding the property has not first been made or adequately assured to the satisfaction of the coroner.

13115. The procedure provided in this chapter may not be used to obtain possession or the transfer of real property.

13116. The procedure provided in this chapter is in addition to and supplemental to any other procedure for (1) collecting money due to a decedent, (2) receiving tangible personal property of a decedent, or (3) having evidence of ownership of property of a decedent transferred. Nothing in this chapter restricts or limits the release of tangible personal property of a decedent pursuant to any other provision of law. This section is declaratory of existing law.

CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO REAL PROPERTY

13150. The procedure provided by this chapter may be used only if no proceeding is being or has been conducted in this state for administration of the decedent's estate.

13151. Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed sixty thousand dollars ($60,000) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property and that administration of the decedent's estate is

unnecessary.

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the particular item of property described in the petition is property passing to the petitioner and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed sixty thousand dollars ($60,000).

(3) A description of the particular item of property in this state which the petitioner alleges is property of the decedent passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described real property is property passing to the petitioner.

(5) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 8802 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The appraisal shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

(c) If the petitioner bases his or her claim to the described particular item of property upon the will of the decedent, a copy of the will shall be attached to the petition.

13153. Notice of the hearing shall be given as provided in Section 1220 to each of the persons named in the petition pursuant to Section

13152.

13154. (a) If the court makes the determinations required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) that no administration of the decedent's estate is necessary.

(b) The court may make an order under this section only if the court makes all of the following determinations:

(1) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, does not exceed sixty thousand dollars ($60,000).

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) No proceeding is being or has been conducted in this state for administration of the decedent's estate.

(4) The real property described in the order is property of the decedent passing to the petitioner.

(c) If the petition has attached an inventory and appraisal that satisfies the requirements of subdivision (b) of Section 13152, the determination required by paragraph (1) of subdivision (b) of this section shall be made on the basis of the verified petition and the attached inventory and appraisal, unless evidence is offered by a person opposing the petition that the gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, exceeds sixty thousand dollars ($60,000).

13155. Upon becoming final, an order under this chapter determining that real property is property passing to the petitioner is conclusive on all persons, whether or not they are in being.

13156. (a) Subject to subdivisions (b), (c), and (d), the petitioner who receives the decedent's property pursuant to an order under this chapter is personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the petitioner may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

(e) Section 353 of the Code of Civil Procedure applies in an action under this section.

(Amended by Stats 1990, Ch. 140, Sec. 16.1. Operative July 1, 1991, by Sec. 32 of chapter.)

[ORIGINAL SECTION]

13156. (a) Subject to subdivisions (b), (c), and (d), the petitioner who receives

the decedent's property pursuant to an order under this chapter is personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the petitioner may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

13157. The attorney's fees for services performed in connection with the filing of a petition and obtaining a court order under this chapter shall be determined by private agreement between the attorney and the client and are not subject to approval by the court. If there is no agreement between the attorney and the client concerning the attorney's fees for services performed in connection with the filing of a petition and obtaining of a court order under this chapter and there is a dispute concerning the reasonableness of the attorney's fees for those services, a petition may be filed with the court in the same proceeding requesting that the court determine the reasonableness of the attorney's fees for those services. If there is an agreement between the attorney and the client concerning the attorney's fees for services performed in connection with the filing of a petition and obtaining a court order under this chapter and there is a dispute concerning the meaning of the agreement, a petition may be filed with the court in the same proceeding requesting that the court determine the dispute.

CHAPTER 5. AFFIDAVIT PROCEDURE FOR REAL PROPERTY OF SMALL VALUE

13200. (a) No sooner than six months from the death of a decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death, then in any county in which real property of the decedent is located, an affidavit in the form prescribed by the Judicial Council pursuant to Section 13209 stating all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) A legal description of the real property and the interest of the decedent therein.

(4) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to the affiant.

(5) "The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisal attached to this affidavit, excluding the real property described in

Section 13050 of the California Probate Code, does not exceed ten thousand dollars ($10,000)."

(6) "At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to this affidavit."

(7) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(8) "Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid."

(9) "The affiant is the successor of the decedent (as defined in Section 13006 of the Probate Code) and to the decedent's interest in the described property, and no other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant declares under penalty of perjury under the law of the State of California that the foregoing is true and correct."

(b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person.

(c) There shall be attached to the affidavit an inventory and appraisal of the decedent's real property in this state, excluding the real property described in Section 13050. The inventory and appraisal of the real property shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The appraisal shall be made by a probate referee selected by the affiant from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located.

(d) If the person or persons executing the affidavit claim under the decedent's will, a copy of the will shall be attached to the affidavit.

(e) A certified copy of the decedent's death certificate shall be attached to the affidavit.

(f) The affiant shall mail a copy of the affidavit and attachments to any person identified in paragraph (4) of subdivision (a).

13201. Notwithstanding any other provision of law, the total fee for the filing of an affidavit under Section 13200 and the issuance of one certified copy of the affidavit under Section 13202 is thirty-five dollars ($35).

13202. Upon receipt of the affidavit and the required fee, the court clerk, upon determining that the affidavit is complete and has the required attachments, shall file the affidavit and attachments and shall issue a certified copy of the affidavit without the attachments. The certified copy shall be recorded in the office of the county recorder of the county where the real property is located. The county recorder shall index the certified copy in the index of grantors and grantees. The decedent shall be indexed as the grantor and each person designated as a successor to the property in the certified copy shall be indexed as a grantee.

13203. (a) A person acting in good faith and for a valuable consideration with a person designated as a successor of the decedent

to a particular item of property in a certified copy of an affidavit issued under Section 13202 and recorded in the county in which the real property is located has the same rights and protections as the person would have if each person designated as a successor in the recorded certified copy of the affidavit had been named as a distributee of the real property in an order for distribution that had become final.

(b) The issuance and recording of a certified copy of an affidavit under this chapter does not preclude later proceedings for administration of the decedent's estate.

13204. Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 353 of the Code of Civil Procedure applies in an action under this section.

(Amended by Stats. 1990, Ch. 140, Sec. 17.1. Operative July 1, 1991, by Sec. 33 of chapter)

[ORIGINAL SECTION]

13204. Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

13205. (a) Except as provided in subdivision (b), each person who is designated as a successor of the decedent in a certified copy of any affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 to any person having a superior right by testate or intestate succession from the decedent.

(b) In addition to any other liability the person has under this section and Sections 13204, 13206, and 13207, if the person fraudulently executed or filed the affidavit under this chapter, the person is liable to the person having a superior right for three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, valued as of the time the certified copy of the affidavit was issued under Section 13202, of the property the person liable took under the certified copy of the affidavit to which the other person has a superior right, excluding any liens and encumbrances on the property at that time.

(c) An action to impose liability under this section is forever barred three years after the certified copy of the affidavit is issued under Section 13202, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

13206. (a) Subject to subdivisions (b), (c), (d), and (e), if proceedings for the administration of the decedent's estate are commenced, each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is liable for:

(1) The restitution to the decedent's estate of the property the person took under the certified copy of the affidavit if the person still has the property, together with (A) the net income the person received from the property and (B) if the person encumbered the property after the certified copy of the affidavit was issued, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.

(2) The restitution to the decedent's estate of the fair market value of the property if the person no longer has the property, together with (A) the net income the person received from the property prior to disposing of it and (B) interest from the date of disposition at the rate payable on a money judgment on the fair market value of the property. For the purposes of this paragraph, the "fair market value of the property" is the fair market value, valued as of the time of the disposition of the property, of the property the person took under the certified copy of the affidavit, excluding the amount of any liens and encumbrances on the property at the time the certified copy of the affidavit was issued.

(b) Subject to subdivision (d), if the person fraudulently executed or filed the affidavit under this chapter, the person is liable under this section for restitution to the decedent's estate of three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, valued as of the time the certified copy of the affidavit was issued, of the property the person took under the certified copy of the affidavit, excluding the amount of any liens and encumbrances on the property at that time.

(c) Subject to subdivision (d), if proceedings for the administration of the decedent's estate are commenced and a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 made a significant improvement to the property taken by the person under the certified copy of the affidavit in the good faith belief that the person was the successor of the decedent to that property, the person is liable for whichever of the following the decedent's estate elects:

(1) The restitution of the property, as improved, to the estate of the decedent upon the condition that the estate reimburse the person making restitution for (A) the amount by which the improvement increases the fair market value of the property

restored, valued as of the time of restitution, and (B) the amount paid by the person for principal and interest on any liens or encumbrances that were on the property at the time the certified copy of the affidavit was issued.

(2) The restoration to the decedent's estate of the fair market value of the property, valued as of the time of the issuance of the certified copy of the affidavit under Section 13202, excluding the amount of any liens and encumbrances on the property at that time, together with interest on the net amount at the rate payable on a money judgment running from the date of the issuance of the certified copy of the affidavit.

(d) The property and amount required to be restored to the estate under this section shall be reduced by any property or amount paid by the person to satisfy a liability under Section 13204 or 13205.

(e) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court's judgment may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

(f) An action to enforce the liability under this section is forever barred three years after the certified copy of the affidavit is issued under Section 13202, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

13207. (a) A person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is not liable under Section 13204 or 13205 if proceedings for the administration of the decedent's estate are commenced and the person satisfies the requirements of Section 13206.

(b) Except as provided in subdivision (b) of Section 13205, the aggregate of the personal liability of a person under Sections 13204 and 13205 shall not exceed the fair market value at the time of the issuance of the certified copy of the affidavit under Section 13202 of the decedent's property received by that person under this chapter, less the amount of any liens and encumbrances on the property at that time, together with the net income the person received from the property and, if the property has been disposed of, interest on the fair market value of the property from the date of disposition at the rate payable on a money judgment. For the purposes of this subdivision, "fair market value of the property" has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13206.

13208. The remedies available under Sections 13204 to 13207, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

PART 2. PASSAGE OF PROPERTY TO SURVIVING SPOUSE WITHOUT ADMINISTRATION

CHAPTER 1. GENERAL PROVISIONS

13500. Except as provided in this chapter, when a husband or wife dies intestate leaving property that passes to the surviving spouse under Section 6401, or dies testate and by his or her will devises all or a part of his or her property to the surviving spouse, the property passes to the survivor subject to the provisions of Chapter 2 (commencing with Section 13540) and Chapter 3 (commencing with Section 13550), and no administration is necessary.

13501. Except as provided in Chapter 6 (commencing with Section 6600) of Division 6 and in Part 1 (commencing with Section 13000) of this division, the following property of the decedent is subject to administration under this code:

(a) Property passing to someone other than the surviving spouse under the decedent's will or by intestate succession.

(b) Property disposed of in trust under the decedent's will.

(c) Property in which the decedent's will limits the surviving spouse to a qualified ownership. For the purposes of this subdivision, a devise to the surviving spouse that is conditioned on the spouse surviving the decedent by a specified period of time is not a "qualified ownership" interest if the specified period of time has expired.

13502. (a) Upon the election of the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse, all or a portion of the following property may be administered under this code:

(1) The one-half of the community property that belongs to the decedent under Section 100, the one-half of the quasi-community property that belongs to the decedent under Section 101, and the separate property of the decedent.

(2) The one-half of the community property that belongs to the surviving spouse under Section 100 and the one-half of the quasi-community property that belongs to the surviving spouse under Section 101.

(b) The election shall be made by a writing specifically evidencing the election filed in the proceedings for the administration of the estate of the deceased spouse within four months after the issuance of letters, or within any further time that the court may allow upon a showing of good cause, and before entry of an order under Section 13656.

13503. (a) The surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file an election and agreement to have all or part of the one-half of the community property that belongs to the surviving spouse under Section 100 and the one-half of the quasi-community property that belongs to the surviving spouse under Section 101

transferred by the surviving spouse or the surviving spouse's personal representative, guardian, or conservator to the trustee under the will of the deceased spouse or the trustee of an existing trust identified by the will of the deceased spouse, to be administered and distributed by the trustee.

(b) The election and agreement shall be filed in the proceedings for the administration of the estate of the deceased spouse and before the entry of the order for final distribution in the proceedings.

13504. Notwithstanding the provisions of this part, community property held in a revocable trust described in Section 5110.150 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

13505. This part applies whether the deceased spouse died before, on, or after July 1, 1987.

13506. A reference in any statute of this state or in a written instrument, including a will or trust, to a provision of former Sections 202 to 206, inclusive, of the Probate Code (as repealed by Chapter 527 of the Statutes of 1984) or former Sections 649.1 to 649.5, inclusive, or Sections 650 to 658, inclusive, of the Probate Code (as repealed by Chapter 783 of the Statutes of 1986) shall be deemed to be a reference to the comparable provision of this part.

CHAPTER 2. RIGHT OF SURVIVING SPOUSE TO DISPOSE OF REAL PROPERTY

13540. (a) Except as provided in Section 13541, after 40 days from the death of a spouse, the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse has full power to sell, lease, mortgage, or otherwise deal with and dispose of the community or quasi-community real property, and the right, title, and interest of any grantee, purchaser, encumbrancer, or lessee shall be free of rights of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse.

(b) Nothing in this section affects or limits the liability of the surviving spouse under Sections 13550 to 13553, inclusive.

13541. (a) Section 13540 does not apply if, within 40 days from the death of the spouse, a notice that satisfies the requirements of this section is recorded in the office of the county recorder of the county in which real property is located.

(b) The notice shall contain all of the following:

(1) A description of the real property in which an interest is claimed.

(2) A statement that an interest in the property is claimed by a named person under the will of the deceased spouse.

(3) The name or names of the owner or owners of the record title to the property.

(c) There shall be endorsed on the notice instructions that it shall

be indexed by the recorder in the name or names of the owner or owners of record title to the property, as grantor or grantors, and in the name of the person claiming an interest in the property, as grantee.

13542. The repeal of former Section 649.2 by Chapter 783 of the Statutes of 1986 does not affect any sale, lease, mortgage, or other transaction or disposition of real property made prior to July 1, 1987, to which that section applied, and such a sale, lease, mortgage, or other transaction or disposition shall continue to be governed by the provisions of former Section 649.2 notwithstanding the repeal of that section.

CHAPTER 3. LIABILITY FOR DEBTS OF DECEASED SPOUSE

13550. Except as provided in Sections 11446, 13552, 13553, and 13554, upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the property described in Section 13551 to the extent provided in Section 13551.

13551. The liability imposed by Section 13550 shall not exceed the fair market value at the date of the decedent's death, less the amount of any liens and encumbrances, of the total of the following:

(a) The portion of the one-half of the community and quasi-community property belonging to the surviving spouse under Sections 100 and 101 that is not exempt from enforcement of a money judgment and is not administered in the estate of the deceased spouse.

(b) The portion of the one-half of the community and quasi-community property belonging to the decedent under Sections 100 and 101 that passes to the surviving spouse without administration.

(c) The separate property of the decedent that passes to the surviving spouse without administration.

13552. If proceedings are commenced in this state for the administration of the estate of the deceased spouse and the time for filing claims has commenced, any action upon the liability of the surviving spouse pursuant to Section 13550 is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(a) Creditors who commence judicial proceedings for the enforcement of the debt and serve the surviving spouse with the complaint therein prior to the expiration of the time for filing claims.

(b) Creditors who have or who secure the surviving spouse's acknowledgment in writing of the liability of the surviving spouse for the debts.

(c) Creditors who file a timely claim in the proceedings for the administration of the estate of the deceased spouse.

13553. The surviving spouse is not liable under this chapter if all the property described in paragraphs (1) and (2) of subdivision (a)

of Section 13502 is administered under this code.

13554. (a) Except as otherwise provided in this chapter, any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died.

(b) In any action or proceeding based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

(c) Section 353 of the Code of Civil Procedure applies in an action under this section.

(Amended by Stats. 1990, Ch. 140, Sec. 18.1. Operative July 1, 1991, by Sec. 34 of chapter.)

[ORIGINAL SECTION]

13554. (a) Except as otherwise provided in this chapter, any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died.

(b) In any action based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

CHAPTER 4. COLLECTION BY AFFIDAVIT OF COMPENSATION OWED TO DECEASED SPOUSE

13600. (a) At any time after a husband or wife dies, the surviving spouse or the guardian or conservator of the estate of the surviving spouse may, without procuring letters of administration or awaiting probate of the will, collect salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of five thousand dollars ($5,000) net.

(b) Not more than five thousand dollars ($5,000) net in the aggregate may be collected by or for the surviving spouse under this chapter from all of the employers of the decedent.

(c) For the purposes of this chapter, a guardian or conservator of the estate of the surviving spouse may act on behalf of the surviving spouse without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

13601. (a) To collect salary or other compensation under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the employer of the deceased spouse stating all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) Either of the following, as appropriate:

(A) "The affiant or declarant is the surviving spouse of the decedent."

(B) "The affiant or declarant is the guardian or conservator of the estate of the surviving spouse of the decedent."

(4) "The surviving spouse of the decedent is entitled to the

earnings of the decedent under the decedent's will or by intestate succession and no one else has a superior right to the earnings."

(5) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(6) "Sections 13600 to 13605, inclusive, of the California Probate Code require that the earnings of the decedent, including compensation for unused vacation, not in excess of five thousand dollars ($5,000) net, be paid promptly to the affiant or declarant."

(7) "Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has a pending request to collect compensation owed by another employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code."

(8) "Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has collected any compensation owed by an employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code except the sum of _____ dollars ($_____) which was collected from _____."

(9) "The affiant or declarant requests that he or she be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation, not to exceed five thousand dollars ($5,000) net, less the amount of _____ dollars ($_____) which was previously collected."

(10) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(c) Reasonable proof of the identity of the surviving spouse shall be provided to the employer. If a guardian or conservator is acting for the surviving spouse, reasonable proof of the identity of the guardian or conservator shall also be provided to the employer. Proof of identity that is sufficient under Section 13104 is sufficient proof of identity for the purposes of this subdivision.

(d) If a person presenting the affidavit or declaration is a person claiming to be the guardian or conservator of the estate of the surviving spouse, the employer shall be provided with reasonable proof, satisfactory to the employer, of the appointment of the person to act as guardian or conservator of the estate of the surviving spouse.

13602. If the requirements of Section 13600 are satisfied, the employer to whom the affidavit or declaration is presented shall promptly pay the earnings of the decedent, including compensation for unused vacation, not in excess of five thousand dollars ($5,000) net, to the person presenting the affidavit or declaration.

13603. If the requirements of Section 13601 are satisfied, receipt by the employer of the affidavit or declaration constitutes sufficient acquittance for the compensation paid pursuant to this chapter and discharges the employer from any further liability with respect to the compensation paid. The employer may rely in good faith on the statements in the affidavit or declaration and has no duty to inquire into the truth of any statement in the affidavit or declaration.

13604. (a) If the employer refuses to pay as required by this chapter, the surviving spouse may recover the amount the surviving spouse is entitled to receive under this chapter in an action brought for that purpose against the employer.

(b) If an action is brought against the employer under this section, the court shall award reasonable attorney's fees to the surviving spouse if the court finds that the employer acted unreasonably in refusing to pay as required by this chapter.

13605. (a) Nothing in this chapter limits the rights of the heirs or devisees of the deceased spouse. Payment of a decedent's compensation pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate.

(b) Any person to whom payment is made under this chapter is answerable and accountable therefor to the personal representative of the decedent's estate and is liable for the amount of the payment to any other person having a superior right to the payment received. In addition to any other liability the person has under this section, a person who fraudulently secures a payment under this chapter is liable to a person having a superior right to the payment for three times the amount of the payment.

13606. The procedure provided in this chapter is in addition to, and not in lieu of, any other method of collecting compensation owed to a decedent.

CHAPTER 5. DETERMINATION OR CONFIRMATION OF PROPERTY PASSING OR BELONGING TO SURVIVING SPOUSE

13650. (a) A surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file a petition in the superior court of the county in which the estate of the deceased spouse may be administered requesting an order that administration of all or part of the estate is not necessary for the reason that all or part of the estate is property passing to the surviving spouse. The petition may also request an order confirming the ownership of the surviving spouse of property belonging to the surviving spouse under Section 100 or 101.

(b) To the extent of the election, this section does not apply to property that the petitioner has elected, as provided in Section 13502, to have administered under this code.

(c) A guardian or conservator may file a petition under this section without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

13651. (a) A petition filed pursuant to Section 13650 shall allege that administration of all or a part of the estate of the deceased spouse is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse, and shall set forth all of the following information:

(1) If proceedings for the administration of the estate are not pending, the facts necessary to determine the county in which the

estate of the deceased spouse may be administered.

(2) A description of the property of the deceased spouse which the petitioner alleges is property passing to the surviving spouse, including the trade or business name of any property passing to the surviving spouse that consists of an unincorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death.

(3) The facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse.

(4) A description of any interest in the community property or quasi-community property, or both, which the petitioner requests the court to confirm to the surviving spouse as belonging to the surviving spouse pursuant to Section 100 or 101.

(5) The name, age, address, and relation to the deceased spouse of each heir and devisee of the deceased spouse, the names and addresses of all persons named as executors of the will of the deceased spouse, and the names and addresses of all persons appointed as personal representatives of the deceased spouse, which are known to the petitioner.

(b) If the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse, a copy of the will shall be attached to the petition.

13652. If proceedings for the administration of the estate of the deceased spouse are pending, a petition under this chapter shall be filed in those proceedings without the payment of an additional fee.

13653. If proceedings for the administration of the estate of the deceased spouse are not pending, a petition under this chapter may, but need not, be filed with a petition for probate of the will of the deceased spouse or for administration of the estate of the deceased spouse.

13654. The filing of a petition under this chapter does not preclude the court from admitting the will of the deceased spouse to probate or appointing a personal representative of the estate of the deceased spouse upon the petition of any person legally entitled, including any petition for probate of the will or for administration of the estate which is filed with a petition filed under this chapter.

13655. (a) If a petition filed under this chapter is filed with a petition for probate of the deceased spouse's will or with a petition for administration of the estate of the deceased spouse, notice of the hearing on the petition shall be given in the manner prescribed by Section 8003 and shall be included in the notice required by that section.

(b) If proceedings for the administration of the estate of the deceased spouse are pending at the time a petition is filed under this chapter, or if the proceedings are not pending and if the petition filed under this chapter is not filed with a petition for probate of the deceased spouse's will or for administration of the estate of the

deceased spouse, notice of the hearing on the petition filed under this chapter shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220 and each person named as executor in any will of the deceased spouse.

(2) All devisees and known heirs of the deceased spouse and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804.

(c) The notice specified in subdivision (b) shall also be mailed as provided in subdivision (b) to the Attorney General, addressed to the office of the Attorney General at Sacramento, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either of the following:

(1) A testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state.

(2) A devise for a charitable purpose without an identified devisee or beneficiary.

13656. (a) If the court finds that all of the estate of the deceased spouse is property passing to the surviving spouse, the court shall issue an order describing the property, determining that the property is property passing to the surviving spouse, and determining that no administration is necessary. The court may issue any further orders which may be necessary to cause delivery of the property or its proceeds to the surviving spouse.

(b) If the court finds that all or part of the estate of the deceased spouse is not property passing to the surviving spouse, the court shall issue an order (1) describing any property which is not property passing to the surviving spouse, determining that that property does not pass to the surviving spouse and determining that that property is subject to administration under this code and (2) describing the property, if any, which is property passing to the surviving spouse, determining that that property passes to the surviving spouse, and determining that no administration of that property is necessary. If the court determines that property passes to the surviving spouse, the court may issue any further orders which may be necessary to cause delivery of that property or its proceeds to the surviving spouse.

(c) If the petition filed under this chapter includes a description of the interest of the surviving spouse in the community or quasi-community property, or both, which belongs to the surviving spouse pursuant to Section 100 or 101 and the court finds that the interest belongs to the surviving spouse, the court shall issue an order describing the property and confirming the ownership of the surviving spouse and may issue any further orders which may be

necessary to cause ownership of the property to be confirmed in the surviving spouse.

13657. Upon becoming final, an order under Section 13656 (1) determining that property is property passing to the surviving spouse or (2) confirming the ownership of the surviving spouse of property belonging to the surviving spouse under Section 100 or 101 shall be conclusive on all persons, whether or not they are in being.

13658. If the court determines that all or a part of the property passing to the surviving spouse consists of an unincorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death, the court shall require the surviving spouse to file a list of all of the known creditors of the business and the amounts owing to each of them. The court may issue any order necessary to protect the interests of the creditors of the business, including, but not limited to, the filing of (1) an undertaking and (2) an inventory and appraisal in the form provided in Section 8802 and made as provided in Part 3 (commencing with Section 8800) of Division 7.

13659. Except as provided in Section 13658, no inventory and appraisal of the estate of the deceased spouse is required in a proceeding under this chapter. However, within three months after the filing of a petition under this chapter, or within such further time as the court or judge for reasonable cause may allow, the petitioner may file with the clerk of the court an inventory and appraisal made as provided in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

13660. The attorney's fees for services performed in connection with the filing of a petition and obtaining of a court order under this chapter shall be determined by private agreement between the attorney and the client and are not subject to approval by the court. If there is no agreement between the attorney and the client concerning the attorney's fees for services performed in connection with the filing of a petition and obtaining of a court order under this chapter and there is a dispute concerning the reasonableness of the attorney's fees for those services, a petition may be filed with the court in the same proceeding requesting that the court determine the reasonableness of the attorney's fees for those services. If there is an agreement between the attorney and the client concerning the attorney's fees for services performed in connection with the filing of a petition and obtaining a court order under this chapter and there is a dispute concerning the meaning of the agreement, a petition may be filed with the court in the same proceeding requesting that the court determine the dispute.

DIVISION 9. TRUST LAW

PART 1. GENERAL PROVISIONS

15000. This division shall be known and may be cited as the Trust Law.

15001. Except as otherwise provided by statute:

(a) This division applies to all trusts regardless of whether they were created before, on, or after July 1, 1987.

(b) This division applies to all proceedings concerning trusts commenced on or after July 1, 1987.

(c) This division applies to all proceedings concerning trusts commenced before July 1, 1987, unless in the opinion of the court application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies.

15002. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

15003. (a) Nothing in this division affects the law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code by Chapter 820 of the Statutes of 1986 was not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

(c) Nothing in this division or in Section 82 is intended to prevent the application of all or part of the principles or procedures of this division to an entity or relationship that is excluded from the definition of "trust" provided by Section 82 where these principles or procedures are applied pursuant to statutory or common law principles, by court order or rule, or by contract.

(Amended by Stats. 1990, Ch. 710, Sec. 43. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

15003. (a) Nothing in this division affects the law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code by Chapter 820 of the Statutes of 1986 was not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

(c) Nothing in this division or in Section 82 is intended to prevent the application of all or part of the principles or procedures of this division to an entity or relationship that is excluded from the definition of "trust" provided by Section 82 where these principles or procedures are applied pursuant to statutory or common law principles, by court order or rule, or by contract.

15004. Unless otherwise provided by statute, this division applies to charitable trusts that are subject to the jurisdiction of the Attorney General to the extent that the application of the provision is not in conflict with the Uniform Supervision of Trustees for Charitable Purposes Act, Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code.

PART 2. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

CHAPTER 1. CREATION AND VALIDITY OF TRUSTS

15200. Subject to other provisions of this chapter, a trust may be created by any of the following methods:

(a) A declaration by the owner of property that the owner holds the property as trustee.

(b) A transfer of property by the owner during the owner's lifetime to another person as trustee.

(c) A transfer of property by the owner, by will or by other instrument taking effect upon the death of the owner, to another person as trustee.

(d) An exercise of a power of appointment to another person as trustee.

(e) An enforceable promise to create a trust.

15201. A trust is created only if the settlor properly manifests an intention to create a trust.

15202. A trust is created only if there is trust property.

15203. A trust may be created for any purpose that is not illegal or against public policy.

15204. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

15205. (a) A trust, other than a charitable trust, is created only if there is a beneficiary.

(b) The requirement of subdivision (a) is satisfied if the trust instrument provides for either of the following:

(1) A beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class.

(2) A grant of a power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

15206. A trust in relation to real property is not valid unless evidenced by one of the following methods:

(a) By a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so.

(b) By a written instrument conveying the trust property signed by the settlor, or by the settlor's agent if authorized in writing to do so.

(c) By operation of law.

15207. (a) The existence and terms of an oral trust of personal property may be established only by clear and convincing evidence.

(b) The oral declaration of the settlor, standing alone, is not sufficient evidence of the creation of a trust of personal property.

(c) In the case of an oral trust, a reference in this division or elsewhere to a trust instrument or declaration means the terms of the trust as established pursuant to subdivision (a).

15208. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

15209. If a trust provides for one or more successor beneficiaries after the death of the settlor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(a) Where there is one settlor who is the sole trustee and the sole beneficiary during the settlor's lifetime.

(b) Where there are two or more settlors, one or more of whom are trustees, and the beneficial interest in the trust is in one or more of the settlors during the lifetime of the settlors.

15210. A trust created pursuant to this chapter which relates to real property may be recorded in the office of the county recorder in the county where all or a portion of the real property is located.

CHAPTER 2. RESTRICTIONS ON VOLUNTARY AND INVOLUNTARY TRANSFERS

15300. Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that a beneficiary's interest in income is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

15301. (a) Except as provided in subdivision (b) and in Sections 15304 to 15307, inclusive, if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(b) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court under Section 709.010 of the Code of Civil Procedure by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.

15302. Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

15303. (a) If the trust instrument provides that the trustee shall

pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(b) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process in a proceeding under Section 709.010 of the Code of Civil Procedure by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subdivision does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 15300 or 15301.

(c) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(d) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

15304. (a) If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(b) If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

15305. (a) As used in this section, "support judgment" means a money judgment for support of the trust beneficiary's spouse or former spouse or minor child.

(b) 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, the court may, to the extent that the court determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of the support judgment out of all or part of those payments as they become due and payable, presently or in the future.

(c) 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, the court may, to the extent that the court

determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of the support judgment out of all or part of 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.

(d) This section applies to a support judgment notwithstanding any provision in the trust instrument.

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 10000) of the Welfare and Institutions Code, this subdivision is not applicable and the provisions of subdivision (a) are to be applied.

15306.5. (a) Notwithstanding a restraint on transfer of the beneficiary's interest in the trust under Section 15300 or 15301, and subject to the limitations of this section, upon a judgment creditor's petition under Section 709.010 of the Code of Civil Procedure, the court may make an order directing the trustee to satisfy all or part

of the judgment out of the payments to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined or determines in the future to pay to the beneficiary.

(b) An order under this section may not require that the trustee pay in satisfaction of the judgment an amount exceeding 25 percent of the payment that otherwise would be made to, or for the benefit of, the beneficiary.

(c) An order under this section may not require that the trustee pay in satisfaction of the judgment any amount that the court determines is necessary for the support of the beneficiary and all the persons the beneficiary is required to support.

(d) An order for satisfaction of a support judgment, as defined in Section 15305, has priority over an order to satisfy a judgment under this section. Any amount ordered to be applied to the satisfaction of a judgment under this section shall be reduced by the amount of an order for satisfaction of a support judgment under Section 15305, regardless of whether the order for satisfaction of the support judgment was made before or after the order under this section.

(e) If the trust gives the trustee discretion over the payment of either principal or income of a trust, or both, nothing in this section affects or limits that discretion in any manner. The trustee has no duty to oppose a petition to satisfy a judgment under this section or to make any claim for exemption on behalf of the beneficiary. The trustee is not liable for any action taken, or omitted to be taken, in compliance with any court order made under this section.

(f) Subject to subdivision (d), the aggregate of all orders for satisfaction of money judgments against the beneficiary's interest in the trust may not exceed 25 percent of the payment that otherwise would be made to, or for the benefit of, the beneficiary.

15307. Notwithstanding a restraint on transfer of a beneficiary's interest in the trust under Section 15300 or 15301, any amount to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined to pay to the beneficiary in excess of the amount that is or will be necessary for the education and support of the beneficiary may be applied to the satisfaction of a money judgment against the beneficiary. Upon the judgment creditor's petition under Section 709.010 of the Code of Civil Procedure, the court may make an order directing the trustee to satisfy all or part of the judgment out of the beneficiary's interest in the trust.

15308. Any order entered by a court under Section 15305, 15306, 15306.5, or 15307 is subject to modification upon petition of an interested person filed in the court where the order was made.

15309. A disclaimer or renunciation by a beneficiary of all or part of his or her interest under a trust shall not be considered a transfer under Section 15300 or 15301.

CHAPTER 3. MODIFICATION AND TERMINATION OF TRUSTS

15400. Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor. This section applies only where the settlor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

15401. (a) A trust that is revocable by the settlor may be revoked in whole or in part by any of the following methods:

(1) By compliance with any method of revocation provided in the trust instrument.

(2) By a writing (other than a will) signed by the settlor and delivered to the trustee during the lifetime of the settlor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation, the trust may not be revoked pursuant to this paragraph.

(b) A trust may not be modified or revoked by an attorney in fact under a power of attorney unless it is expressly permitted by the trust instrument.

(c) Nothing in this section limits the authority to modify or terminate a trust pursuant to Section 15403 or 15404 in an appropriate case.

(d) The manner of revocation of a trust revocable by the settlor that was created by an instrument executed before July 1, 1987, is governed by prior law and not by this section.

15402. Unless the trust instrument provides otherwise, if a trust is revocable by the settlor, the settlor may modify the trust by the procedure for revocation.

15403. (a) Except as provided in subdivision (b), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(b) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in Chapter 2 (commencing with Section 15300).

15404. (a) If the settlor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(b) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the settlor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(c) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the settlor,

or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

15405. For the purposes of Sections 15403 and 15404, the consent of a beneficiary who lacks legal capacity, including a minor, or who is an unascertained or unborn person may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In determining whether to give consent, the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

15406. In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to Section 15403 or 15404, the presumption of fertility is rebuttable.

15407. (a) A trust terminates when any of the following occurs:

(1) The term of the trust expires.

(2) The trust purpose is fulfilled.

(3) The trust purpose becomes unlawful.

(4) The trust purpose becomes impossible to fulfill.

(5) The trust is revoked.

(b) On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

15408. (a) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the settlor, order any of the following:

(1) Termination of the trust.

(2) Modification of the trust.

(3) Appointment of a new trustee.

(b) Notwithstanding subdivision (a), if the trust principal does not exceed twenty thousand dollars ($20,000) in value, the trustee has the power to terminate the trust.

(c) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

15409. (a) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(b) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

15410. At the termination of a trust, the trust property shall be disposed of as follows:

(a) In the case of a trust that is revoked by the settlor, as directed by the settlor.

(b) In the case of a trust that is terminated by the consent of the settlor and all beneficiaries, as agreed by the settlor and all beneficiaries.

(c) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument.

(d) If a trust is terminated by the trustee pursuant to subdivision (b) of Section 15408, the trust property may be distributed as determined by the trustee pursuant to the standard provided in subdivision (c) without the need for a court order. Where the trust instrument does not provide a manner of distribution at termination and the settlor's intent is not adequately expressed in the trust instrument, the trustee may distribute the trust property to the living beneficiaries on an actuarial basis.

15411. If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

15412. On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

PART 3. TRUSTEES AND BENEFICIARIES

CHAPTER 1. TRUSTEES

Article 1. General Provisions

15600. (a) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(1) Signing the trust instrument or the trust instrument as modified, or signing a separate written acceptance.

(2) Knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subdivision (b).

(b) In a case where there is an immediate risk of damage to the

trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within a reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the settlor or, if the settlor is dead or incompetent, to a beneficiary. This subdivision does not impose a duty on the person named as trustee to act.

15601. (a) A person named as trustee may in writing reject the trust or a modification of the trust.

(b) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in subdivision (a) of Section 15600 within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(c) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to the rejected trust or modification.

15602. (a) A trustee is not required to give a bond to secure performance of the trustee's duties, unless any of the following circumstances occurs:

(1) A bond is required by the trust instrument.

(2) Notwithstanding a waiver of a bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(3) An individual who is not named as a trustee in the trust instrument is appointed as a trustee by the court.

(b) Notwithstanding paragraph (1) of subdivision (a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties.

(c) If a bond is required, it shall be filed or served and shall be in the amount and with sureties and liabilities ordered by the court.

(d) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(e) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

15603. On application by the trustee, the court clerk shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

Article 2. Cotrustees

15620. Unless otherwise provided in the trust instrument, a power vested in two or more trustees may only be exercised by their unanimous action.

15621. Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

15622. Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust, as if they are the only trustees, where necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property.

Article 3. Resignation and Removal of Trustees

15640. A trustee who has accepted the trust may resign only by one of the following methods:

(a) As provided in the trust instrument.

(b) In the case of a revocable trust, with the consent of the person holding the power to revoke the trust.

(c) In the case of a trust that is not revocable, with the consent of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought. If a beneficiary has a conservator, the conservator may consent to the trustee's resignation on behalf of the conservatee without obtaining court approval. Without limiting the power of the beneficiary to consent to the trustee's resignation, if the beneficiary has designated an attorney in fact who has the power under the power of attorney to consent to the trustee's resignation, the attorney in fact may consent to the resignation.

(d) Pursuant to a court order obtained on petition by the trustee under Section 17200. The court shall accept the trustee's resignation and may make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

15641. The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

15642. (a) A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under Section 17200.

(b) The grounds for removal of a trustee by the court include the following:

(1) Where the trustee has committed a breach of the trust.

(2) Where the trustee is insolvent or otherwise unfit to administer the trust.

(3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.

(4) Where the trustee fails or declines to act.

(5) Where the trustee's compensation is excessive under the circumstances.

(6) For other good cause.

(c) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a

petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

15643. There is a vacancy in the office of trustee in any of the following circumstances:

(a) The person named as trustee rejects the trust.

(b) The person named as trustee cannot be identified or does not exist.

(c) The trustee resigns or is removed.

(d) The trustee dies.

(e) A conservator or guardian of the person or estate of an individual trustee is appointed.

(f) The trustee files a petition for adjudication of bankruptcy or for approval of an arrangement, composition, or other extension under the federal Bankruptcy Code, or a petition filed against the trustee for any of these purposes is approved.

(g) A trust company's charter is revoked or powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(h) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

15644. When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

15645. If the trustee of a trust that is not revocable has refused to transfer administration of the trust to a successor trust company on request of the beneficiaries described in subdivision (c) of Section 15640 and the court in subsequent proceedings under Section 17200 makes an order removing the existing trustee and appointing a trust company as successor trustee, the court may, in its discretion, award costs and reasonable attorney's fees incurred by the petitioner in the proceeding to be paid by the trustee or from the trust as ordered by the court.

Article 4. Appointment of Trustees

15660. (a) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(b) If the trust instrument provides a practical method of

appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(c) If the vacancy in the office of trustee is not filled as provided in subdivision (b), the vacancy may be filled by a trust company that has agreed to accept the trust on agreement of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the agreement is made. If a beneficiary has a conservator, the conservator may agree to the successor trustee on behalf of the conservatee without obtaining court approval. Without limiting the power of the beneficiary to agree to the successor trustee, if the beneficiary has designated an attorney in fact who has the power under the power of attorney to agree to the successor trustee, the attorney in fact may agree to the successor trustee.

(d) If the vacancy in the office of trustee is not filled as provided in subdivision (b) or (c), on petition of a cotrustee or beneficiary, the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

Article 5. Compensation and Indemnification of Trustees

15680. (a) Subject to subdivision (b), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(b) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(1) Where the duties of the trustee are substantially different from those contemplated when the trust was created.

(2) Where the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high.

(3) In extraordinary circumstances calling for equitable relief.

(c) An order fixing or allowing greater or lesser compensation under subdivision (b) applies only prospectively to actions taken in administration of the trust after the order is made.

15681. If the trust instrument does not specify the trustee's compensation, the trustee is entitled to reasonable compensation under the circumstances.

15682. The court may fix an amount of periodic compensation under Sections 15680 and 15681 to continue for as long as the court determines is proper.

15683. Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

15684. A trustee is entitled to the repayment out of the trust

property for the following:

(a) Expenditures that were properly incurred in the administration of the trust.

(b) To the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

15685. The trustee has an equitable lien on the trust property as against the beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

15686. (a) As used in this section, "trustee's fee" includes, but is not limited to, the trustee's periodic base fee, rate of percentage compensation, minimum fee, hourly rate, and transaction charge, but does not include fees for extraordinary services.

(b) A trustee may not charge an increased trustee's fee for administration of a particular trust unless the trustee first gives at least 60 days' written notice of that increased fee to each beneficiary of the trust whose interest may be affected by the increased fee.

(c) If a beneficiary files a petition under Section 17200 for review of the increased trustee's fee or for removal of the trustee and serves a copy of the petition on the trustee before the expiration of the 60-day period, the increased trustee's fee does not take effect as to that trust until otherwise ordered by the court or the petition is dismissed.

CHAPTER 2. BENEFICIARIES

15800. Except to the extent that the trust instrument otherwise provides or where the joint action of the settlor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(a) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division.

(b) The duties of the trustee are owed to the person holding the power to revoke.

15801. (a) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(b) This section does not apply where the joint consent of the settlor and all beneficiaries is required by statute.

15802. Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

15803. The holder of a presently exercisable general power of

appointment or power to withdraw property from the trust has the rights of a person holding the power to revoke the trust that are provided by Sections 15800 to 15802, inclusive, to the extent of the holder's power over the trust property.

15804. (a) Subject to subdivisions (b) and (c), it is sufficient compliance with a requirement in this division that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(1) Where an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened immediately before the commencement of the proceedings.

(2) Where an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living person, notice shall be given to the living person.

(3) Where an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(b) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subdivision (a), notice shall also be given to persons not otherwise entitled to notice under subdivision (a) with respect to whom the conflict of interest exists.

(c) Nothing in this section affects any of the following:

(1) Requirements for notice to a person who has requested special notice, a person who has filed notice of appearance, or a particular person or entity required by statute to be given notice.

(2) Availability of a guardian ad litem pursuant to Section 1003.

15805. Notwithstanding any other provision of law, the Attorney General is subject to the limitations on the rights of beneficiaries of revocable trusts provided by Sections 15800 to 15802, inclusive.

PART 4. TRUST ADMINISTRATION

CHAPTER 1. DUTIES OF TRUSTEES

Article 1. Trustee's Duties in General

16000. On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to

the extent the trust instrument provides otherwise, according to this division.

16001. (a) Except as provided in subdivision (b), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time (1) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given or (2) by the person to whom the settlor delegates the right to direct the trustee.

(b) If a written direction given under subdivision (a) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

16002. (a) The trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(b) It is not a violation of the duty provided in subdivision (a) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(1) The sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts.

(2) The trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

16003. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

16004. (a) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(b) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid in good faith for the claim.

(c) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subdivision does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

16005. The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

16006. The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

16007. The trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.

16008. (a) Except as provided in subdivision (b), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(b) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

16009. The trustee has a duty to do the following:

(a) To keep the trust property separate from other property not subject to the trust.

(b) To see that the trust property is designated as property of the trust.

16010. The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

16011. The trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

16012. (a) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(b) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

16013. If a trust has more than one trustee, each trustee has a duty to do the following:

(a) To participate in the administration of the trust.

(b) To take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

16014. (a) The trustee has a duty to apply the full extent of the trustee's skills.

(b) If the settlor, in selecting the trustee, has relied on the trustee's representation of having special skills, the trustee is held to the standard of the skills represented.

16015. The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in Section 16002 or 16004. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control

with another domestic or foreign corporation.

Article 2. Trustee's Standard of Care

16040. (a) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument.

(b) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(c) The settlor may expand or restrict the standards provided in subdivisions (a) and (b) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

16041. A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

16042. If a trust created before, on, or after July 1, 1987, refers to "investments permissible by law for investment of trust funds," "authorized by law for investment of trust funds," "legal investments," "authorized investments," or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital," or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by Section 16040 and authorizing any investment permitted under Chapter 2 (commencing with Section 16200).

Article 3. Trustee's Duty to Report Information and Account to Beneficiaries

16060. The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

16061. Except as provided in Section 16064, on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

16062. (a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustees, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed.

(b) A trustee of a living trust created by an instrument executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a).

(c) A trustee of a trust created by a will executed before July 1, 1987, is not subject to the duty to account provided by subdivision (a), except that if the trust is removed from continuing court jurisdiction pursuant to Article 2 (commencing with Section 17350) of Chapter 4 of Part 5, the duty to account provided by subdivision (a) applies to the trustee.

(d) Except as provided in Section 16064, the duty of a trustee to account pursuant to former Section 1120.1a of the Probate Code (as repealed by Chapter 820 of the Statutes of 1986), under a trust created by a will executed before July 1, 1977, which has been removed from continuing court jurisdiction pursuant to former Section 1120.1a, continues to apply after July 1, 1987. The duty to account under former Section 1120.1a may be satisfied by furnishing an account that satisfies the requirements of Section 16063.

16063. An account furnished pursuant to Section 16062 shall contain the following information:

(a) A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the trust or since the last account.

(b) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust or as of the end of the period covered by the account.

(c) The trustee's compensation for the last complete fiscal year of the trust or since the last account.

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the last complete fiscal year of the trust or since the last account.

(e) A statement that the recipient of the account may petition the court pursuant to Section 17200 to obtain a court review of the account and of the acts of the trustee.

(f) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives an account or report disclosing facts giving rise to the claim.

16064. The trustee is not required to report information or account to a beneficiary in any of the following circumstances:

(a) To the extent the trust instrument waives the report or account.

(b) In the case of a beneficiary of a revocable trust, as provided in Section 15800.

(c) As to a beneficiary who has waived in writing the right to a report or account. A waiver of rights under this subdivision may be withdrawn in writing at any time as to the most recent account and future accounts. A waiver has no effect on the beneficiary's right to petition for a report or account pursuant to Section 17200.

(d) Where the beneficiary and the trustee are the same person.

Article 4. Duties With Regard to Discretionary Powers

16080. Except as provided in Section 16081, a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

16081. (a) Subject to the additional requirements of subdivision (b), if a trust instrument confers "absolute," "sole," or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust.

(b) Notwithstanding the settlor's use of terms like "absolute," "sole," or "uncontrolled," a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

16082. Except as otherwise specifically provided in the trust instrument, a person who holds a power to appoint or distribute income or principal to or for the benefit of others, either as an individual or as trustee, may not use the power to discharge the legal obligations of the person holding the power.

Article 5. Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts

16100. As used in this article, the following definitions shall control:

(a) "Charitable trust" means a charitable trust as described in Section 4947(a)(1) of the Internal Revenue Code.

(b) "Private foundation" means a private foundation as defined in Section 509 of the Internal Revenue Code.

(c) "Split-interest trust" means a split-interest trust as described

in Section 4947(a)(2) of the Internal Revenue Code.

16101. During any period when a trust is deemed to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under Section 4942 of the Internal Revenue Code.

16102. During any period when a trust is deemed to be a charitable trust, a private foundation, or a split-interest trust, the trustee shall not do any of the following:

(a) Engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code.

(b) Retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code.

(c) Make any investments in such manner as to subject the property of the trust to tax under Section 4944 of the Internal Revenue Code.

(d) Make any taxable expenditure as defined in Section 4945(d) of the Internal Revenue Code.

16103. With respect to split-interest trusts:

(a) Subdivisions (b) and (c) of Section 16102 do not apply to any trust described in Section 4947(b)(3) of the Internal Revenue Code.

(b) Section 16102 does not apply with respect to any of the following:

(1) Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under Section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code.

(2) Any amounts in trust other than amounts for which a deduction was allowed under Section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in Section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable.

(3) Any amounts irrevocably transferred in trust before May 27, 1969.

16104. The provisions of Sections 16101, 16102, and 16103 shall be deemed to be contained in the instrument creating every trust to which this article applies. Any provision of the instrument inconsistent with or contrary to this article is without effect.

16105. (a) A proceeding contemplated by Section 101(*l*)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to Section 17200 by the organization involved. All specifically named beneficiaries of the organization and the Attorney General shall be parties to the proceedings. Notwithstanding Section 17000, this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(b) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from

the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

CHAPTER 2. POWERS OF TRUSTEES

Article 1. General Provisions

16200. A trustee has the following powers without the need to obtain court authorization:

(a) The powers conferred by the trust instrument.

(b) Except as limited in the trust instrument, the powers conferred by statute.

(c) Except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in Section 16040.

16201. This chapter does not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

16202. The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

16203. An instrument that incorporates the powers provided in former Section 1120.2 (repealed by Chapter 820 of the Statutes of 1986) shall be deemed to refer to the powers provided in Article 2 (commencing with Section 16220). For this purpose, the trustee's powers under former Section 1120.2 are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

Article 2. Specific Powers of Trustees

16220. The trustee has the power to collect, hold, and retain trust property received from a settlor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained even though it includes property in which the trustee is personally interested.

16221. The trustee has the power to accept additions to the property of the trust from a settlor or any other person.

16222. (a) Subject to subdivision (b), the trustee has the power to continue or participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

(b) Except as provided in subdivision (c), the trustee may continue the operation of a business or other enterprise only as authorized by the trust instrument or by the court. For the purpose of this subdivision, the lease of four or fewer residential units is not

considered to be the operation of a business or other enterprise.

(c) The trustee may continue the operation of a business or other enterprise for a reasonable time pending a court hearing on the matter or pending a sale of the business or other enterprise.

(d) The limitation provided in subdivision (b) does not affect any power to continue or participate in the operation of a business or other enterprise that the trustee has under a trust created by an instrument executed before July 1, 1987.

16223. The trustee has the power to invest in any kind of property, whether real, personal, or mixed.

16224. (a) In the absence of an express provision to the contrary in a trust instrument, where the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of an interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment or reinvestment and to repurchase agreements fully collateralized by United States government obligations.

(b) This section applies only to trusts created on or after January 1, 1985.

16225. (a) The trustee has the power to deposit trust funds at reasonable interest in any of the following accounts:

(1) An insured account in a financial institution.

(2) To the extent that the account is collateralized, an account in a bank, an account in an insured savings and loan association, or an account in an insured credit union.

(b) A trustee may deposit trust funds pursuant to subdivision (a) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subdivision, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(c) This section does not limit the power of a trustee in a proper case to deposit trust funds in an account described in subdivision (a) that is subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(d) The court may authorize the deposit of trust funds in an account described in subdivision (a) in an amount greater than the maximum insured or collateralized amount.

(e) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

16226. The trustee has the power to acquire or dispose of

property, for cash or on credit, at public or private sale, or by exchange.

16227. The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

16228. The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

16229. The trustee has the power to do any of the following:

(a) Make ordinary or extraordinary repairs, alterations, or improvements in buildings or other trust property.

(b) Demolish any improvements.

(c) Raze existing or erect new party walls or buildings.

16230. The trustee has the power to do any of the following:

(a) Subdivide or develop land.

(b) Dedicate land to public use.

(c) Make or obtain the vacation of plats and adjust boundaries.

(d) Adjust differences in valuation on exchange or partition by giving or receiving consideration.

(e) Dedicate easements to public use without consideration.

16231. The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

16232. The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals or geothermal energy, and to enter into a community oil lease or a pooling or unitization agreement, and for a term within or extending beyond the term of the trust.

16233. The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

16234. With respect to any shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to the shares, memberships, or property.

(b) Waive notice of a meeting or give consent to the holding of a meeting.

(c) Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

16235. The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

16236. The trustee has the power to sell or exercise stock subscription or conversion rights.

16237. The trustee has the power to consent, directly or through

a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretion to any protective or other committee as the trustee may deem advisable.

16238. The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery.

16239. The trustee has the power to deposit securities in a securities depository, as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the Financial Code or is exempt from licensing by Section 30005 or 30006 of the Financial Code. The securities may be held by the securities depository in the manner authorized by Section 775 of the Financial Code.

16240. The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

16241. The trustee has the power to borrow money for any trust purpose to be repaid from trust property. The lender may include, but is not limited to, a bank holding company, affiliate, or subsidiary of the trustee.

16242. The trustee has the power to do any of the following:

(a) Pay or contest any claim.

(b) Settle a claim by or against the trust by compromise, arbitration, or otherwise.

(c) Release, in whole or in part, any claim belonging to the trust.

16243. The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

16244. The trustee has the following powers:

(a) To make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances.

(b) To guarantee loans to the beneficiary by encumbrances on trust property.

16245. The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

16246. The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

16247. The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisers, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative

duties.

16248. The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

16249. The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

CHAPTER 3. REVISED UNIFORM PRINCIPAL AND INCOME ACT

16300. This chapter may be cited as the Revised Uniform Principal and Income Act.

16301. As used in this chapter:

(a) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(b) "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax.

(c) "Remainder beneficiary" means the person entitled to principal, presently or in the future, including income which has been accumulated and added to principal.

16302. (a) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(1) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter.

(2) In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter.

(3) If neither paragraph (1) nor (2) is applicable, in accordance with the standard of care provided in Section 16040 and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal.

(b) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this chapter.

16303. (a) Income is the return in money or property derived from the use of principal, including return received as any of the following:

(1) Rent of real or personal property, including sums received for cancellation or renewal of a lease.

(2) Interest on money lent, including sums received as

consideration for the prepayment of principal except as provided in Section 16307 on bond premium and bond discount.

(3) Receipts allocated to income as provided in Section 16304.

(4) Income earned during administration of a decedent's estate as provided in Section 16305.

(5) Corporate distributions as provided in Section 16306.

(6) Accrued increment on bonds or other obligations issued at discount as provided in Section 16307.

(7) Receipts from business and farming operations as provided in Section 16308.

(8) Receipts from disposition of natural resources as provided in Section 16309.

(9) Receipts from other principal subject to depletion as provided in Section 16310.

(10) Receipts from disposition of underproductive property as provided in Section 16311.

(b) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(1) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal.

(2) Proceeds of property taken on eminent domain proceedings.

(3) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary.

(4) Receipts allocated to principal as provided in Section 16304.

(5) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Section 16306.

(6) Proceeds from the disposition of bonds and other obligations for the payment of money as provided in Section 16307.

(7) Royalties and other receipts from disposition of natural resources as provided in Section 16309.

(8) Receipts from other principal subject to depletion as provided in Section 16310.

(9) Any profit resulting from any change in the form of principal except as provided in Section 16311 on underproductive property.

(10) Receipts from disposition of underproductive property as provided in Section 16311.

(11) Any allowances for depreciation established under Section 16308 and paragraph (2) of subdivision (b) of Section 16312.

16304. (a) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the

death of the person even though there is an intervening period of administration of the person's estate, except that income on the property during the period of administration is governed by Chapter 8 (commencing with Section 12000) of Part 10 of Division 7, and becomes subject to the trust as it accrues.

(b) Upon property becoming subject to a trust by reason of a person's death:

(1) Receipts due but not paid at the date of death of the person are principal.

(2) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(c) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(d) If an income beneficiary's right to income terminates by death or in any other manner, income paid to the income beneficiary or received by the trustee before the termination belongs to the income beneficiary or his or her personal representative. All income received by the trustee after such termination shall be paid to the person next entitled to income by the terms of the trust. This subdivision is subject to subdivision (d) of Section 21524 and does not apply to income received by a trustee under subdivision (b) of Section 16305.

(e) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

(f) A distribution to a beneficiary of current income is payable not less frequently than annually.

16305. (a) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be distributed in the manner set forth in Chapter 8 (commencing with Section 12000) of Part 10 of Division 7. Income received by a trustee under this subdivision shall be treated as income of the trust.

(b) If an income beneficiary's right to income, including interest payable under Section 12003, terminates by death or in any other manner during the period of probate administration, income attributable to the period of probate administration, when subsequently received by the trustee, shall be equitably prorated between the beneficiary (or his or her personal representative) and the person next entitled to income by the terms of the trust instrument.

16306. (a) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(b) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(1) A call of shares.

(2) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation.

(3) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(c) In the case of a regulated investment company or a trust qualifying and electing to be taxed under federal law as a real estate investment trust:

(1) Distributions made from ordinary income are income.

(2) All other distributions, including distributions from capital gains, depreciation, or depletion, whether made in the form of cash, an option to take new stock or cash, or an option to purchase additional shares, are principal.

(d) Except as provided in subdivisions (a), (b), and (c), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subdivisions (b) and (c), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(e) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets.

16307. (a) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subdivision (b) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(b) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was

issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

16308. (a) If a trustee uses any part of the principal in the operation of a business, including an agricultural or farming operation, of which the settlor was a sole proprietor or a partner, the net profits and losses of the business shall be computed in accordance with recognized methods of accounting for a comparable business. Net profits from a business are income. Net losses from a business do not reduce other trust income for the fiscal or calendar year during which they occur but shall be carried into subsequent fiscal or calendar years and reduce the net profits of the business for those years.

(b) Subdivision (a) is subject to the provisions of Section 16313 and for this purpose any property of the business or agricultural or farming operation shall be deemed to be "trust property" within the meaning of Section 16313.

16309. (a) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(1) If received as rent on a lease or extension payments on a lease, the receipts are income.

(2) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(3) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in paragraphs (1) and (2) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of (A) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or (B) 50 percent of the net receipts remaining after payment of expenses, direct and indirect, computed without

allowance for depletion.

(b) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

16310. If the principal consists of property subject to depletion, other than property subject to Section 16309, including land from which merchantable timber may be removed and, when subject to depletion or amortization, leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but in no event shall the amount allocated to principal exceed a reasonable allowance for depletion or amortization.

16311. (a) Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least 1 percent per year of its inventory value for more than a year, including as income the value of any beneficial use of the property by the income beneficiary, shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charges paid while the property was underproductive.

(b) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at 5 percent per year while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

(c) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages, (for example, real property acquired by or in lieu of a foreclosure), the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

(d) This section does not apply to securities listed on a national securities exchange or traded over the counter if the securities are held in a broadly diversified portfolio designed to produce a reasonable return appropriate to the purposes of the trust.

16312. (a) After determining income and principal in accordance with the terms of the trust instrument or with this

chapter, the trustee shall charge to income or principal expenses and other charges as provided in this section.

(b) The following charges shall be made against income:

(1) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee, interest paid by the trustee, and ordinary repairs.

(2) The trustee in its discretion may make a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence.

(3) One-half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise.

(4) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise.

(5) One-half of the trustee's regular compensation, whether based on a percentage of principal or income, unless the court directs otherwise.

(6) All expenses reasonably incurred for current management of principal and application of income.

(7) Any tax levied upon receipts defined as income under this part or the trust instrument and payable by the trustee.

(c) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(d) The following charges shall be made against principal:

(1) Trustee's compensation not chargeable to income under paragraphs (4) and (5) of subdivision (b), special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee.

(2) Charges not provided for in subdivision (b), including the cost of investing and reinvesting principal, the payments on principal of an indebtedness (including a mortgage amortized by periodic payments of principal), expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action or proceeding to construe the trust or protect it or the property or assure the title of any trust property.

(3) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by paragraph (2) of subdivision (b) and by

Section 16308.

(4) Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority.

(5) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

(e) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under Section 16304.

16313. The trustee is not required to set aside a reserve or allowance from trust income for depreciation or depletion of, or to amortize, any trust property unless the trust instrument expressly requires a reserve or allowance. Nothing in this chapter prevents a trustee in its discretion from establishing a reserve or allowance, or from continuing any previous practice of maintaining a reserve or allowance.

16314. (a) A specific gift, a general pecuniary gift, an annuity, or a gift for maintenance distributable under a trust carries with it income and bears interest from the date of the settlor's death or other event upon which the distributee's right to receive the gift occurs, in the same manner as a specific devise, a general pecuniary devise, an annuity, or a devise for maintenance under a will set forth in Chapter 8 (commencing with Section 12000) of Part 10 of Division 7.

(b) For the purpose of this section, a reference in Chapter 8 (commencing with Section 12000) of Part 10 of Division 7 to the date of the testator's death means the date of the settlor's death or other event upon which the distributee's right to receive the gift occurs.

16315. The changes made in Sections 16304 and 16305, and the addition of Section 16314, by Chapter 1199 of the Statutes of 1988 apply to a trust created before July 1, 1989, but the changes and addition apply to the trust as if created on that date and do not affect any aspect of the trust administration that occurred, or rights of beneficiaries that existed, before that date.

CHAPTER 4. LIABILITY OF TRUSTEES TO BENEFICIARIES

Article 1. Liability for Breach of Trust

16400. A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

16401. (a) Except as provided in subdivision (b), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(b) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(1) Where the trustee has the power to direct the act of the agent.

(2) Where the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate.

(3) Where the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee.

(4) Where the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent.

(5) Where the trustee conceals the act of the agent.

(6) Where the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(c) The liability of a trustee for acts or omissions of agents that occurred before July 1, 1987, is governed by prior law and not by this section.

16402. (a) Except as provided in subdivision (b), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(b) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(1) Where the trustee participates in a breach of trust committed by the cotrustee.

(2) Where the trustee improperly delegates the administration of the trust to the cotrustee.

(3) Where the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee.

(4) Where the trustee negligently enables the cotrustee to commit a breach of trust.

(5) Where the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(c) The liability of a trustee for acts or omissions of a cotrustee that occurred before July 1, 1987, is governed by prior law and not by this section.

16403. (a) Except as provided in subdivision (b), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(b) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(1) Where the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee and the successor trustee improperly permits it to continue.

(2) Where the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee.

(3) Where the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee reasonably should have known of the predecessor trustee's breach.

(c) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before July 1, 1987, is governed by prior law and not by this section.

Article 2. Remedies for Breach of Trust

16420. (a) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(1) To compel the trustee to perform the trustee's duties.

(2) To enjoin the trustee from committing a breach of trust.

(3) To compel the trustee to redress a breach of trust by payment of money or otherwise.

(4) To appoint a receiver or temporary trustee to take possession of the trust property and administer the trust.

(5) To remove the trustee.

(6) Subject to Section 18100, to set aside acts of the trustee.

(7) To reduce or deny compensation of the trustee.

(8) Subject to Section 18100, to impose an equitable lien or a constructive trust on trust property.

(9) Subject to Section 18100, to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(b) The provision of remedies for breach of trust in subdivision (a) does not prevent resort to any other appropriate remedy provided by statute or the common law.

16421. The remedies of a beneficiary against the trustee are exclusively in equity.

Article 3. Measure of Liability for Breach of Trust

16440. (a) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest.

(2) Any profit made by the trustee through the breach of trust, with interest.

(3) Any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(b) If the trustee has acted reasonably and in good faith under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subdivision (a) if it would be equitable to do so.

16441. If the trustee is liable for interest pursuant to Section 16440, the trustee is liable for the greater of the following amounts:

(a) The amount of interest that accrues at the legal rate on judgments in effect during the period when the interest accrued.

(b) The amount of interest actually received.

16442. The provisions in this article for liability of a trustee for breach of trust do not prevent resort to any other remedy available under the statutory or common law.

Article 4. Limitations and Exculpation

16460. (a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(1) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(2) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after the beneficiary discovered, or reasonably should have discovered, the subject of the claim.

(b) For the purpose of subdivision (a), a beneficiary is deemed to have received an account or report, as follows:

(1) In the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally.

(2) In the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose.

(3) In the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

16461. (a) Except as provided in subdivision (b), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(b) A provision in the trust instrument is not effective to relieve the trustee of liability (1) for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or (2) for any profit that the trustee derives from a breach of trust.

16462. (a) Notwithstanding Section 16461, a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(b) Subdivision (a) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

16463. (a) Except as provided in subdivisions (b) and (c), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(b) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(1) Where the beneficiary was under an incapacity at the time of the consent or of the act or omission.

(2) Where the beneficiary at the time consent was given did not know of his or her rights and of the material facts (A) that the trustee knew or should have known and (B) that the trustee did not reasonably believe that the beneficiary knew.

(3) Where the consent of the beneficiary was induced by improper conduct of the trustee.

(c) Where the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subdivision (b) or where the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

16464. (a) Except as provided in subdivision (b), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(b) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(1) Where the beneficiary was under an incapacity at the time of making the release or contract.

(2) Where the beneficiary did not know of his or her rights and of the material facts (A) that the trustee knew or reasonably should have known and (B) that the trustee did not reasonably believe that the beneficiary knew.

(3) Where the release or contract of the beneficiary was induced by improper conduct of the trustee.

(4) Where the transaction involved a bargain with the trustee that was not fair and reasonable.

16465. (a) Except as provided in subdivision (b), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his or her option reject or affirm, and the beneficiary affirms the transaction, the beneficiary shall not thereafter reject it and hold the

trustee liable for any loss occurring after the trustee entered into the transaction.

(b) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(1) The beneficiary was under an incapacity.

(2) The beneficiary did not know of his or her rights and of the material facts (A) that the trustee knew or reasonably should have known and (B) that the trustee did not reasonably believe that the beneficiary knew.

(3) The affirmance was induced by improper conduct of the trustee.

(4) The transaction involved a bargain with the trustee that was not fair and reasonable.

PART 5. JUDICIAL PROCEEDINGS CONCERNING TRUSTS

CHAPTER 1. JURISDICTION AND VENUE

17000. (a) The superior court having jurisdiction over the trust pursuant to this part has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(b) The superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction of the following:

(1) Actions and proceedings to determine the existence of trusts.

(2) Actions and proceedings by or against creditors or debtors of trusts.

(3) Other actions and proceedings involving trustees and third persons.

17001. In proceedings commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court.

(Amended by Stats. 1990, Ch. 710, Sec. 44. Operative July 1, 1991, by Sec 48 of chapter.)

[ORIGINAL SECTION]

17001. In proceedings concerning the internal affairs of trusts commenced pursuant to this division, the court has all the powers of the superior court.

17002. (a) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(b) If the principal place of administration of the trust cannot be determined under subdivision (a), it shall be determined as follows:

(1) If the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business.

(2) If the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business

of any of the cotrustees as agreed upon by them or, if not, the residence or usual place of business of any of the cotrustees.

17003. Subject to Section 17004:

(a) By accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under this division.

(b) To the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under this division.

17004. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure.

17005. (a) The proper county for commencement of a proceeding pursuant to this division is either of the following:

(1) In the case of a living trust, the county where the principal place of administration of the trust is located.

(2) In the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(b) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(c) Except as otherwise provided in subdivisions (a) and (b), the proper county for commencement of a proceeding pursuant to this division is determined by the rules applicable to civil actions generally.

17006. There is no right to a jury trial in proceedings under this division concerning the internal affairs of trusts.

CHAPTER 2. NOTICE

17100. Except as otherwise provided in this division, notice in proceedings commenced pursuant to this division, or notice otherwise required by this division, is governed by Part 2 (commencing with Section 1200) of Division 3.

17102 (Repealed by Stats. 1990, Ch. 710, Sec. 45 Operative July 1, 1991, by Sec 48 of chapter)

[ORIGINAL SECTION]

17102. Unless the court dispenses with the notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, notice shall be given as the court may require in the manner provided in Section 413 30 of the Code of Civil Procedure

17105. A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

CHAPTER 3. PROCEEDINGS CONCERNING TRUSTS

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing

instrument of an organization pursuant to Section 16105.

17201. A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

17202. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

17203. At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to all of the following persons:

(a) All trustees.

(b) All beneficiaries who are entitled to notice.

(c) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General, unless the Attorney General waives notice.

17204. (a) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in Section 17200 and giving an address for receiving notice by mail. A copy of the request shall be personally delivered or mailed to the trustee or the trustee's attorney. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received. When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service. A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

(b) Except as provided in subdivision (c), after serving and filing a request and proof of service pursuant to subdivision (a), the beneficiary is entitled to notice pursuant to Section 17203.

(c) A request for special notice made by a beneficiary whose right to notice is restricted by Section 15802 is not effective.

17205. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within five days after service of the notice of appearance or receipt of the request.

17206. The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

17207. An appeal may be taken from the grant or denial of any final order made under this chapter, except the following:

(a) Compelling the trustee to submit an account or report acts as

trustee to a beneficiary pursuant to paragraph (7) of subdivision (b) of Section 17200.

(b) Accepting the resignation of a trustee pursuant to paragraph (11) of subdivision (b) of Section 17200.

(c) Approving removal of a testamentary trust from continuing court jurisdiction pursuant to paragraph (18) of subdivision (b) of Section 17200.

17209. The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

17210. In a case involving a charitable trust subject to the jurisdiction of the Attorney General, the Attorney General may petition under this chapter.

CHAPTER 4. TESTAMENTARY TRUSTS SUBJECT TO CONTINUING COURT JURISDICTION

Article 1. Administration of Testamentary Trusts Subject to Continuing Court Jurisdiction

17300. This article applies only to the following:

(a) A trust created by a will executed before July 1, 1977, and not incorporated by reference in a will on or after July 1, 1977.

(b) A trust created by a will which provides that the trust is subject to the continuing jurisdiction of the superior court.

17301. If a trust described in Section 17300 continues after distribution of the decedent's estate, the court in which the decedent's estate was administered retains jurisdiction over the trust for any of the purposes specified in Section 17200.

17302. Except as otherwise provided in this article, proceedings relating to trusts under continuing court jurisdiction are governed by this part.

17303. This article does not apply to a trust described in Section 17300 that has been removed from continuing court jurisdiction.

17304. (a) At any time after final distribution of the decedent's estate, a trust described in Section 17300 may be transferred to a different county in this state as provided in this section.

(b) The petition for transfer shall set forth all of the following:

(1) The name of the county to which jurisdiction over the trust is sought to be transferred.

(2) The names, ages, and places of residence of the trustees and all beneficiaries of the trust, so far as known to the petitioner.

(3) A brief description of the character, condition, value, and location of property of the trust.

(4) A brief statement of the reasons for transfer.

(c) If, after hearing, it appears to the court that the transfer of jurisdiction to the county designated in the petition or to any other county in this state will be in the best interests of the estate, or that economical and convenient administration of the trust will be

facilitated by the transfer, the court shall make an order transferring jurisdiction over the trust. Upon such order, the court clerk shall certify a copy of the order of transfer to the clerk of the court to which jurisdiction is transferred, together with copies of the instrument creating the trust, the decree of distribution, and any other documents or matters of record the court determines by order to be necessary to define the powers and duties of the trustee, or otherwise to be necessary in connection with further administration of the trust.

(d) The court to which jurisdiction is transferred may from time to time require by order the filing of certified copies of additional papers or matters of record from the court in which the decedent's estate was administered as are required.

(e) Upon the filing of a certified copy of the order of transfer, together with supporting documents, the court to which jurisdiction is transferred has the same jurisdiction over the trust as the court in which the decedent's estate was administered but for the transfer.

Article 2. Removal of Trusts From Continuing Court Jurisdiction

17350. This article applies only to trusts created by will executed before July 1, 1977, and not incorporated by reference in a will on or after July 1, 1977.

17351. (a) If any of the trustees of a trust described in Section 17350 is a trust company, the trust shall be removed from continuing court jurisdiction as provided in this section. Within six months after the initial funding of the trust, the trustee shall give a notice of removal of the trust from continuing court jurisdiction to each beneficiary. Notice of removal shall be sent by registered or certified mail or by first-class mail, but notice sent by first-class mail is effective only if an acknowledgment of receipt of notice is signed by the beneficiary and returned to the trustee.

(b) The notice of removal of the trust from continuing court jurisdiction shall contain the following:

(1) A statement that as of January 1, 1983, the law was changed to remove the necessity for continuing court jurisdiction over the trust.

(2) A statement that Section 17200 of the Probate Code gives any beneficiary the right to petition a court to determine important matters relating to the administration of the trust.

(3) A copy of the text of Sections 17200 and 17201.

(4) A statement that each income beneficiary, as defined in subdivision (a) of Section 16301, is entitled to an annual statement of the principal and income receipts and disbursements of the trust and that any other beneficiary is entitled to such information upon written request to the trustee.

(5) The name and location of the court in the county in which it is appropriate to file a petition pursuant to Section 17200, the name and location of the court that had jurisdiction over the administration of the decedent's estate, and a statement that it is appropriate to file

a petition pursuant to Section 17200 with either court.

(c) The trustee shall file with the court that had jurisdiction over the administration of the decedent's estate proof of giving notice under this section within seven months after the initial funding of the trust.

17352. (a) If none of the trustees of a trust described in Section 17350 is a trust company, the trust may be removed from continuing court jurisdiction only with approval of the court. The trustee may petition for court approval at any time, and from time to time, in the trustee's discretion.

(b) The petition for removal shall set forth the trust accounts in detail, report the trustee's acts, and show the condition of the trust estate. A copy of the trust instrument shall be attached to the petition.

(c) At the hearing the court may receive testimony from any interested person and may grant or deny the petition, or may grant the petition on such conditions as the court in its discretion deems proper.

(d) If the petition is granted, the trustee shall send the notice of removal of the trust provided in subdivision (b) of Section 17351 and file proof of service as required by subdivision (c) of Section 17351 within six months and seven months, respectively, from the date the petition is granted. A copy of the court order granting the petition shall be attached to the notice.

(e) If the petition is not granted, the trust shall continue to be administered under Article 1 (commencing with Section 17300) as if the settlor had provided in the will that the court does not lose jurisdiction of the estate by final distribution.

17353. If a trust company is appointed as a successor trustee of a trust which, at the time of the appointment, is subject to continuing court jurisdiction because it was not removed pursuant to Section 17352, the successor trustee shall comply with Section 17351. For the purpose of complying with Section 17351, the date of appointment of the successor trustee shall be treated as the date of initial funding of the trust.

17354. After a trust is removed from continuing court jurisdiction pursuant to this article, neither a change in trustees nor any other event causes the trust to be subject to continuing court jurisdiction under Article 1 (commencing with Section 17300).

CHAPTER 5. TRANSFER OF TRUST TO ANOTHER JURISDICTION

17400. (a) This chapter applies to all of the following:

(1) A trust that is subject to this division.

(2) A trust subject to Chapter 8 (commencing with Section 6320) of Part 1 of Division 6.

(3) Any other trust to which the provisions of this chapter are made applicable by statute or trust instrument.

(b) This chapter does not prevent the transfer of the place of

administration of a trust or of trust property to another jurisdiction by any other available means.

17401. (a) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in this chapter.

(b) Except as otherwise provided in this chapter, proceedings under this chapter are governed by this part.

17402. The petition for transfer shall set forth all of the following:

(a) The names and places of residence of the following:

(1) The trustee administering the trust in this state.

(2) The trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction.

(b) The names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner.

(c) Whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court.

(d) A general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age.

(e) A general statement of the nature and value of the property of any trust of the same settlor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction.

(f) The name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts.

(g) A statement of the character, condition, location, and value of the trust property sought to be transferred.

(h) Whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred.

(i) A statement of the reasons for the transfer.

17403. (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(b) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

17404. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(next page is 972.1)

(a) The transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust.

(b) The transfer will not violate the trust instrument.

(c) Any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

17405. If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a full discharge of the trustee in relation to all property embraced in the order.

CHAPTER 6. TRANSFER OF TRUST FROM ANOTHER JURISDICTION

17450. (a) This chapter applies to a trust, or portion thereof, administered in a jurisdiction outside this state.

(b) This chapter does not prevent the transfer of the place of administration of a trust or of trust property to this state by any other available means.

17451. (a) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in this chapter.

(b) Except as otherwise provided in this chapter, proceedings under this chapter are governed by this part.

17452. (a) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to Section 17002 is located.

(b) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either (1) any beneficiary resides or (2) a substantial portion of the trust property to be transferred is located or will be located.

17453. The petition for transfer shall set forth all of the following:

(a) The names and places of residence of the following:

(1) The trustee administering the trust in the other jurisdiction.

(2) The proposed trustee to whom administration of the trust or trust property will be transferred.

(b) The names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner.

(c) Whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been

filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(d) Whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(f) A copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto.

(g) A statement of the character, condition, location, and value of the trust property sought to be transferred.

(h) A statement of the reasons for the transfer.

17454. (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(b) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

17455. (a) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(1) The transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust.

(2) The transfer will not violate the trust instrument.

(3) The trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument.

(4) The proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(b) If the court grants the petition under subdivision (a), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in Section 15602.

17456. If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if

transfer is approved by the proper court of the other jurisdiction.

17457. A trust transferred to this state pursuant to this chapter shall be administered in the same manner as a trust of that type created in this state. The validity of a trust and the construction of the beneficial provisions of a trust transferred to this state are not affected by this section.

PART 6. RIGHTS OF THIRD PERSONS

CHAPTER 1. LIABILITY OF TRUSTEE TO THIRD PERSONS

18000. (a) Unless otherwise provided in the contract or in this chapter, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(b) The personal liability of a trustee on a contract entered into before July 1, 1987, is governed by prior law and not by this section.

18001. A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

18002. A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

18003. (a) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(b) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(c) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

18004. A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

18005. The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under Section 17200.

CHAPTER 2. PROTECTION OF THIRD PERSONS

18100. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts in good faith and for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or

improperly exercising them:

(a) The third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

(b) The third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

18101. A third person who acts in good faith is not bound to ensure the proper application of trust property paid or delivered to the trustee.

18102. If a third person acting in good faith and for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

18103. If an express trust relating to real property is not contained or declared in the grant to the trustee, or in an instrument signed by the trustee and recorded in the same office with the grant to the trustee, the grant shall be deemed absolute in favor of a person dealing with the trustee in good faith and for a valuable consideration.

18104. (a) If an interest in or lien or encumbrance on real property is conveyed, created, or affected by an instrument in favor of a person in trust but no beneficiary is indicated in the instrument, it is presumed that the person holds the interest, lien, or encumbrance absolutely and free of the trust. This is a presumption affecting the burden of proof. In an action or proceeding involving the interest, lien, or encumbrance instituted against the person, the person shall be deemed the only necessary representative of the undisclosed beneficiary and of the original grantor or settlor and anyone claiming under them. A judgment is binding upon and conclusive against these persons as to all matters finally adjudicated in the judgment.

(b) An instrument executed by the person holding an interest, lien, or encumbrance described in subdivision (a), whether purporting to be the act of that person in his or her own right or in the capacity of a trustee, is presumed to affect the interest, lien, or encumbrance according to the tenor of the instrument. This is a presumption affecting the burden of proof. Upon the recording of the instrument in the county where the land affected by the instrument is located, the presumption is conclusive in favor of a person acting in good faith and for valuable consideration.

CHAPTER 3. RIGHTS OF CREDITORS OF SETTLOR

18200. If the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor.

18201. Upon the death of a settlor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the settlor's death is subject to the claims of creditors of the decedent settlor's estate and to the expenses of administration of the estate to the extent that the decedent settlor's estate is inadequate to satisfy those claims and expenses.

PART 7. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

(Part 7 added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter)

18500. This part may be cited as the Uniform Management of Institutional Funds Act.

(Added by Stats. 1990, Ch. 1307, Sec 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18501. As used in this part:

(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(b) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

(c) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(d) "Historic dollar value" means the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the endowment fund at the time it is made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the endowment fund.

(e) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(f) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (1) a fund held for an institution by a trustee that is not an institution or (2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(Added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18502. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair

value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 18506. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

(Added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18502.5. (a) With respect to real property assets of an endowment fund, appropriations by the governing board pursuant to Section 18502 shall be limited until January 1, 1994, to so much of the realized net appreciation in the fair value of the real property assets of the endowment fund over the historic dollar value of those assets as is prudent under the standard established by Section 18506.

(b) Appropriations made pursuant to Section 18502 and this section shall be based upon an average fair value covering a period of up to the five preceding fiscal years of the institution and shall be set at any reasonable date prior to each fiscal year.

(c) This section shall remain in effect only until January 1, 1994, and on that date is repealed unless a later enacted statute, which is enacted before that date, deletes or extends that date.

(Added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter. Repealed as of January 1, 1994, by its own provisions.)

18503. (a) Section 18502 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended.

(b) If the gift instrument includes a designation of the gift as an endowment or a direction or authorization to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction or authorization that contains other words of similar meaning:

(1) A restriction on the expenditure of net appreciation need not be implied solely from the designation, direction, or authorization, if the gift instrument became effective before the Uniform Management of Institutional Funds Act became applicable to the institution.

(2) A restriction on the expenditure of net appreciation may not be implied solely from the designation, direction, or authorization, if the gift instrument becomes effective after the Uniform Management of Institutional Funds Act became applicable to the institution.

(c) The effective dates of the Uniform Management of Institutional Funds Act are the following:

(1) January 1, 1974, with respect to a private incorporated or unincorporated organization organized and operated exclusively for educational purposes and accredited by the Association of Western Colleges and Universities.

(2) January 1, 1991, with respect to an institution not described in paragraph (1).

(Added by Stats. 1990, Ch 1307, Sec 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18504. In addition to an investment otherwise authorized by law or by the applicable gift instrument, the governing board, subject to any specific limitations set forth in the applicable gift instrument, may do any or all of the following:

(a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, deeds of trust, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations or partnerships, and obligations of any government or subdivision or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution.

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

(Added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18505. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may do the following:

(a) Delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds.

(b) Contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act.

(c) Authorize the payment of compensation for investment advisory or management services.

(Added by Stats. 1990, Ch 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18506. (a) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property, appropriating appreciation, and delegating investment management for the benefit of an institution, the members of the governing board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the institution. In the course of administering the fund pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(b) In exercising judgment under this section, the members of the governing board shall consider the long- and short-term needs of the

institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth, and long-term net appreciation, as well as the probable safety of funds.

(Added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18507. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of the donor's death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the superior court of the county in which the principal activities of the institution are conducted, or other court of competent jurisdiction, for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. No court has jurisdiction to release a restriction on an institutional fund under this part unless the Attorney General is a party to the proceedings. If the court finds that the restriction is obsolete or impracticable, it may by order release the restriction in whole or in part. A release under this subdivision may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres.

(Added by Stats 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18508. Nothing in this part alters the status of governing boards, or the duties and liabilities of directors, under other laws of this state.

(Added by Stats. 1990, Ch. 1307, Sec. 4. Operative July 1, 1991, by Sec. 5 of chapter.)

18509. Nothing in this part limits the application of any law relating to the expenditure of public funds.

(Added by Stats. 1990, Ch. 1307, Sec 4. Operative July 1, 1991, by Sec. 5 of chapter.)

DIVISION 10. PRORATION OF TAXES

CHAPTER 1. PRORATION OF ESTATE TAXES

Article 1. General Provisions

20100. Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Estate tax" means a tax imposed by any federal or California estate tax law, now existing or hereafter enacted, and includes

interest and penalties on any deficiency.

(b) "Person interested in the estate" means any person, including a personal representative, entitled to receive, or who has received, from a decedent while alive or by reason of the death of the decedent any property or interest therein.

(c) "Personal representative" includes a guardian, conservator, trustee, or other person charged with the responsibility of paying the estate tax.

(d) "Property" means property included in the gross estate for federal estate tax purposes.

(e) "Value" means fair market value as determined for federal estate tax purposes.

20101. (a) This chapter does not apply to persons interested in the estate of a decedent who died before January 1, 1987.

(b) Notwithstanding the repeal of former Article 4a (commencing with Section 970) of Chapter 15 of Division 3 of the Probate Code by Chapter 783 of the Statutes of 1986, the provisions of that former article remain applicable where the decedent died before January 1, 1987. No inference as to the applicable law in effect before January 1, 1987, shall be drawn from the enactment of this chapter.

Article 2. Proration

20110. (a) Except as provided in subdivision (b), any estate tax shall be equitably prorated among the persons interested in the estate in the manner prescribed in this article.

(b) This section does not apply:

(1) To the extent the decedent in a written inter vivos or testamentary instrument disposing of property specifically directs that the property be applied to the satisfaction of an estate tax or that an estate tax be prorated to the property in the manner provided in the instrument. As used in this paragraph, an "instrument disposing of property" includes an instrument that creates an interest in property or an amendment to an instrument that disposes of property or creates an interest in property.

(2) Where federal law directs otherwise. If federal law directs the manner of proration of the federal estate tax, the California estate tax shall be prorated in the same manner.

20111. The proration required by this article shall be made in the proportion that the value of the property received by each person interested in the estate bears to the total value of all property received by all persons interested in the estate, subject to the provisions of this article.

20112. (a) In making a proration of the federal estate tax, allowances shall be made for credits allowed for state or foreign death taxes in determining the federal tax payable and for exemptions and deductions allowed for the purpose of determining the taxable estate.

(b) In making a proration of the California estate tax, allowances shall be made for (1) credits (other than the credit for state death taxes paid) allowed by the federal estate tax law and attributable to property located in this state, and (2) exemptions and deductions allowed by the federal estate tax law for the purpose of determining the taxable estate attributable to property located in this state.

(c) In making a proration of an estate tax, interest on extension of taxes and interest and penalties on any deficiency shall be charged to equitably reflect the benefits and burdens of the extension or deficiency and of any tax deductions associated with the interest and penalties.

20113. If a trust is created, or other provision made whereby a person is given an interest in the income of, an estate for years or for life in, or other temporary interest in, any property, the estate tax on both the temporary interest and on the remainder thereafter shall be charged against and paid out of the corpus of the property without apportionment between remainders and temporary estates.

20114. (a) As used in this section, "qualified real property" means qualified real property as defined in Section 2032A of the Internal Revenue Code (26 U.S.C. Sec. 2032A).

(b) If an election is made pursuant to Section 2032A of the Internal Revenue Code (26 U.S.C. Sec. 2032A), the proration shall be based upon the amount of federal estate tax that would be payable but for the election. The amount of the reduction in federal estate tax resulting from an election pursuant to Section 2032A of the Internal Revenue Code (26 U.S.C. Sec. 2032A) shall reduce the tax that is otherwise attributable to the qualified real property that is the subject of the election. If the tax that is otherwise attributable to the qualified real property is reduced to zero pursuant to this subdivision, any excess amount of reduction shall reduce the tax otherwise payable with respect to the other property, this amount to be equitably prorated in accordance with Section 20111.

(c) If additional federal estate tax is imposed under subsection (c) of Section 2032A of the Internal Revenue Code (26 U.S.C. Sec. 2032A) by reason of early disposition or cessation of qualified use, the additional tax shall be a charge against the portion of the qualified real property to which the additional tax is attributable, and shall be equitably prorated among the persons interested in that portion of the qualified real property in proportion to their interests.

20114.5. (a) As used in this section:

(1) A reference to Section 4980A of the Internal Revenue Code means Section 4980A of the federal Internal Revenue Code of 1986 as amended (26 U.S.C. Sec. 4980A) and also means former Section 4981A of the federal Internal Revenue Code of 1986.

(2) "Excess retirement accumulation" has the meaning given it in Section paragraph (3) of subsection (d) of Section 4980A.

(b) If the federal estate tax is increased under subsection (d) of Section 4980A of the Internal Revenue Code, the amount of the increase shall be a charge against the persons who receive the excess

retirement accumulation that gives rise to the increase, and shall be equitably prorated among all persons who receive interests in qualified employer plans and individual retirement plans to which the excess retirement accumulation is attributable.

20115. Where the payment of any portion of the federal estate tax is extended under the provisions of the federal estate tax law, the amount of extended tax shall be a charge against the persons who receive the specific property that gives rise to the extension.

20116. (a) If all property does not come into the possession of the personal representative, the personal representative is entitled, and has the duty, to recover from the persons interested in the estate the proportionate amount of the estate tax with which the persons are chargeable under this chapter.

(b) If the personal representative cannot collect from any person interested in the estate the amount of an estate tax apportioned to the person, the amount not recoverable shall be equitably prorated among the other persons interested in the estate who are subject to proration.

20117. (a) If a person is charged with or required to pay an estate tax greater than the amount prorated to that person because another person does not pay the amount of estate tax prorated to the other person, the person charged with or required to pay the greater amount has a right of reimbursement against the other person.

(b) The right of reimbursement may be enforced through the personal representative in the discretion of the personal representative, or may be enforced directly by the person charged with or required to pay the greater amount, and for the purpose of direct enforcement the person is subrogated to the position of the personal representative.

(c) The personal representative or person who has a right of reimbursement may commence a proceeding to have a court determine the right of reimbursement. The provisions of Article 3 (commencing with Section 20120) shall govern the proceeding, with changes necessary to make the provisions appropriate for application to the proceeding, and the court order determining the right of reimbursement is an enforceable judgment.

Article 3. Judicial Proceedings

20120. (a) The personal representative or any person interested in the estate may commence a proceeding to have a court determine the proration pursuant to this chapter.

(b) A proceeding under this article shall be commenced in the court in which the estate of the decedent was administered or, if no administration proceedings have been commmenced, in the superior court of any county in which the estate of the decedent may be administered.

(c) If proceedings for the administration of the decedent's estate are pending, a proceeding under this article shall be combined with

the administration proceedings. If a proceeding is commenced at any time before final distribution, there shall be no additional filing fee.

20121. A proceeding under this article shall be commenced by filing a petition that sets forth all of the following information:

(a) The jurisdictional facts.

(b) Other facts necessary for the court to determine the proration of estate taxes.

20122. Not less than 30 days before the hearing, the petitioner shall do both of the following:

(a) Cause notice of the hearing and a copy of the petition to be mailed to the personal representative and to each person interested in the estate against whom prorated amounts may be charged pursuant to paragraph (1) of subdivision (a) of Section 20123.

(b) Cause a summons and a copy of the petition to be served on each person interested in the estate who may be directed to make payment of prorated amounts pursuant to paragraph (2) of subdivision (a) of Section 20123. The summons shall be in the form and shall be served in the manner prescribed in Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.

20123. (a) The court, upon making a determination as provided in this article, shall make an order:

(1) Directing the personal representative to charge the prorated amounts against the persons against whom an estate tax has been prorated insofar as the personal representative is in possession of any property or interests of the persons against whom the charge may be made.

(2) Summarily directing all other persons against whom an estate tax has been prorated to make payment of the prorated amounts to the personal representative.

(b) An appeal may be taken from an order made or from the refusal to make an order under this section.

(c) A court order made under this section is a judgment that may be enforced against the persons against whom an estate tax has been prorated.

20124. Upon petition by the personal representative or any person interested in the estate, the court shall modify an order made pursuant to this article whenever it appears that the amount of estate tax as actually determined is different from the amount of estate tax on which the court based the order.

20125. (a) A personal representative acting or resident in another state may commence an action in this state to recover from a person interested in the estate, who either is resident in this state or owns property in this state, the amount of the federal estate tax, or an estate tax or death duty payable to another state, apportioned to the person.

(b) The action shall be commenced in the superior court of any county in which administration of the estate of the decedent would be proper or, if none, in which any defendant resides.

(c) For purposes of the action the apportionment by the court

having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

CHAPTER 2. PRORATION OF TAXES ON GENERATION-SKIPPING TRANSFER

Article 1. General Provisions

20200. Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Generation-skipping transfer tax" means a tax imposed by any federal or California generation-skipping transfer tax law, now existing or hereafter enacted, and includes interest and penalties on any deficiency.

(b) "Property" means property on which a generation-skipping transfer tax is imposed.

(c) "Transferee" means any person who receives, who is deemed to receive, or who is the beneficiary of, any property.

(d) "Trustee" means any person who is a trustee within the meaning of the federal generation-skipping transfer tax law, or who is otherwise required to pay a generation-skipping transfer tax.

(e) "Value" means fair market value as determined for generation-skipping transfer tax purposes.

20201. (a) This chapter does not apply to transferees of property of a decedent who died before January 1, 1987.

(b) No inference as to the applicable law in effect before January 1, 1987, shall be drawn from the enactment of this chapter.

Article 2. Proration

20210. (a) Except as provided in subdivision (b), any generation-skipping transfer tax shall be equitably prorated among the transferees in the manner prescribed in this article.

(b) This section does not apply:

(1) To the extent the transferor in a written instrument transferring property specifically directs that the property be applied to the satisfaction of a generation-skipping transfer tax or that a generation-skipping transfer tax be prorated to the property in the manner provided in the instrument.

(2) Where federal law directs otherwise. If federal law directs the manner of proration of the federal generation-skipping transfer tax, the California generation-skipping transfer tax shall be prorated in the same manner.

20211. The proration required by this article shall be made in the proportion that the value of the property received by each transferee bears to the total value of all property received by all transferees, subject to the provisions of this article.

20212. In making a proration required by this article:

(a) Allowances shall be made for credits, exemptions, and

deductions allowed for the purpose of determining the tax payable.

(b) Interest and penalties on any deficiency shall be charged to equitably reflect the benefits and burdens of the deficiency and of any tax deductions associated with the interest and penalties.

20213. If a trust is created or other provision made whereby a transferee is given an interest in income, or an estate for years or for life, or another temporary interest in property, the tax on both the temporary interest and other interests in the property shall be charged against, and paid out of, the corpus of the property without apportionment between the temporary and other interests.

20214. (a) If all property does not come into the possession of the trustee, the trustee is entitled, and has the duty, to recover from the transferees, the proportionate amount of the tax with which the transferees are chargeable under this chapter.

(b) If the trustee cannot collect from any transferee the amount of tax apportioned to the transferee, the amount not recoverable shall be equitably prorated among the other transferees who are subject to proration.

20215. (a) If a person is charged with, or required to pay, a generation-skipping transfer tax greater than the amount prorated to that person because another person does not pay the amount of generation-skipping transfer tax prorated to the other person, the person charged with or required to pay the greater amount has a right of reimbursement against the other person.

(b) The right of reimbursement may be enforced through the trustee in the discretion of the trustee, or may be enforced directly by the person charged with, or required to pay, the greater amount and, for the purpose of direct enforcement, the person is subrogated to the position of the trustee.

(c) The trustee or person who has a right of reimbursement may commence a proceeding to have a court determine the right of reimbursement. The provisions of Article 3 (commencing with Section 20220) shall govern the proceeding, with changes necessary to make the provisions appropriate for application to the proceeding, and the court order determining the right of reimbursement is an enforceable judgment.

Article 3. Judicial Proceedings

20220. (a) The trustee or any transferee may commence a proceeding to have a court determine the proration pursuant to this chapter.

(b) A proceeding under this article shall be commenced in the court in which the estate of the decedent was administered or, if no administration proceedings have been commenced, in the superior court of any county in which the estate of the decedent may be administered.

(c) If proceedings for the administration of the decedent's estate are pending, a proceeding under this article shall be combined with

the administration proceedings. If a proceeding is commenced at any time before final distribution, there shall be no additional filing fee.

20221. A proceeding under this article shall be commenced by filing a petition that sets forth all of the following information:

(a) The jurisdictional facts.

(b) Other facts necessary for the court to determine the proration of the generation-skipping transfer tax.

20222. Not less than 30 days before the hearing the petitioner shall do both of the following:

(a) Cause notice of the hearing and a copy of the petition to be mailed to the trustee and each transferee against whom prorated amounts may be charged pursuant to paragraph (1) of subdivision (a) of Section 20223.

(b) Cause a summons and a copy of the petition to be served on each transferee who may be directed to make payment of prorated amounts pursuant to paragraph (2) of subdivision (a) of Section 20223. The summons shall be in the form and shall be served in the manner prescribed in Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.

20223. (a) The court, upon making a determination as provided in this article, shall make an order:

(1) Directing the trustee to charge the prorated amounts against the transferees against whom the generation-skipping transfer tax has been prorated insofar as the trustee is in possession of any property or interests of the transferees against whom the charge may be made.

(2) Summarily directing all other transferees against whom the generation-skipping transfer tax has been prorated to make payment of the prorated amounts to the trustee.

(b) An appeal may be taken from an order made or from the refusal to make an order under this section.

(c) A court order made under this section is a judgment that may be enforced against the persons against whom a generation-skipping transfer tax has been prorated.

20224. Upon petition by the trustee or any transferee, the court shall modify an order made pursuant to this article whenever it appears that the amount of generation-skipping transfer tax as actually determined is different from the amount of tax on which the court based the order.

20225. (a) A trustee acting or resident in another state may commence an action in this state to recover from a transferee, who either is resident in this state or owns property in this state, the amount of the federal generation-skipping transfer tax, or a generation-skipping transfer tax payable to another state, apportioned to the person.

(b) The action shall be commenced in the superior court of any county in which administration of the estate of the decedent would be proper or, if none, in which any defendant resides.

(c) For purposes of the action an apportionment by the court

having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS

PART 1. GENERAL PROVISIONS

21101. Unless the provision or context otherwise requires, this division applies to a will, trust, deed, and any other instrument.

21120. (a) If an instrument authorizes a fiduciary to satisfy a pecuniary gift wholly or partly by distribution of property other than money, property selected for that purpose shall be valued at its fair market value on the date of distribution, unless the instrument expressly provides otherwise. If the instrument permits the fiduciary to value property selected for distribution as of a date other than the date of distribution, then, unless the instrument expressly provides otherwise, the property selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of the pecuniary gift as stated in, or determined by, the instrument.

(b) As used in this section, "pecuniary gift" means a transfer of property made in an instrument that either is expressly stated as a fixed dollar amount or is a dollar amount determinable by the provisions of the instrument.

PART 3. NO CONTEST CLAUSE

CHAPTER 1. GENERAL PROVISIONS

21300. As used in this part:

(a) "Contest" means an attack in a proceeding on an instrument or on a provision in an instrument.

(b) "No contest clause" means a provision in an otherwise valid instrument that, if enforced, would penalize a beneficiary if the beneficiary brings a contest.

21301. This part is not intended as a complete codification of the law governing enforcement of a no contest clause. The common law governs enforcement of a no contest clause to the extent this part does not apply.

21302. This part applies notwithstanding a contrary provision in the instrument.

21303. Except to the extent otherwise provided in this part, a no contest clause is enforceable against a beneficiary who brings a contest within the terms of the no contest clause.

21304. In determining the intent of the transferor, a no contest clause shall be strictly construed.

21306. A no contest clause is not enforceable against a beneficiary

to the extent the beneficiary, with probable cause, brings a contest that is limited to either or both of the following grounds:

(a) Forgery.

(b) Revocation.

21307. A no contest clause is not enforceable against a beneficiary to the extent the beneficiary, with probable cause, contests a provision that benefits any of the following persons:

(a) A person who drafted or transcribed the instrument.

(b) A person who gave directions to the drafter of the instrument concerning dispositive or other substantive contents of the provision or who directed the drafter to include the no contest clause in the instrument, but this subdivision does not apply if the transferor affirmatively instructed the drafter to include the contents of the provision or the no contest clause.

(c) A person who acted as a witness to the instrument.

CHAPTER 2. DECLARATORY RELIEF

21320. (a) If an instrument containing a no contest clause is or has become irrevocable, a beneficiary may apply to the court for a determination whether a particular motion, petition, or other act by the beneficiary would be a contest within the terms of the no contest clause.

(b) A no contest clause is not enforceable against a beneficiary to the extent an application under subdivision (a) by the beneficiary is limited to the procedure and purpose described in subdivision (a) and does not require a determination of the merits of the motion, petition, or other act by the beneficiary.

(c) A determination of whether Section 21306 or 21307 would apply in a particular case may not be made under this section.

21321. (a) If a proceeding is pending for administration of the transferor's estate, an application under Section 21320 shall be filed in the court in which the proceeding is pending.

(b) If no proceeding is pending for administration of the transferor's estate and the transferor is deceased, an application under Section 21320 may be filed in the superior court in any county in which administration of the transferor's estate would be proper or, if none, in any county in which property affected by the transfer is located or, if none, in any county in this state.

(c) If no proceeding is pending for administration of the transferor's estate and the transferor is living and resides in this state, an application under Section 21320 shall be filed in the superior court in the county in which the transferor resides.

(d) If no proceeding is pending for administration of the transferor's estate and the transferor is living but does not reside in this state, an application under Section 21320 may be filed in the superior court in the county in which property affected by the transfer is located or, if none, in any county in this state.

(e) Notwithstanding any other provision of this section, if the

instrument containing the no contest clause is a trust, an application under Section 21320 shall be filed in the court having jurisdiction over the trust under Chapter 1 (commencing with Section 17000) of Part 5 of Division 9.

21322. (a) If a proceeding is pending for administration of the transferor's estate, notice of the hearing on an application under Section 21320 shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each beneficiary named in the instrument containing the no contest clause whose interest could be adversely affected by the application.

(3) The Attorney General, if the instrument containing the no contest clause (A) involves or may involve a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee resident in this state or (B) involves or may involve a devise for charitable purposes without an identified devisee.

(b) If no proceeding is pending for administration of the transferor's estate, at least 30 days before the hearing on an application under Section 21320, the applicant shall serve notice of the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure on all of the following persons:

(1) Each beneficiary named in the instrument containing the no contest clause whose interest could be affected by the application.

(2) Each executor, trustee, or other fiduciary named in the instrument containing the no contest clause.

(3) The Attorney General, if the instrument containing the no contest clause (A) involves or may involve a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee resident in this state or (B) involves or may involve a devise for charitable purposes without an identified devisee.

PART 4. ABATEMENT

21400. Notwithstanding any other provision of this part, if the instrument provides for abatement, or if the transferor's plan or if the purpose of the transfer would be defeated by abatement as provided in this part, the shares of beneficiaries abate as is necessary to effectuate the instrument, plan, or purpose.

21401. Except as provided in Sections 6562 (omitted spouse) and 6573 (omitted children) and in Division 10 (commencing with Section 20100) (proration of taxes), shares of beneficiaries abate as provided in this part for all purposes, including payment of the debts, expenses, and charges specified in Section 11420, satisfaction of gifts, and payment of expenses on specifically devised property pursuant to Section 12002, and without any priority as between real and personal property.

21402. (a) Shares of beneficiaries abate in the following order:
(1) Property not disposed of by the instrument.
(2) Residuary gifts.
(3) General gifts to persons other than the transferor's relatives.
(4) General gifts to the transferor's relatives.
(5) Specific gifts to persons other than the transferor's relatives.
(6) Specific gifts to the transferor's relatives.

(b) For purposes of this section, a "relative" of the transferor is a person to whom property would pass from the transferor under Section 6401 or 6402 (intestate succession) if the transferor died intestate and there were no other person having priority.

21403. (a) Subject to subdivision (b), shares of beneficiaries abate pro rata within each class specified in Section 21402.

(b) Gifts of annuities and demonstrative gifts are treated as specific gifts to the extent they are satisfied out of the fund or property specified in the gift and as general gifts to the extent they are satisfied out of property other than the fund or property specified in the gift.

21404. If an instrument requires property that is the subject of a specific gift to be exonerated from a mortgage, deed of trust, or other lien, a specific gift of other property does not abate for the purpose of exonerating the encumbered property.

21405. (a) In any case in which there is abatement when a distribution is made during estate administration, the court shall fix the amount each distributee must contribute for abatement. The personal representative shall reduce the distributee's share by that amount.

(b) If a specific gift must be abated, the beneficiary of the specific gift may satisfy the contribution for abatement out of the beneficiary's property other than the property that is the subject of the specific gift.

21406. (a) This part does not apply to a gift made before July 1, 1989. In the case of a gift made before July 1, 1989, the law that would have applied had this part not been enacted shall apply.

(b) For purposes of this section a gift by will is made on the date of the decedent's death.

PART 5. COMPLIANCE WITH INTERNAL REVENUE CODE

CHAPTER 1. GENERAL PROVISIONS

21500. As used in this part, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time. A reference to a provision of the Internal Revenue Code includes any subsequent provision of law enacted in its place.

21501. (a) This part applies to a distribution made on or after January 1, 1988, whether the transferor died before, on, or after that date.

(b) A distribution made on or after January 1, 1983, and before

January 1, 1988, is governed by the applicable law in effect before January 1, 1988.

21502. (a) This part does not apply to an instrument the terms of which expressly or by necessary implication make this part inapplicable.

(b) By an appropriate statement made in an instrument, the transferor may incorporate by reference any or all of the provisions of this part. The effect of incorporating a provision of this part in an instrument is to make the incorporated provision a part of the instrument as though the language of the incorporated provision were set forth verbatim in the instrument. Unless an instrument incorporating a provision of this part provides otherwise, the instrument automatically incorporates the provision's amendments.

21503. (a) If an instrument includes a formula intended to eliminate the federal estate tax, the formula shall be applied to eliminate or to reduce to the maximum extent possible the federal estate tax.

(b) If an instrument includes a formula that refers to a maximum fraction or amount that will not result in a federal estate tax, the formula shall be construed to refer to the maximum fraction or amount that will not result in or increase the federal estate tax.

CHAPTER 2. MARITAL DEDUCTION GIFTS

21520. As used in this chapter:

(a) "Marital deduction" means the federal estate tax deduction allowed for transfers under Section 2056 of the Internal Revenue Code or the federal gift tax deduction allowed for transfers under Section 2523 of the Internal Revenue Code.

(b) "Marital deduction gift" means a transfer of property that is intended to qualify for the marital deduction.

21521. Sections 21524 and 21526 do not apply to a trust that qualifies for the marital deduction under Section 20.2056(e)-2(b) of the Code of Federal Regulations (commonly referred to as the "estate trust").

21522. If an instrument contains a marital deduction gift:

(a) The provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the marital deduction provisions of the Internal Revenue Code.

(b) The fiduciary shall not take any action or have any power that impairs the deduction as applied to the marital deduction gift.

(c) The marital deduction gift may be satisfied only with property that qualifies for the marital deduction.

21523. (a) The Economic Recovery Tax Act of 1981 was enacted August 13, 1981. This section applies to an instrument executed before September 12, 1981 (before 30 days after enactment of the Economic Recovery Tax Act of 1981).

(b) If an instrument described in subdivision (a) indicates the

transferor's intention to make a gift that will provide the maximum allowable marital deduction, the instrument passes to the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before enactment of the Economic Recovery Tax Act of 1981, with adjustments for the following, if applicable:

(1) The provisions of Section 2056(c)(1)(B) and (C) of the Internal Revenue Code in effect immediately before enactment of the Economic Recovery Tax Act of 1981.

(2) To reduce the amount passing under the gift by the final federal estate tax values of any other property that passes under or outside of the instrument and qualifies for the marital deduction. This subdivision does not apply to qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code.

21524. If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

(a) The transferor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to subdivision (d), the transferor's spouse is entitled to all of the income of the marital deduction property not less frequently than annually, as long as the spouse is alive.

(c) The transferor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or to convert it into productive property within a reasonable time.

(d) Notwithstanding subdivision (d) of Section 16304, in the case of qualified terminable interest property under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.

21525. (a) If an instrument that makes a marital deduction gift includes a condition that the transferor's spouse survive the transferor by a period that exceeds or may exceed six months, other than a condition described in subdivision (b), the condition shall be limited to six months as applied to the marital deduction gift.

(b) If an instrument that makes a marital deduction gift includes a condition that the transferor's spouse survive a common disaster that results in the death of the transferor, the condition shall be limited to the time of the final audit of the federal estate tax return for the transferor's estate, if any, as applied to the marital deduction gift.

(c) The amendment of subdivision (a) made by Chapter 113 of the Statutes of 1988 is declaratory of, and not a change in, either

existing law or former Section 1036 (repealed by Chapter 923 of the Statutes of 1987).

21526. A fiduciary is not liable for a good faith decision to make any election, or not to make any election, referred to in Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code.

CHAPTER 3. CHARITABLE GIFTS

21540. If an instrument indicates the transferor's intention to comply with the Internal Revenue Code requirements for a charitable remainder unitrust or a charitable remainder annuity trust as each is defined in Section 664 of the Internal Revenue Code, the provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the charitable deduction provisions of Section 2055 or Section 2522 of the Internal Revenue Code and the charitable remainder trust provisions of Section 664 of the Internal Revenue Code in order to conform to that intent. In no event shall the fiduciary take an action or have a power that impairs the charitable deduction. The provisions of the instrument may be augmented in any manner consistent with Section 2055(e) or Section 2522(c) of the Internal Revenue Code on a petition provided for in Section 17200.

21541. If an instrument indicates the transferor's intention to comply with the requirements for a charitable lead trust as described in Section 170(f)(2)(B) and Section 2055(e)(2) or Section 2522(c)(2) of the Internal Revenue Code, the provisions of the instrument, including any power, duty, or discretionary authority given to a fiduciary, shall be construed to comply with the provisions of that section in order to conform to that intent. In no event shall the fiduciary take any action or have any power that impairs the charitable deduction. The provisions of the instrument may be augmented in any manner consistent with that intent upon a petition provided for in Section 17200.

SEC. 15. Section 7663 is added to the Probate Code, to read:

7663. (a) After payment of debts pursuant to Section 7662, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute to the decedent's beneficiaries any money or other property of the decedent remaining in the possession of the public administrator.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund of the county, subject to Article 3 (commencing with Section 50050) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. If the amount deposited exceeds ten thousand dollars ($10,000), the public administrator shall at the time of the deposit give the Controller written notice of the information specified in Section 1311 of the Code of Civil Procedure, and the

Controller shall compile and report the information in the same manner as information concerning estates delivered to the Treasurer or the Controller under Section 7643 or 7644.

SEC. 16. Section 7664 is added to the Probate Code, to read:

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. Subject to Section 353 of the Code of Civil Procedure, in an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed to the person, valued as of the date of the distribution, less the amount of any liens and encumbrances on the property on that date.

SEC. 17. Section 9103 is added to the Probate Code, to read:

9103. (a) Upon petition by a creditor and notice of hearing given as provided in Section 1220, the court may allow a claim to be filed after expiration of the time for filing a claim if the creditor establishes that either of the following conditions is satisfied:

(1) Neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had actual knowledge of the administration whichever occurred first.

(2) Neither the creditor nor the attorney representing the creditor in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had knowledge of the existence of the claim whichever occurred first.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the date of the decedent's death.

(c) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the creditor's petition if a preliminary distribution to beneficiaries or a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among beneficiaries or creditors.

(d) Regardless of whether the claim is later established in whole or in part, property distributed under court order and payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Section 9392 and subject to Section 9053, the personal representative,

distributee, or payee is not liable on account of the prior distribution or payment.

SEC. 18. Section 9201 is added to the Probate Code, to read:

9201. (a) Notwithstanding any other statute, if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

(1) The public entity may provide a form to be used for the written notice or request to the public entity required by this chapter. Where appropriate, the form may require the decedent's social security number, if known.

(2) The claim is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the remedies, and is barred at the time, otherwise provided in the law, act, or code.

(b)

Law, Act, or Code	Applicable Section
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code

Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

SEC. 19. Section 9391 is added to the Probate Code, to read:

9391. The holder of a mortgage or other lien on property in the decedent's estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 353 of the Code of Civil Procedure does not apply to an action under this section.

SEC. 20. Section 9392 is added to the Probate Code, to read:

NOTE. See SEC 14 of this chapter

SEC. 21. Section 11429 is added to the Probate Code, to read:

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid, whether or not included in the order for payment, has no right to require contribution from creditors who are paid or from distributees, except

to the extent provided in Section 9392.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a creditor who is not paid, subject to Section 9053.

SEC. 22. Section 13109 is added to the Probate Code, to read:

13109. A person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable, to the extent provided in Section 13112, for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. Subject to Section 353 of the Code of Civil Procedure, in any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

SEC. 23. Section 13156 is added to the Probate Code, to read:

13156. (a) Subject to subdivisions (b), (c), and (d), the petitioner who receives the decedent's property pursuant to an order under this chapter is personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) Subject to Section 353 of the Code of Civil Procedure, in any action or proceeding based upon an unsecured debt of the decedent, the petitioner may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

SEC. 24. Section 13204 is added to the Probate Code, to read:

13204. Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. Subject to Section 353 of the Code of Civil Procedure, in any action based upon the debt, the person may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

SEC. 25. Section 13554 is added to the Probate Code, to read:

13554. (a) Except as otherwise provided in this chapter, any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced

against the deceased spouse if the deceased spouse had not died.

(b) Subject to Section 353 of the Code of Civil Procedure, in any action based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

SEC. 26. Section 15 of this act shall become operative only if Senate Bill 1774 of the 1989–90 Regular Session is enacted and amends Section 7663 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 7663 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 27. Section 16 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 7664 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 7664 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 28. Section 17 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 9103 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 9103 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 29. Section 18 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 9201 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 9201 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 30. Section 19 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 9391 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 9391 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 31. Section 20 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and adds Section 9392 to the Probate Code.

SEC. 32. Section 21 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 11429 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 11429 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 33. Section 22 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 13109 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 13109 of the Probate Code as enacted by Section 14 of this act shall not become

operative.

SEC. 34. Section 23 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 13156 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 13156 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 35. Section 24 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 13204 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 13204 of the Probate Code as enacted by Section 14 of this act shall not become operative.

SEC. 36. Section 25 of this act shall become operative only if Senate Bill 1855 of the 1989–90 Regular Session is enacted and amends Section 13554 of the Probate Code, and this bill is enacted and is chaptered after that bill, in which event Section 13554 of the Probate Code as enacted by Section 14 of this act shall not become operative.

Sec. 37. This act shall become operative on July 1, 1991.

(Amended by Stats. 1990, Ch. 710, Sec. 46. Operative July 1, 1991, by Sec. 48 of chapter.)

[ORIGINAL SECTION]

SEC. 37. This act shall become operative only if Assembly Bill 831 of the 1989–90 Regular Session is chaptered and takes effect on or before January 1, 1991, in which case this bill shall become operative on July 1, 1991.

(next page is 973)

CHAPTER 80

An act to amend Sections 139 and 140 of the Penal Code, relating to crimes.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 2, 1990.]

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

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

139. (a) Except as provided in Sections 71 and 136.1, any person who has been convicted of any felony offense specified in Section 12021.1 who willfully and maliciously communicates to a witness to, or a victim of, the crime for which the person was convicted, a credible threat to use force or violence upon that person or that person's immediate family, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison for two, three, or four years.

(b) Any person who is convicted of violating subdivision (a) who subsequently is convicted of making a credible threat, as defined in subdivision (c), which constitutes a threat against the life of, or a threat to cause great bodily injury to, a person described in subdivision (a), shall be sentenced to consecutive terms of imprisonment as prescribed in Section 1170.13.

(c) As used in this section, "a credible threat" is a threat made with the intent and the apparent ability to carry out the threat so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) The present incarceration of the person making the threat shall not be a bar to prosecution under this section.

(e) As used in this section, "malice," "witness," and "victim" have the meanings given in Section 136.

SEC. 2. Section 140 of the Penal Code is amended to read:

140. Except as provided in Section 139, every person who willfully threatens to use force or violence upon the person of a witness to, or a victim of, a crime or any other person, or to take, damage, or destroy any property of any witness, victim, or any other person, because the witness, victim, or informant has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding or juvenile court proceeding, shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

CHAPTER 81

An act to amend Sections 12020.5, 12220, 12230, and 12520 of, to add Section 12583 to, and to repeal and add Section 12501 of, the Penal Code, relating to weapons.

[Approved by Governor May 1, 1990 Filed with Secretary of State May 2, 1990.]

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

SECTION 1. Section 12020.5 of the Penal Code is amended to read:

12020.5. It shall be unlawful for any person, as defined in Section 12277, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of any weapon or device whose possession is prohibited by Section 12020, 12220, or 12280.

SEC. 2. Section 12220 of the Penal Code is amended to read:

12220. (a) Any person, firm, or corporation, who within this state possesses or knowingly transports a machinegun, except as authorized by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the state prison, or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(b) Any person, firm, or corporation who within this state intentionally converts a firearm into a machinegun, or who sells, or offers for sale, or knowingly manufactures a machinegun, except as authorized by this chapter, is punishable by imprisonment in the state prison for four, six, or eight years.

SEC. 3. Section 12230 of the Penal Code is amended to read:

12230. The Department of Justice may issue permits for the possession, manufacture, and transportation or possession, manufacture, or transportation of machineguns, upon a satisfactory showing that good cause exists for the issuance thereof to the applicant for the permit, but no permit shall be issued to a person who is under 18 years of age.

SEC. 4. Section 12501 of the Penal Code is repealed.

SEC. 5. Section 12501 is added to the Penal Code, to read:

12501. Section 12520 shall not apply to, or affect, any of the following:

(a) The sale to, purchase by, or possession of silencers by agencies listed in Section 830.1, or the military or naval forces of this state or of the United States for use in the discharge of their official duties.

(b) The possession of silencers by regular, salaried, full-time peace officers who are employed by an agency listed in Section 830.1, or by the military or naval forces of this state or of the United States when

on duty and when the use of silencers is authorized by the agency and is within the course and scope of their duties.

(c) The manufacture, possession, transportation, or sale or other transfer of silencers to an entity described in subdivision (a) by dealers or manufacturers registered under Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code, and the regulations issued pursuant thereto.

SEC. 6. Section 12520 of the Penal Code is amended to read:

12520. Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison or by a fine not to exceed ten thousand dollars ($10,000) or by both.

SEC. 7. Section 12583 is added to the Penal Code, to read:

12583. Nothing in this article shall prohibit the sale to, purchase by, possession of, or use of blowguns or blowgun ammunition by zookeepers, animal control officers, Department of Fish and Game personnel, humane officers whose names are maintained in the county record of humane officers pursuant to Section 607f of the Civil Code, or veterinarians in the course and scope of their business in order to administer medicine to animals.

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 82

An act to amend Section 14613 of the Government Code, to amend Section 12020 of the Health and Safety Code, to amend Sections 488.5, 557.5, and 557.6 of the Insurance Code, to amend Sections 409.5, 830.2, 830.3, 830.33, 830.36, 830.7, 830.8, 830.9, 13540, and 13542 of the Penal Code, to amend Section 10334 of the Public Contract Code, to amend Sections 8226 and 8227 of the Public Utilities Code, and to amend Section 25258 of the Vehicle Code, relating to peace officers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 2, 1990. Filed with Secretary of State May 3, 1990]

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

SECTION 1. Section 14613 of the Government Code is amended to read:

14613. There is in the Department of General Services the California State Police Division.

The Governor, upon the recommendation of the Director of General Services, and with the advice and consent of the Senate, shall appoint the chief of the division. The Director of General Services shall appoint members and employees of the division as may be necessary to protect and provide police services for state property and buildings and occupants thereof. Members of the division have the powers of peace officers as defined in the Penal Code.

Members of the division consist of the following: the chief, deputy chiefs, assistant chiefs, commanders, captains, lieutenants, sergeants, officers, and security officers. All other persons in the division are considered employees.

The division may provide for the physical security of any current or former constitutional officer of the state and any current or former legislator of the state.

Upon the request of the Chief Justice, the director, through the division, may provide appropriate protective services to any current or former member of the state courts of appeal and the California Supreme Court.

SEC. 2. Section 12020 of the Health and Safety Code is amended to read:

12020. The chief and the issuing authority, as defined in Sections 12003 and 12007, respectively, shall in their areas of jurisdiction enforce the provisions of this part and the regulations adopted by the State Fire Marshal pursuant to this part.

Any peace officer, as defined in Sections 830.1, 830.2, and subdivisions (a), (e), (k), and (*l*) of Section 830.3 of the Penal Code, may enforce the provisions of this part.

SEC. 3. Section 488.5 of the Insurance Code is amended to read:

488.5. No insurer shall, in issuing or renewing a private automobile insurance policy to a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code, in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, or in subdivision (f) of Section 165 of the Vehicle Code, in the performance of his or her duty during the hours of his or her employment.

As used in this section:

(a) "Peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), (d), and (e) of Section 830.33, subdivisions (a) and (b) of Section 830.5, and Section 830.6, of the Penal Code.

(b) "Policy" shall have the same meaning as defined in subdivision (a) of Section 660.

SEC. 4. Section 557.5 of the Insurance Code is amended to read:

557.5. No peace officer, member of the California Highway Patrol, or firefighter shall be required to report any accident in which he or she is involved while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code, in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, or in subdivision (f) of Section 165 of the Vehicle Code in performance of his or her duty during the hours of his or her employment, to any person who has issued that peace officer, member of the California Highway Patrol, or firefighter a private automobile insurance policy.

As used in this section:

(a) "Peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), (d), and (e) of Section 830.33, subdivisions (a) and (b) of Section 830.5, and Section 830.6, of the Penal Code.

(b) "Policy" shall have the same meaning as defined in subdivision (a) of Section 660.

SEC. 5. Section 557.6 of the Insurance Code is amended to read:

557.6. Any peace officer as defined pursuant to this section who has been involved in an accident shall submit to his or her private automobile insurer within 30 days of the accident his or her written declaration under penalty of perjury stating whether or not at the time of the accident he or she was operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code, in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, or in subdivision (f) of Section 165 of the Vehicle Code in the performance of his or her duty during the hours of his or her employment. In lieu of a written declaration, the peace officer may submit to the private automobile insurer a copy of the incident report filed by the peace officer with his or her employer.

As used in this section, "peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), (d), and (e) of Section 830.33, subdivisions (a) and (b) of Section 830.5, and Section 830.6, of the Penal Code.

SEC. 6. Section 409.5 of the Penal Code is amended to read:

409.5. (a) Whenever a menace to the public health or safety is

created by a calamity such as flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the California Highway Patrol, California State Police, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (h) of Section 830.2, any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (g) of Section 830.2, any officer or employee of the Department of Fish and Game designated a peace officer under subdivision (f) of Section 830.2, and any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties, may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If such a calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

(b) Officers of the California Highway Patrol, California State Police, police departments, marshal's office or sheriff's office or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (h) of Section 830.2 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

SEC. 7. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol, provided that the primary duty of the peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth in the Vehicle Code.

(b) Any member of the California State Police Division, provided that the primary duty of the peace officer shall be to provide police services for the protection of state officers, and the protection of state

properties and occupants thereof, as set forth in the Government Code.

(c) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(d) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(e) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(f) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of those deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(g) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(h) The Director of Forestry and employees or classes of employees of the Department of Forestry designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(i) 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 any 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.

(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 officers shall be the enforcement of the law as prescribed in that section.

SEC. 8. 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 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(*l*) 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.

(m) 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.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) 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.

(p) 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.

(q) 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. 9. Section 830.33 of the Penal Code is amended to read:

830.33. 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) 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.

(b) 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.

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

(d) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(e) Any railroad policeman commissioned by the Governor pursuant to Section 8226 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 employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 10. Section 830.36 of the Penal Code is amended to read:

830.36. 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) The Sergeant-at-Arms of each house of the Legislature, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(b) Bailiffs of the Supreme Court and of the courts of appeal, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(c) Court service officer in a county of the second class and third class, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 11. Section 830.7 of the Penal Code is amended to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if they successfully complete a course in the exercise of those powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for institutions of higher education, recognized under subdivision (a) of Section 94310.1 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or chief of police within whose jurisdiction the institution lies.

(c) Persons regularly employed as security officers for health facilities, as defined in Section 1250 of the Health and Safety Code, which are owned and operated by cities, counties, and cities and counties, if the facility has concluded a memorandum of understanding permitting the exercise of that authority with the sheriff or chief of police within whose jurisdictions the facility lies.

(d) Employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and approved by the Secretary of the Resources Agency.

(e) Employees of the Public Utilities Commission assigned to the

Transportation Division, designated by the division director and approved by the commission, to the extent necessary to enforce the provisions of the Public Utilities Code.

SEC. 12. Section 830.8 of the Penal Code is amended to read:

830.8. (a) Federal criminal investigators and law enforcement officers are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided that these investigators and law enforcement officers are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of their federal duties. These investigators and law enforcement officers, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

SEC. 13. Section 830.9 of the Penal Code is amended to read:

830.9. Animal control officers 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 those officers successfully complete a course in the exercise of those powers pursuant to Section 832. That part of the training course specified in Section 832 pertaining to the carrying and use of firearms shall not be required for any animal control officer whose employing agency prohibits the use of firearms.

For the purposes of this section, "firearms" includes capture guns, blowguns, carbon dioxide operated rifles and pistols, air guns, handguns, rifles, and shotguns.

SEC. 14. Section 13540 of the Penal Code is amended to read:

13540. Any person or persons desiring peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 4 who, on January 1, 1990, were not entitled to be designated as peace officers under Chapter 4.5 shall request the Commission on Peace Officer Standards and Training to undertake a feasibility study regarding designating that person or persons as peace officers. The request and study shall be undertaken in accordance with regulations adopted by the commission. The commission may charge any person requesting a study, a fee, not to exceed the actual cost of undertaking the study. Nothing in this article shall apply to or otherwise affect the authority of the Director of Corrections, the Director of the Youth Authority, the Director of the Youthful Offender Parole Board, or the Secretary of the Youth and Adult

Correctional Agency to designate peace officers as provided for in Section 830.5.

SEC. 14.5. Section 13542 of the Penal Code is amended to read:

13542. In order for the commission to give a favorable recommendation as to a change in designation to peace officer status, the person or persons desiring the designation change shall be employed by an agency with a supervisory structure consisting of a chief law enforcement officer, the agency shall agree to comply with the training requirements set forth in Section 832, and shall be subject to the funding restriction set forth in Section 13526. The commission shall issue the study and its recommendations to the requesting person or agency within 18 months of the request if the request is made in accordance with the regulations of the commission. A copy of that study and recommendations shall also be submitted to the Legislature.

SEC. 15. Section 10334 of the Public Contract Code is amended to read:

10334. (a) No state employee shall purchase any goods, supplies, equipment, or materials from the state, unless the goods, supplies, equipment, or materials are offered to the general public in the regular course of the state's business on the same terms and conditions as those applicable to the employee. "State employee," as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of "designated employee" under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer described in subdivision (a), (b), (f), (g), or (h) of Section 830.2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to subdivision (a) of Section 12027 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120 month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his or her retirement date.

(c) Notwithstanding subdivision (a), any peace officer described in subdivision (a) of Section 830.2 of the Penal Code may purchase his or her state-issued service revolver if the Commissioner of the California Highway Patrol directs the Department of the California

Highway Patrol to change its state-issued service weapon system. The cost of the service revolver shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the revolver issued as determined by the commissioner, plus a charge for the cost of handling. The requesting officer shall request to purchase his or her revolver in writing to the department within 10 calendar days of receiving the new state-issued weapon.

SEC. 16. Section 8226 of the Public Utilities Code is amended to read:

8226. The Governor of the state may, upon the application of any railroad company, appoint and commission during his or her pleasure one or more persons designated by the company, to serve at the expense of the company, as police officers, who shall have the powers and authority of peace officers listed in Section 830.33 of the Penal Code, after being duly sworn. The company designating these persons shall be responsible civilly for any abuse of their authority.

SEC. 17. Section 8227 of the Public Utilities Code is amended to read:

8227. Every peace officer designated under Section 8226 shall, when in uniform, wear in plain view a shield bearing the words "railroad police," and the name of the company for which he or she is commissioned. When on duty, but not in uniform, the peace officer shall carry the shield upon his or her person and present it upon request.

SEC. 18. Section 25258 of the Vehicle Code is amended to read:

25258. (a) An authorized emergency vehicle operating under the conditions specified in Section 21055 may display a flashing white light from a gaseous discharge lamp designed and used for the purpose of controlling official traffic control signals.

(b) An authorized emergency vehicle used by a peace officer, as defined in Section 830.1, subdivision (a), (b), (c), (d), (e), (f), (g), (h), or (j) of Section 830.2, subdivision (b) of Section 830.31, subdivision (a) or (b) of Section 830.32, subdivision (a), (b), (c), or (d) of Section 830.33, or subdivision (a) of Section 830.4 of the Penal Code, in the performance of the peace officer's duties, may, in addition, display a steady or flashing blue warning light visible from the front, sides, or rear of the vehicle.

SEC. 19. 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. 20. 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 numerous changes made in the law in 1989 governing the designations, powers, and duties of peace officers, some confusion has occurred regarding the proper interpretation of the statutes. Therefore, it is essential that this act take effect immediately in order to clarify those changes.

CHAPTER 83

An act to amend Sections 22127.1, 22658, and 24205 of, to add Sections 24000.5, 24204.5, and 24204.6 to, and to repeal Sections 24300, 24301, and 24302 of, the Education Code, relating to public employee retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 2, 1990 Filed with Secretary of State May 3, 1990]

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

SECTION 1. Section 22127.1 of the Education Code is amended to read:

22127.1. (a) Notwithstanding the first and second paragraphs of Section 22127, "final compensation" means the highest annual compensation earnable by a member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the system. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) Section 22127, except the first paragraph thereof, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22127 or "final compensation" with respect to a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means:

(1) All teachers and substitute teachers in positions requiring certification qualifications who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct instruction. For the purpose of determining continuity of employment within the meaning of this subdivision, an authorized leave of absence for sabbatical or illness, or other bargained or employer approved leaves shall not constitute

a break in employment.

(2) Other certificated personnel who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct services to pupils, including, but not limited to, librarians, counselors, nurses, speech therapists, resource specialists, audiologists, audiometrists, hygienists, optometrists, psychologists, driver safety instructors, and personnel on special assignment to perform school attendance and adjustment services.

(d) As used in this section, "classroom teacher" does not include:

(1) Certificated employees whose job descriptions require an administrative credential.

(2) Certificated employees whose job descriptions include responsibility for supervision of certificated staff.

(3) Certificated employees who serve as advisers, coordinators, consultants, or developers or planners of curricula, instructional materials, or programs, who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, less than 60 percent of their contract time in direct instruction.

(4) Certificated employees whose job descriptions require provision of direct instruction or services, but who are functioning in nonteaching assignments.

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer which has, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written agreement with an exclusive representative, which makes this section applicable to its certificated employees.

(f) The written agreement shall include a mechanism to pay for all increases in benefits and allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in benefits and allowance provided by this section and related administrative costs, a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers and the employer. The members representing the classroom teachers shall be named by the bargaining agent. If the employer agrees to pay the total cost of the benefit improvement, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system the amount determined by the Teachers' Retirement Board to be equal to the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this

section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22127 and the proportionate share of the cost to the system, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in benefits and allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of the receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is in the Public Employees' Retirement System pursuant to Section 22608, that he or she may, within 90 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this system. However, only service credited under this system subsequent to the date of that election shall be subject to this section.

(h) An employer which agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the eligibility of an employee, upon retirement or eligibility for a disability or family allowance, pursuant to the criteria set forth in this section.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section 22658. The employer, within 30 days of receiving an invoice from the system, shall reimburse the system pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payment not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

SEC. 2. Section 22658 of the Education Code is amended to read:

22658. The nonmember spouse who is awarded a separate account shall have the right to a retirement allowance.

(a) The nonmember spouse shall be eligible to retire if the following conditions are satisfied:

(1) The member had performed at least five years of creditable California service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated contributions, if five of the member's six years of credited service immediately before the dissolution or legal separation had been in California. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, and permissive service credit which the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of

credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A retirement allowance of a nonmember spouse shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for retirement on a form provided by the system, which is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received by the system in Sacramento and the effective date is after the date the judgment was entered.

(c) Upon retirement, the nonmember spouse shall receive a retirement allowance which shall consist of an annual allowance payable in monthly installments upon retirement at normal retirement age or over, equal to 2 percent of final compensation for each year of credited service. If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, which will elapse until the nonmember spouse would have reached normal retirement age.

(1) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse at the last day of the month in which the retirement allowance begins to accrue shall be used.

(2) Final compensation, for purposes of calculating the retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22127 or Section 22127.1, whichever is applicable, and shall be based on the earnable compensation of the member on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse is not eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to a position requiring membership or has his or her allowance terminated under Section 23910, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member

to a position requiring membership, or the termination of the disability allowance and the employment or self-employment of the member. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 23910, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the benefits for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the benefits for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance will be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Sections 23911 and 24303.

(e) The nonmember spouse who receives a retirement allowance is not a retirant. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions, including, but not limited to, Sections 24003, 24701, and 24702, based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 3. Section 24000.5 is added to the Education Code, to read:

24000.5. Upon retirement for service following a prior retirement and subsequent reinstatement to membership, a member shall receive a retirement allowance which shall be calculated pursuant to Section 24000 and shall be reduced by the actuarial equivalent of the total of all allowance payments received during the prior retirement and regular interest on those payments from the date of payment to the effective date of the current retirement.

SEC. 4. Section 24204.5 is added to the Education Code, to read:

24204.5. Upon a member's reinstatement to membership pursuant to Section 23913, any option elected at the time of retirement pursuant to Section 24200 shall be considered to be a preretirement election of an option elected as of the effective date of the prior retirement and shall be subject to the same provisions as an option elected under Section 24203.

SEC. 5. Section 24204.6 is added to the Education Code, to read:

24204.6. Reinstatement to membership pursuant to Section 23913

does not cancel an option elected under the provisions of Section 24200 or 24203. The option shall remain in effect unchanged and shall be reapplied to the allowance payable upon the subsequent retirement.

SEC. 6. Section 24205 of the Education Code is amended to read:

24205. If a member cancels the election of an option made pursuant to Section 24203, written cancellation shall be received by the board on or before the day preceding the effective date of retirement or during the period between reinstatement pursuant to Section 23913 and the effective date of the subsequent retirement. Regardless of how the member elects to receive his or her retirement allowance, the allowance shall be reduced by one-half of 1 percent for each year or partial year that Option 3 or Option 5 is in effect, or by six-tenths of 1 percent for each year or partial year that Option 4 is in effect, or by three-fourths of 1 percent for each year or partial year that Option 2 is in effect.

SEC. 7. Section 24300 of the Education Code is repealed.

SEC. 8. Section 24301 of the Education Code is repealed.

SEC. 9. Section 24302 of the Education Code is repealed.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the proper implementation of one-year final compensation for electing employers under the State Teachers' Retirement System may be effectuated at the earliest possible time and that a more equitable formula may be established for the subsequent retirement for members of the State Teachers' Retirement System who reinstate from retirement, without adversely impacting the fiscal integrity of the Teachers' Retirement Fund, it is necessary that this act take effect immediately.

CHAPTER 84

An act to amend Sections 86103, 87102, 87304, 87306, and 91005 of, to add Sections 8956, 15626, 87102.5, 87102.6, 87406, and 87407 to, to add Chapter 9.5 (commencing with Section 89500) to Title 9 of, to repeal Section 85202 of, and to repeal Article 4 (commencing with Section 85400) and Article 8 (commencing with Section 85800) of Chapter 5 of Title 9 of, the Government Code, relating to governmental ethics.

[Approved by Governor May 4, 1990 Filed with Secretary of State May 4, 1990]

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

SECTION 1. Section 8956 is added to the Government Code, to read:

8956. (a) The appropriate legislative ethics committees shall conduct at least semiannually an orientation course of the relevant statutes and regulations governing official conduct. The curriculum and presentation of the course shall be established by house rules.

(b) The committees shall conduct at least annually an orientation course on the relevant ethical issues and laws relating to lobbying, in consultation with the Fair Political Practices Commission. This course may be combined with the course described in subdivision (a).

(c) At least once in each biennial session, each Member of the Legislature and each designated employee of the Legislature shall attend one of these courses.

(d) The committees shall impose fees on lobbyists for attending the course described in subdivision (b). The fees shall be set at an amount that will enable the lobbyists' participation in the course to be funded from those fees to the fullest extent possible.

SEC. 2. Section 15626 is added to the Government Code, to read:

15626. (a) This section shall be known, and may be cited, as the Quentin L. Kopp Conflict of Interest Act of 1990.

(b) Prior to rendering any decision in any adjudicatory proceeding pending before the State Board of Equalization, each member who knows or has reason to know that he or she received a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars ($250) or more from a party or his or her agent, or from any participant or his or her agent, shall disclose that fact on the record of the proceeding.

(c) No member shall make, participate in making, or in any way attempt to use his or her official position to influence, the decision in any adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of two hundred fifty dollars ($250) or more within the preceding 12 months from a party or his or her agent, or from any participant or his or her agent, and if the member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9.

(d) Notwithstanding subdivision (c), if a member receives a contribution which would otherwise require disqualification under subdivision (c), and he or she returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful.

(e) A party to, or a participant in, an adjudicatory proceeding

pending before the board shall disclose on the record of the proceeding any contribution or contributions in an aggregate amount of two hundred fifty dollars ($250) or more made within the preceding 12 months by the party or participant, or his or her agent, to any member of the board.

(f) When a close corporation is a party to, or a participant in, an adjudicatory proceeding pending before the board, the majority shareholder is subject to the disclosure requirement specified in this section.

(g) For purposes of this section, if a deputy to the Controller sits at a meeting of the board and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and shall disqualify himself or herself from voting pursuant to the requirements of this section.

(h) For purposes of this section:

(1) "Contribution" has the same meaning prescribed in Section 82015 and the regulations adopted thereto.

(2) "Party" means any person who is the subject of an adjudicatory proceeding pending before the board.

(3) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. A person actively supports or opposes a particular decision if he or she lobbies in person the members or employees of the board, testifies in person before the board, or otherwise acts to influence the members of the board.

(4) "Agent" means any person who represents a party to or participant in an adjudicatory proceeding pending before the board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.

(5) "Adjudicatory proceeding pending before the board" means a matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board members. A consent calendar matter is not included unless the matter has previously appeared on the calendar as a nonconsent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party.

(6) A member knows or has reason to know about a contribution if, after the adjudicatory proceeding first appears on a meeting notice of the board, facts have been brought to the member's personal attention that he or she has received a contribution which would require disqualification under subdivision (c), or that the member received written notice from the board staff, before commencement of the hearing and before any subsequent decision

on the matter, that a specific party, close corporation, or majority shareholder, or agent thereof, or any participant having a financial interest in the matter, or agent thereof, in a specific, named adjudicatory proceeding before the board, made a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars ($250) or more. Each member shall provide board staff with a copy of each of his or her campaign statements at the time each of those statements is filed.

The notice of contribution shall be on a form prescribed under rules adopted by the board to provide for staff inquiry of each party, participant, close corporation, and its majority shareholder, and any agent thereof, to determine whether any contribution has been made to a member, and if so, in what aggregate amount and on what date or dates within the 12 months preceding an adjudicatory proceeding or decision.

In addition, the staff shall inquire and report on the record as follows:

(A) Whether any party or participant is a close corporation, and if so, the name of its majority shareholder.

(B) Whether any agent is an employee or member of any law, accounting, consulting or other firm, or similar entity or corporation, and if so, its name and address and whether a contribution has been made by any such person, firm, corporation, or entity.

(i) (1) Any person who knowingly or willfully violates any provision of this section is guilty of a misdemeanor.

(2) No person convicted of a misdemeanor under this section shall be a candidate for any elective office or act as a lobbyist for a period for four years following the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for the purposes of this section.

(3) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars ($10,000), or three times the amount the person failed to disclose or report properly, may be imposed upon conviction for each violation.

(4) Prosecution for violation of this section shall be commenced within four years after the date on which the violation occurred.

(5) This section shall not prevent any member of the board from making, or participating in making, a governmental decision to the extent that the member's participation is legally required for the action or decision to be made. However, the fact that a member's vote is needed to break a tie does not make the member's participation legally required.

SEC. 3. Section 85202 of the Government Code, as amended by Chapter 303 of the Statutes of 1989, is repealed.

SEC. 3.5. Article 4 (commencing with Section 85400) of Chapter 5 of Title 9 of the Government Code is repealed.

The repeal of this article shall become operative only if Senate Constitutional Amendment No. 32 of the 1989–90 Regular Session is adopted by the voters.

SEC. 4. Article 8 (commencing with Section 85800) of Chapter 5 of Title 9 of the Government Code is repealed.

SEC. 5. Section 86103 of the Government Code is amended to read:

86103. A lobbyist certification shall include:

(a) A recent 3- by 4-inch black and white photograph of the lobbyist.

(b) The lobbyist's full name, business address, and telephone number.

(c) A statement that the lobbyist has read and understands the prohibitions contained in Sections 86203 and 86205.

(d) (1) Beginning with the 1991–92 Regular Session of the Legislature, a statement that the lobbyist has completed, within the previous 24 months, the course described in subdivision (b) of Section 8956. For the 1991–92 Regular Session, however, all renewal certifications shall be treated as new lobbyist certifications under paragraph (2) for the purposes of this subdivision.

(2) If, in the case of a new lobbyist certification, the lobbyist has not completed the course within the previous 24 months, the lobbyist certification shall include a statement that the lobbyist will complete a scheduled course within a reasonable period of time, and the lobbyist certification shall be accepted on a conditional basis. Within a reasonable time following the lobbyist's completion of the ethics course, the lobbyist shall file a new lobbyist certification with the Secretary of State which shall replace the conditional lobbyist certification previously filed.

(e) Any other information required by the commission consistent with the purposes and provisions of this chapter.

SEC. 6. Section 87102 of the Government Code is amended to read:

87102. The requirements of Section 87100 are in addition to the requirements of Articles 2 (commencing with Section 87200) and 3 (commencing with Section 87300) and any Conflict of Interest Code adopted thereunder. Except as provided in Section 87102.5, the remedies provided in Chapters 3 (commencing with Section 83100) and 11 (commencing with Section 91000) shall not be applicable to elected state officers for violations or threatened violations of this article.

SEC. 7. Section 87102.5 is added to the Government Code, to read:

87102.5. (a) The remedies provided in Chapter 3 (commencing with Section 83100) shall apply to any Member of the Legislature who makes, participates in making, or in any way attempts to use his or her official position to influence any of the following governmental decisions in which he or she knows or has reason to know that he or she has a financial interest:

(1) Any state governmental decision, other than any action or decision before the Legislature, made in the course of his or her duties as a member.

(2) Approval, modification, or cancellation of any contract to which either house or a committee of the Legislature is a party.

(3) Introduction as a lead author of any legislation that the member knows or has reason to know is nongeneral legislation.

(4) Any vote in a legislative committee or subcommittee on what the member knows or has reason to know is nongeneral legislation.

(5) Any rollcall vote on the Senate or Assembly floor on an item which the member knows is nongeneral legislation.

(6) Any action or decision before the Legislature in which all of the following occur:

(A) The member has received any salary, wages, commissions, or similar earned income within the preceding 12 months from the lobbyist employer.

(B) The member knows or has reason to know the action or decision will have a direct and significant financial impact on a lobbyist employer.

(C) The action or decision will not have an impact on the public generally or a significant segment of the public in a similar manner.

(7) Any action or decision before the Legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a significant segment of the public, from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

(b) For purposes of this section, all of the following apply:

(1) "Any action or decision before the Legislature" means any vote in a committee or subcommittee, or any rollcall vote on the floor of the Senate or Assembly.

(2) "Financial interest" means an interest as defined in Section 87103.

(3) "Legislation" means a bill, resolution, or constitutional amendment.

(4) "Nongeneral legislation" means legislation that is described in Section 87102.6 and is not of a general nature pursuant to Section 16 of Article IV of the Constitution.

(5) A Member of the Legislature has reason to know that an action or decision will have a direct and significant financial impact on a person with respect to which disqualification may be required pursuant to subdivision (a) if either of the following apply:

(A) With the knowledge of the member, the person has attempted to influence the vote of the member with respect to the action or decision.

(B) Facts have been brought to the member's personal attention indicating that the action or decision will have a direct and

significant impact on the person.

(6) The prohibitions specified in subdivision (a) do not apply to a vote on the Budget Bill as a whole, or to a vote on a consent calendar, a motion for reconsideration, a waiver of any legislative rule, or any purely procedural matter.

(7) A Member of the Legislature has reason to know that legislation is nongeneral legislation if facts have been brought to his or her personal attention indicating that it is nongeneral legislation.

(8) Written advice given to a Member of the Legislature regarding his or her duties under this section by the Legislative Counsel shall have the same effect as advice given by the commission pursuant to subdivision (b) of Section 83114 if both of the following apply:

(A) The member has made the same written request based on the same material facts to the commission for advice pursuant to Section 83114 as to his or her duties under this section, as the written request and facts presented to the Legislative Counsel.

(B) The commission has not provided written advice pursuant to the member's request prior to the time the member acts in good faith reliance on the advice of the Legislative Counsel.

SEC. 8. Section 87102.6 is added to the Government Code, to read:

87102.6. (a) "Nongeneral legislation" means legislation as to which both of the following apply:

(1) It is reasonably foreseeable that the legislation will have direct and significant financial impact on one or more identifiable persons, or one or more identifiable pieces of real property.

(2) It is not reasonably foreseeable that the legislation will have a similar impact on the public generally or on a significant segment of the public.

(b) For purposes of this section and Section 87102.5, all of the following apply:

(1) "Legislation" means a bill, resolution, or constitutional amendment.

(2) The term "public generally" includes an industry, trade, or profession.

(3) Any recognized subgroup or specialty of the industry, trade, or profession constitutes a significant segment of the public.

(4) A legislative district, county, city, or special district constitutes a significant segment of the public.

(5) More than a small number of persons or pieces of real property is a significant segment of public.

(6) Legislation, administrative action, or other governmental action impacts in a similar manner all members of the public, or all members of a significant segment of the public, on which it has a direct financial effect, whether or not the financial effect on individual members of the public or the significant segment of the public is the same as the impact on the other members of the public or the significant segment of the public.

(7) The Budget Bill as a whole is not nongeneral legislation.

(8) Legislation that contains at least one provision that constitutes nongeneral legislation is nongeneral legislation, even if the legislation also contains other provisions that are general and do not constitute nongeneral legislation.

SEC. 9. Section 87304 of the Government Code is amended to read:

87304. If any agency fails to submit a proposed conflict of interest code or if any state agency fails to report amendments pursuant to subdivision (b) of Section 87306 within the time limits prescribed pursuant to Section 87303 or 87306, the code reviewing body may issue any appropriate order directed to the agency or take any other appropriate action, including the adoption of a conflict of interest code for the agency. If the code reviewing body does not issue an appropriate order or take other action within 90 days of the deadline imposed on the agency as prescribed in Section 87303 or 87306, the commission may issue any appropriate order directed to the agency or take any other appropriate action, including the adoption of a conflict of interest code for the agency. The commission shall consult with the agency before ordering the adoption of a conflict of interest code for the agency.

SEC. 10. Section 87306 of the Government Code is amended to read:

87306. (a) Every agency shall amend its Conflict of Interest Code, subject to the provisions of Section 87303, when change is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to subdivision (a) of Section 87302 and relevant changes in the duties assigned to existing positions. Proposals for amendments or revisions shall be submitted to the code reviewing body within ninety days after the changed circumstances necessitating the amendments have become apparent. If after nine months following the occurrence of those changes the Conflict of Interest Code has not been amended or revised, the superior court may issue any appropriate order in an action brought under the procedures set forth in Section 87305.

(b) Notwithstanding subdivision (a), every state agency shall submit to the code reviewing body a biennial report identifying changes in its code, including, but not limited to, all new positions designated pursuant to subdivision (a) of Section 87302, changes in the list of reportable sources of income, and relevant changes in the duties assigned to existing positions. These reports shall be submitted no later than March 1 of each odd-numbered year.

SEC. 11. Section 87406 is added to the Government Code, to read:

87406. (a) This section shall be known, and may be cited, as the Milton Marks Postgovernment Employment Restrictions Act of 1990.

(b) No Member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written

communication, before the Legislature, any committee or subcommittee thereof, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

(c) No elected state officer, other than a Member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this subdivision, an appearance before a "state administrative agency" does not include an appearance in a court of law, before an administrative law judge, or before the Worker's Compensation Appeals Board.

(d) (1) No designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, and no member of a state administrative agency, for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Worker's Compensation Appeals Board.

(2) For purposes of paragraph (1), a state administrative agency of a designated employee of the Governor's office includes any state administrative agency subject to the direction and control of the Governor.

(e) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to any individual subject to this section who is or becomes an officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the state agency, board, or commission.

(f) This section shall become operative on January 1, 1991, but

only if Senate Constitutional Amendment No. 32 of the 1989–90 Regular Session is approved by the voters. With respect to Members of the Legislature whose current term of office on January 1, 1991, began in December 1988, this section shall not apply until January 1, 1993.

SEC. 12. Section 87407 is added to the Government Code, to read:

87407. No state administrative official, elected state officer, or designated employee of the Legislature shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

SEC. 13. Chapter 9.5 (commencing with Section 89500) is added to Title 9 of the Government Code, to read:

CHAPTER 9.5. ETHICS

89500. This chapter shall be known and may be cited as the Ethics in Government Act of 1990.

Article 1. Honoraria

89501. No local elected officeholder shall accept any honoraria for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering, or any gifts, from any single source, which is in excess of one thousand dollars ($1,000), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.

89502. (a) No elected state officer may accept an honorarium.

(b) "Honorarium" means, except as provided in subdivision (c), any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

(c) "Honorarium" does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The commission shall adopt regulations to implement this subdivision.

(d) Section 89506 shall apply to all payments, advances, and reimbursements for travel and related lodging and subsistence.

(e) This section does not apply to any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the Controller for donation to the General Fund, without being claimed as a deduction from income for tax purposes.

(f) For purposes of this section, "elected state officer" includes the Insurance Commissioner.

89503. (a) No member of a state board or commission, and no designated employee of a state agency, shall accept an honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interest. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(b) Subdivisions (b), (c), (d), and (e) of Section 89502 shall apply to this section.

(c) Every state agency shall amend its conflict of interest code in accordance with this section no later than December 31, 1991.

89503.5. This article shall become operative only if Senate Constitutional Amendment No. 32 of the 1989–90 Regular Session is approved by the voters.

Article 2. Gifts

89504. (a) No elected state officer shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250).

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Section 89506.

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(c) For purposes of this section, "elected state officer" includes the Insurance Commissioner.

(d) The gift limitation amounts in this section shall be adjusted biennially by the commission to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars ($10).

(e) The limitations in this section are in addition to the limitations on gifts in Section 86203.

89505. (a) No member of a state board or commission, and no designated employee of a state agency, shall accept gifts with a total value of more than two hundred fifty dollars ($250) in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interest. This paragraph shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(b) Subdivisions (b), (c), (d), and (e) of Section 89504 shall apply to the prohibitions in this section.

(c) Every state agency shall amend its conflict of interest code in accordance with this section no later than December 31, 1991.

89505.5. This article shall become operative only if Senate Constitutional Amendment No. 32 of the 1989–90 Regular Session is approved by the voters.

Article 3. Travel

89506. (a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, is not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, member of a state board or commission, or designated employee of a state agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Sections 89504 and 89505.

(c) Subdivision (a) applies only to travel which is reported on the recipient's statement of economic interests.

(d) For purposes of this section, a gift of travel does not include any of the following:

(1) Travel which is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or which is a contribution.

(2) Travel which is provided by the agency of an elected state officer, member of a state board or commission, or a designated employee.

(3) Travel which is reasonably necessary in connection with a bona fide business, trade, or profession and which satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 174 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(4) Travel which is excluded from the definition of a gift by any other provision of this title.

89507. This article shall become operative only if Senate Constitutional Amendment No. 32 of the 1989–90 Regular Session is approved by the voters.

Article 4. Campaign Funds

89510. (a) A candidate may only accept contributions from persons, political committees, broad based political committees, and political parties and only in the amounts specified in Article 3 (commencing with Section 85300). A candidate shall not accept contributions from any other source.

(b) All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate to the specific office for which the candidate has stated, pursuant to Section 85200, that he or she intends to seek or expenses associated with holding that office.

(c) In the event that the numerical reference to a district changes due to a reapportionment subsequent to a candidate declaring an intention to seek a specific office, the candidate may use the contribution raised under the old-numbered district to seek office, and for office expenses, in the new-numbered district.

(d) In the event that the boundaries of the district for a specific office change as a result of a reapportionment which is enacted after a candidate files a statement of intention to be a candidate for that specific office, the candidate may use any contributions received for that specific office for expenses associated with the election of the candidate to any other equivalent district office of the agency body which includes the specific office, at the next election for that other district office, and for expenses associated with holding that other district office.

89511. (a) This article applies to campaign funds held by candidates for elective office, elected officers, controlled committees, ballot measure committees, committees opposed to a candidate or measure, political action committees, and any committee which qualifies as a committee pursuant to subdivision (a) of Section 82013.

(b) (1) For purposes of this chapter, "campaign funds" includes any contributions, cash, cash equivalents, and other assets received or possessed by a committee as defined by subdivision (a) of Section 82013.

(2) For purposes of this chapter, "substantial personal benefit" means an expenditure of campaign funds which results in a direct personal benefit with a value of more than one hundred dollars ($100) to a candidate or elected officer.

(3) For purposes of this article, "household" includes the candidate's or elected officer's spouse, dependent children, and parents who reside with the candidate or elected officer.

89512. An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial

personal benefit shall be directly related to a political, legislative, or governmental purpose.

89513. The following provisions govern the use of campaign funds for the specific expenditures set forth in this section. It is the intent of the Legislature that these provisions shall guide the interpretation of the standard imposed by Section 89512 as applied to other expenditures not specifically set forth below.

(a) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or employees or staff of the campaign committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose.

(1) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.

(2) For the purposes of this section, payments or reimbursement for travel by the household of a candidate or elected officer when traveling to the same destination in order to accompany the candidate or elected officer shall be considered for the same purpose as the candidate's or elected officer's travel.

(3) Whenever campaign funds are used to pay or reimburse a candidate, elected officer, his or her representative, or a member of the candidate's household for travel expenses and necessary accommodations, the expenditure shall be reported as required by paragraph (7) of subdivision (j) of Section 84211.

(4) Whenever campaign funds are used to pay or reimburse a candidate, elected officer, his or her representative, or a member of the candidate's household for travel expenses and necessary accommodations, any mileage credit which is earned or awarded pursuant to an airline bonus mileage program shall be deemed personally earned by or awarded to the individual traveler. Neither the earning or awarding of mileage credit, nor the redeeming of credit for actual travel, shall be subject to reporting pursuant to Section 84211.

(b) Campaign funds shall not be used to pay for or reimburse the cost of professional services unless the services are directly related to a political, legislative, or governmental purpose.

(1) Expenditures by a campaign committee to pay for professional services reasonably required by the campaign committee to assist it in the performance of its administrative functions are directly related to a political, legislative, or governmental purpose.

(2) Campaign funds shall not be used to pay health-related expenses for a candidate, elected officer, or members of his or her

household. "Health-related expenses" include, but are not limited to, examinations by physicians, dentists, psychiatrists, psychologists, or counselors, expenses or medications, treatments or medical equipment, expenses for hospitalization, health club dues, and special dietary foods. However, campaign funds may be used to pay employer costs of health care benefits for a member of the candidate's or elected officer's household who is a bona fide employee of the campaign committee.

(c) Campaign funds shall not be used to pay or reimburse fines, penalties, judgments, or settlements, except those resulting from either of the following:

(1) Parking citations incurred in the performance of an activity which was directly related to a political, legislative, or governmental purpose.

(2) Any other action for which payment of attorney's fees from contributions would be permitted pursuant to this title.

(d) Campaign funds shall not be used for campaign, business, or casual clothing except specialty clothing that is not suitable for everyday use, including, but not limited to, formal wear, where this attire is to be worn by the candidate or elected officer and is directly related to a political, legislative, or governmental purpose.

(e) Except where otherwise prohibited by law, campaign funds may be used to purchase or reimburse for the costs of purchase of tickets to political fundraising events for the attendance of a candidate, elected officer, his or her immediate family, and employees or staff of the campaign committee and the elected officer's governmental agency.

(1) Campaign funds shall not be used to pay for or reimburse for the costs of tickets for entertainment or sporting events for the candidate, elected officer, or members of his or her immediate family unless their attendance at the event is directly related to a political, legislative, or governmental purpose.

(2) The purchase of tickets for entertainment or sporting events for the benefit of persons other than the candidate, elected officer, or his or her immediate family are governed by subdivision (f).

(f) (1) Campaign funds shall not be used to make personal gifts unless the gift is directly related to a political, legislative, or governmental purpose. The refund of a campaign contribution does not constitute the making of a gift.

Nothing in this section shall prohibit the use of campaign funds to reimburse or otherwise compensate a public employee for services rendered to a candidate or campaign committee while on vacation, leave, or otherwise outside of compensated public time.

(2) An election victory celebration or similar campaign event, or gifts with a total cumulative value of less than two hundred fifty dollars ($250) in a single year made to an individual employee, a campaign committee worker, or an employee of the elected officer's agency, are considered to be directly related to a political, legislative, or governmental purpose. For purposes of this paragraph, a gift to a

member of a person's immediate family shall be deemed to be a gift to that person.

(g) Campaign funds shall not be used to make loans other than to organizations pursuant to Section 85919.

89514. Expenditures of campaign funds for attorney's fees and other costs in connection with administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation arises directly out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action arising from an election contest or recount.

89515. Campaign funds may be used to make donations or loans to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations, where no substantial part of the proceeds will have a material financial effect on the candidate, elected officer, member of his or her immediate family, or the campaign treasurer, and where the donation or loan bears a reasonable relation to a political, legislative, or governmental purpose.

89516. Notwithstanding Sections 89512 and 89513, this section governs the use of campaign funds for vehicle expenses.

(a) Campaign funds shall not be used to purchase a vehicle unless both of the following apply:

(1) Title to the vehicle is held by the campaign committee and not the candidate, elected officer, a member of his or her immediate family, or the campaign treasurer.

(2) The use of the vehicle is directly related to a political, legislative, or governmental purpose.

(b) Campaign funds shall not be used to lease a vehicle unless both of the following apply:

(1) The lessee is the campaign committee, or a state or local agency and not the candidate, elected officer, or a member of his or her immediate family.

(2) The use of the vehicle is directly related to political, legislative, or governmental purposes.

(c) Campaign funds may be used to pay for or reimburse the operating costs, including, but not limited to, insurance, maintenance, and repairs, for any vehicle for which campaign funds may be spent pursuant to this section.

(d) Campaign funds may be used to reimburse a candidate, elected officer, his or her immediate family, or an employee or member of the staff of the campaign committee or of the elected officer's governmental agency for the use of his or her vehicle at the rate approved by the Internal Revenue Service pursuant to Section 162 of the Internal Revenue Code in connection with deductible mileage expenses under the federal income tax law, if both of the

following requirements are met:

(1) The vehicle use for which reimbursement is sought is directly related to political, governmental, or legislative purposes.

(2) The specific purpose and mileage in connection with each expenditure is documented in a manner approved by the Internal Revenue Service in connection with deductible mileage expenses.

(e) For the purposes of this section, use of a vehicle is considered to be directly related to a political, legislative, or governmental purpose as long as its use for other purposes is only incidental to its use for political, legislative, or governmental purposes.

89517. (a) Campaign funds shall not be used for payment or reimbursement for the lease of real property or for the purchase, lease, or refurbishment of any appliance or equipment, where the lessee is, or the legal title resides, in whole or in part, in a candidate, elected officer, member of his or her immediate family, or the treasurer of the committee.

(b) Campaign funds shall not be used to purchase real property. Except as prohibited by subdivision (a), campaign funds may be used to lease real property for up to one year at a time where the use of that property is directly related to political, legislative, or governmental purposes.

(c) For the purposes of this section, real property, appliance, or equipment is considered to be directly related to a political, legislative, or governmental purpose as long as its use for other purposes is only incidental to its use for political, legislative, or governmental purposes.

89518. Campaign funds shall not be used to compensate a candidate or elected officer for the performance of political, legislative, or governmental activities, except for reimbursement of out-of-pocket expenses incurred for political, legislative, or governmental purposes.

89519. Upon leaving any elected office, or at the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds raised after January 1, 1989, under the control of the former candidate or elected officer shall be considered surplus campaign funds and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100) and shall be used only for the following purposes:

(a) The payment of outstanding campaign debts or elected officer's expenses.

(b) The pro rata repayment of contributions.

(c) Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.

(d) Contributions to a political party or committee so long as the funds are not used to make contributions in support of or opposition to a candidate for elective office.

(e) Contributions to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot measure.

89520. The remedies provided in Chapter 11 (commencing with Section 91000) shall not apply to violations of this chapter.

89521. Any person who makes or receives an honorarium, gift, or expenditure in violation of this chapter is liable in a civil action brought by the commission for an amount of up to three times the amount of the unlawful honorarium, gift, or expenditure.

SEC. 14. Section 91005 of the Government Code is amended to read:

91005. (a) Any person who makes or receives a contribution, gift or expenditure in violation of Section 84300, 84304, 86202, 86203, or 86204 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to five hundred dollars ($500) or three times the amount of the unlawful contribution, gift or expenditure, whichever is greater.

(b) Any designated employee or public official specified in Section 87200, other than an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a Conflict of Interest Code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

SEC. 15. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in 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. 17. In renumbering or making technical amendments to provisions formerly in Chapter 5 (commencing with Section 85100) of Title 9 of the Government Code, it is not the intent of the Legislature to reenact provisions that may have been held unconstitutional or otherwise modified by the courts prior to the effective date of this act. Any court judgment shall have the same force and effect on the validity of the renumbered provisions as it had on the provisions as orginally numbered.

CHAPTER 85

An act to amend Section 5604 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 8, 1990 Filed with Secretary of State May 9, 1990]

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

SECTION 1. Section 5604 of the Welfare and Institutions Code is amended to read:

5604. (a) Each community mental health service shall have an advisory board of 17 members appointed by the governing body except that boards in counties with a population of less than 100,000 may have a minimum of 11 members. One member of the advisory board shall be a member of the local governing body. Not less than 51 percent of the members of the advisory board shall be persons representative of the public interest in mental health.

(1) In counties with 100,000 or more population, not less than six of the members representing the public interest shall be persons or the parents, spouse, sibling, or adult children of persons, who are receiving or have received mental health services from a city or county Short-Doyle program or any of its contract agencies, a state hospital, or any public or private nonprofit mental health agency and at least two shall be persons who are receiving or have received mental health services and at least two shall be the parents, spouse, sibling, or adult children of persons receiving or who have received mental health services.

(2) In counties under 100,000 population, at least one member shall be a person who is receiving or has received mental health services.

(3) The advisory boards shall contain two physicians, one of whom shall specialize in psychiatry, and the remaining members shall be selected from among the following mental health professions: psychology, social work, nursing, marriage and family counseling, psychiatric technology, and hospital or community mental health facility administration. No more than one appointee from each of these professions shall be selected. Persons in the professions of education, law, criminal justice, and fiscal management may be considered as representatives of the general public. For members representing the public interest, the governing body shall appoint persons representing different disciplines. Not more than two nonpaid members of the governing body of a private or public Short-Doyle contract agency may be appointed to the advisory board.

(b) The term of each member of the board shall be for three years. However, of the members first appointed to a board with 17

members, six shall be appointed for one year, six for a term of two years, and five for a term of three years. For members appointed to boards of less than 17 members, the governing body shall equitably stagger the appointments so that approximately one-third of the appointments shall be for one year, one-third for two years, and one-third for three years. If, however, prior to the expiration of a term a member ceases to retain the status which qualified the person for appointment on the board, the membership on the board shall terminate and there shall be a vacancy on the board.

(c) If two or more local agencies jointly establish a community mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the advisory board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a member of the governing body or a person who does not qualify as a professional member under this section designated by the governing body and the second of whom shall be a person or a parent, spouse, sibling, or adult child of a person who has received mental health services.

(d) No member of the advisory board or his or her spouse shall be a full-time or part-time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a Short-Doyle contract agency.

(e) Members of the advisory board shall abstain from voting on any issue in which the member has a financial interest as defined in Section 87103 of the Government Code.

(f) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full-time or part-time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a paid member of the governing body of, a Short-Doyle contract agency.

(g) The composition of the mental health advisory board shall reflect the minority population found in the county. A statement shall be included in the mental health plan or contract as to the ways equitable representation will be achieved and a timetable for achieving equitable representation.

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

In order to provide for continuity in participation of representatives on mental health advisory boards at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 86

An act to amend Section 25100 of the Corporations Code, relating to securities.

[Approved by Governor May 8, 1990 Filed with Secretary of State May 9, 1990]

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

SECTION 1. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings and loan association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Savings and Loan Commissioner of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any

such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Savings and Loan Commissioner of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of such nonprofit organization or from remuneration received from such nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to such issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or such other persons.

(l) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a

current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, provided that such paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of such securities when the commissioner finds that such qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets such requirements shall be conclusive evidence that such plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date such determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not such revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in subparagraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in paragraph (1) (A) (iii).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other

concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of such shares within a reasonable period of time after being requested by the exchange to take such action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying such exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of

Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against such members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding 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 which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any

penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of such corporation or from remuneration, other than reasonable salary, received from such corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation.

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings and loan association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Savings and Loan Commissioner, which at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) Such security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) Such security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under such act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

SEC. 2. After an analysis of the annual reports required pursuant to subdivision (o) of Section 25100 of the Corporations Code, the commissioner shall file a report with the Legislature on or before June 30, 1992, setting forth his or her findings and recommendations.

CHAPTER 87

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 May 8, 1990 Filed with Secretary of State May 9, 1990]

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

SECTION 1. This act may be cited as the First Validating Act of 1990.

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.
Los Angeles County Transportation Commission.

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 authorities for freeway emergencies.
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 88

An act to add Section 42032 to the Vehicle Code, relating to vehicles.

[Approved by Governor May 8, 1990 Filed with Secretary of State May 9, 1990.]

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

SECTION 1. Section 42032 is added to the Vehicle Code, to read:

42032. (a) In addition to any other fines and penalties, any local public agency which owns or operates vehicles used for the collection of garbage, refuse, or rubbish and which has, within any 90-day period, been convicted an excessive number of times for operating those vehicles in violation of any of the weight limitations set forth in Chapter 5 (commencing with Section 35550) of Division 15, taking into consideration the total number of trip routes for those vehicles which are normally scheduled in the same 90-day period, may be assessed a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation. Nothing in this section affects the legal standards, proof requirements, or penalty provisions of any other provision of the law.

(b) The penalties imposed by this section shall be assessed and recovered in a civil action brought by the Attorney General or by any district attorney or city attorney. Prior to undertaking a civil action, a reasonable effort for informal resolution of the problem of excessive violations shall be made by the applicable attorney. Penalties recovered shall be paid to the Treasurer for deposit in the State Highway Account in the State Transportation Fund and used, upon appropriation, for purposes of highway maintenance.

CHAPTER 89

An act to amend Section 11713 of the Vehicle Code, relating to vehicles.

[Approved by Governor May 8, 1990. Filed with Secretary of State May 9, 1990]

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

SECTION 1. Section 11713 of the Vehicle Code is amended to read:

11713. It is unlawful and a violation of this code for the holder of

any license issued under this article to do any of the following:

(a) To make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer not franchised to sell new motor vehicles of a particular line-make, may advertise that it has the ability to purchase for resale, vehicles available from franchised dealers provided that any such advertisement or offer clearly and conspicuously states: "Dealer is not franchised to sell or service new vehicles. All vehicles purchased directly from dealer must be purchased as used and are subject to availability from a franchised dealer."

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

(d) To advertise or represent a vehicle as a new vehicle if the vehicle falls within the purview of Section 665.

(e) To engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) For any licensed dealer to engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) To include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) To employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or to fail to willfully notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) To deliver, following sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).

(j) To use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(*l*) To participate in the sale of a vehicle reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) To permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles sold by, or the business of, or branch location used by, the other person.

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

(o) To sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) To accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. A purchase deposit relative to the sale of a vehicle by a dealer not franchised to sell new motor vehicles of a particular line-make shall be subject to all of the following conditions: (i) there is a written purchase order; (ii) the deposit shall not exceed 2.5 percent of the total purchase price specified in the written purchase order; (iii) the deposit shall be deposited in a federally insured depository institution in a trust account held in favor of the purchaser; (iv) the deposit is entirely refundable upon written notice to the dealer; (v) the purchaser is advised in writing of his right to rescind the transaction prior to the delivery of the vehicle; and, (vi) each purchase agreement shall contain a provision for liquidated damages in the event of default under the purchase agreement, which shall not limit the dealer's right of offset against funds held in favor of the purchaser in the trust account.

(q) To consign for sale to another dealer a new vehicle.

(r) To fail to report, to the Department of Justice, a transaction by,

through, or to, the dealer which involves currency of more than ten thousand dollars ($10,000). The dealer shall file a report of that transaction with the Department of Justice in a form and at the time that the Department of Justice shall, by regulation, require.

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 90

An act to amend Sections 9262, 11707, 11808.5, and 11820 of, and to add Sections 9262.5 and 11728 to, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 8, 1990 Filed with Secretary of State May 9, 1990.]

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

SECTION 1. Section 9262 of the Vehicle Code is amended to read:

9262. (a) The fee for a license issued to dealers and lessor-retailers is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred fifty dollars ($150).

(2) For the annual renewal of a license, a fee of one hundred dollars ($100).

(3) If an alteration of an existing license is caused by a firm name change, address change, change in the corporate officer structure, or the addition of a branch location, a fee of seventy dollars ($70).

(b) The fee for a license issued to dismantlers, manufacturers, manufacturer branches, remanufacturers, remanufacturer branches, transporters, distributors, and distributor branches is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred dollars ($100).

(2) For the annual renewal of a license, a fee of eighty-five dollars ($85).

(3) If an alteration of an existing license is caused by a firm name

change, address change, or the addition of a branch location, a fee of fifty dollars ($50).

(4) If an alteration of an existing license is caused by a change in the corporate officer structure, a fee of seventy dollars ($70).

(c) The fee for a license issued to representatives is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of fifty dollars ($50).

(2) For the annual renewal of a license, a fee of eighty-five dollars ($85).

(d) When the holder of a license for which a fee is provided in this section applies for special plates as provided in subdivision (b) of Section 11505 or subdivision (b) of Section 11714, the fee for the plates and the annual renewal of the plates is the prevailing vehicle registration fee as set forth in Section 9250 for the period for which the special plates are issued or renewed.

SEC. 2. Section 9262.5 is added to the Vehicle Code, to read:

9262.5. It is the intent of the Legislature, in amending Section 9262 in 1990 to increase the fee for the annual renewal of the license of a dealer and of a lessor-retailer to one hundred dollars ($100), that fifteen dollars ($15) of that increase shall, when appropriated, be utilized by the department for the investigation of those dealers and lessor-retailers who demonstrate the greatest potential for causing losses to consumers as shown by repeated consumer complaints, habitual violations of the requirements of their licenses, the issuance of a probationary license by the department, or a violation of other standards and criteria established by the department for these purposes.

SEC. 3. Section 11707 of the Vehicle Code is amended to read:

11707. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. Except as provided in Section 11728, the monetary penalty shall not exceed one thousand dollars ($1,000) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that

schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law, notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

SEC. 4. Section 11728 is added to the Vehicle Code, to read:

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars ($2,500) per violation and impose a license suspension of not more than 30 days for any person licensed as a vehicle dealer, salesman, or wholesaler who offers for sale a vehicle at a place other than the place of business authorized by the department for that licensee. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salesmen, and wholesalers apply to this section.

SEC. 5. Section 11808.5 of the Vehicle Code is amended to read:

11808.5. (a) After the filing of an accusation under this article, the director may enter into a stipulated compromise settlement agreement with the consent of the licensee on terms and conditions mutually agreeable to the director, the respondent licensee, and the accuser without further hearing or appeal. The agreement may include, but is not limited to, a period of probation or monetary penalties, or both. Except as provided in Section 11728, the monetary penalty shall not exceed five hundred dollars ($500) for each violation, and it shall be based on the nature of the violation and the effect of the violation on the purposes of this article.

(b) A compromise settlement agreement may be entered before, during, or after the hearing, but is valid only if executed and filed pursuant to subdivision (d) before the proposed decision of the hearing officer, if any, is adopted or the case is decided.

(c) The department shall adopt, by regulation, a schedule of maximum and minimum amounts of monetary penalties, the payment of which may be included as a term or condition of a compromise settlement agreement entered under subdivision (a). Any monetary penalty included in a compromise settlement agreement shall be within the range of monetary penalties in that schedule.

(d) Any compromise settlement agreement entered under this section shall be signed by the director, the respondent licensee, and the accuser, or by their authorized representatives. The director shall file, or cause to be filed, the agreement with the Office of Administrative Hearings, together with the department's notice of withdrawal of the accusation or statement of issues upon which the action was initiated.

(e) If the respondent licensee fails to perform all of the terms and conditions of the compromise settlement agreement, the agreement is void and the department may take any action authorized by law, notwithstanding the agreement, including, but not limited to, refiling the accusation or imposing license sanctions.

SEC. 6. Section 11820 of the Vehicle Code is amended to read:

11820. The following fees shall be paid to the department:

(a) Except as provided by Section 42231, a nonrefundable fee for the original issuance of a license, fifty dollars ($50).

(b) Fee for license renewal, fifty dollars ($50).

(c) Fee for a duplicate license, fifteen dollars ($15).

SEC. 7. Sections 1 and 6 of this act shall become operative on July 1, 1990.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order, as quickly as possible, to generate sufficient revenues during the 1990–91 fiscal year for the Motor Vehicle Account in the State Transportation Fund to support those operations of state government which are financed from those revenues and to increase certain monetary penalties in the enhancement of their deterrent effect, it is necessary that this act take effect immediately.

CHAPTER 91

An act to amend Section 5011 of the Public Resources Code, relating to the state park system.

[Approved by Governor May 9, 1990. Filed with Secretary of State May 10, 1990.]

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

SECTION 1. Section 5011 of the Public Resources Code is amended to read:

5011. Any person receiving aid to the aged, blind, or disabled under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code, any person receiving aid to families with dependent children under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the

Welfare and Institutions Code, or any person over 62 years of age whose total monthly income from all sources, including any old age assistance payments, does not exceed the amount specified in subdivision (c) of Section 12200 of the Welfare and Institutions Code for a single person, or in subdivision (d) of that section for married persons, as adjusted pursuant to Section 12201 of that code, upon application therefor and payment of ($5) to the Department of Parks and Recreation, shall be issued a "Golden Bear Pass" which is valid for the specified year and which entitles the bearer and spouse to free use on any day of the day-use facilities in units of the state park system, except Hearst San Simeon State Historical Monument, Sutter's Fort State Historic Park, and the California State Railroad Museum, under limitations as may be determined by departmental regulation regarding peak hours and contractual arrangements with vendors. The pass shall entitle the bearer and spouse to have access only to day-use facilities and not to the use of any other facilities.

The department shall not grant half price privileges or offer any discount for the use of state park system facilities on the basis of the pass authorized by this section.

Notwithstanding the preceding paragraph, the department shall develop and implement, on or before January 1, 1986, a senior discount program for the use of state park system facilities The program may be modified after January 1, 1991, to include a "Golden Bear Senior Pass" available to any person over 62 years of age for an annual fee fixed by the department, valid for the specified year, and entitling the bearer and spouse to the use of day and camping facilities as specified by the department. The department shall set the fee for the "Golden Bear Senior Pass" and shall specify the facilities and times for which the pass is valid so as to minimize any loss in total annual park revenues to the department.

CHAPTER 92

An act to add and repeal Article 6 (commencing with Section 41251) of, and to repeal and add Article 5 (commencing with Section 41201) of, Chapter 3 of Division 16 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 May 11, 1990. Filed with Secretary of State May 11, 1990.]

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

SECTION 1. Article 5 (commencing with Section 41201) of Chapter 3 of Division 16 of the Food and Agricultural Code is repealed.

SEC. 2. Article 5 (commencing with Section 41201) is added to

Chapter 3 of Division 16 of the Food and Agricultural Code, to read:

Article 5. Wine Grape Inspection Advisory Committee

41201. There is in the department a Wine Grape Inspection Advisory Committee consisting of 10 wine producers and 10 wine grape growers appointed by the director. The director may appoint one additional member to the committee, who shall be a public member. The members of the committee shall receive no compensation.

In making appointments to the committee, the director shall appoint only one person to represent any one winery or growers' firm, and shall make every effort to ensure that there is geographical representation from the major wine grape production areas in the state.

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.

41201.5. There is in the department a Wine Grape Inspection Advisory Committee consisting of eight wine producers and eight wine grape growers appointed by the director. The director shall appoint one additional member to the committee, who may be a public member. The members of the committee shall receive no compensation.

This section shall become operative on January 1, 1993.

41202. The Legislature hereby declares that it intends that the wine producers and wine grape growers appointed to the Wine Grape Inspection Advisory Committee pursuant to this article shall represent and further the interests of the grape industry. The Legislature also declares that this representation and furtherance of the grape industry serves the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed as members of the committee, the grape industry is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

41203. The term of office of each member of the committee is three years.

41204. The members of the committee, alternate members when acting as members or when requested to perform certain actions by the committee, and subcommittee members, may be reimbursed, upon request, for necessary expenses incurred by them in the performance of their duties.

41205. The members of the committee, or their voting alternates, consisting of at least six producers and six processors, shall constitute a quorum. Any action of the committee shall require not less than six affirmative votes of the processor members and six affirmative votes of the producer members.

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.

41205.5. The members of the committee, or their voting alternates, consisting of at least five producers and five processors, shall constitute a quorum. Any action of the committee shall require not less than five affirmative votes of the processor members and five affirmative votes of the producer members.

This section shall become operative on January 1, 1993.

41206. The committee shall select a chairperson and a vice chairperson from among its members, and other officers as it deems necessary. The committee may adopt such regulations as it deems necessary for the conduct of its meetings and functions to carry out the objectives of this article.

The office of the chairperson and vice chairperson shall alternate annually between the producer and processor members. In any year that a processor member is the chairperson, a producer member shall be the vice chairperson, and in any year that a producer member is the chairperson, a processor member shall be vice chairperson. The committee may recommend such subcommittees as it deems necessary to assist the committee and the director.

41207. (a) The committee shall be advisory to the director on all matters pertaining to this chapter and certification of the quality of grapes used for processing pursuant to Section 40531 and shall make recommendations concerning the inspection and certification services rendered, including the annual budget and fees necessary to provide adequate inspection services and varietal and appellation integrity. All recommendations for budgets and assessment fees shall be submitted to the director on or before May 1 of each year.

(b) The committee's primary goal shall be to recommend to the director objective criteria and inspection procedures for all quality conditions that have an effect on the acceptance of, or on the amount of the purchase price of, fresh grapes for wine and by-product purposes.

(c) The committee may also recommend to the director the institution and promotion of scientific research pertaining to varietal and appellation integrity.

(d) On or before May 1 of each year, the committee shall receive and evaluate comments and report to the director concerning the performance of the variety and appellation integrity program and the progress toward attaining the goals of the program. The committee shall, based upon their evaluation, make recommendations so that the program is as active or inactive as the committee deems appropriate.

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.

41207.5. (a) The committee shall be advisory to the director on all matters pertaining to this chapter and certification of the quality of grapes used for processing pursuant to Section 40531 and shall make recommendations concerning the inspection and certification

services rendered, including the annual budget and fees necessary to provide adequate inspection services. All recommendations for budgets and assessment fees shall be submitted to the director on or before May 1 of each year.

(b) The committee's primary goal shall be to recommend to the director objective criteria and inspection procedures for all quality conditions that have an effect on the acceptance of, or on the amount of the purchase price of, fresh grapes for wine and by-product purposes.

(c) This section shall become operative on January 1, 1993.

41208. The committee shall meet at the call of the chairperson or at the request to the director of any three members of the committee. The committee shall meet at least once a year. The meetings of the committee shall be held at locations in California which will tend to ensure industry participation and productive meetings.

41209. The director shall appoint an alternate member for each committee member. In making the appointments, the director shall appoint a wine producer as the alternate for each wine producer member and a wine grape grower as the alternate for each wine grape grower member, and shall consider persons suggested by the member for whom the alternate is designated to serve.

41210. Alternate members shall serve at committee meetings only in the absence of the member for whom they are designated as the alternate.

SEC. 3. Article 6 (commencing with Section 41251) is added to Chapter 3 of Division 16 of the Food and Agricultural Code, to read:

Article 6. Winegrape Variety and Appellation Integrity

41251. The director may inspect any transaction which involves the use of fresh grapes for wine and by-products purposes for varietal and appellation integrity.

41252. The director may adopt a budget and establish necessary fee schedules to fund random varietal and appellation inspections. The budget and fee schedules shall be based on the approximate cost of providing the inspections. The fee schedules shall be calculated to provide, as close as practicable, one-half of the funds from the processors, to be paid by processor industry sources, and one-half of the funds from the producers, to be paid pursuant to Section 41253. The producer's fee shall not exceed ten cents ($0.10) per ton of grapes produced annually.

41253. Any processor of grapes for wine or by-product purposes who receives more than 100 tons of grapes for crushing during each marketing season beginning July 1 and ending the following June 30, may deduct the full amount of the producer's fee from the amount of money owed to the producer who shipped the grapes.

The full amount of the producers' fee shall be paid by the processor to the director on or before January 10 of each year on all grapes

received for crushing through December 15, and the producers' fee on any grapes received for crushing after December 15 shall be paid on or before June 30 of that marketing season.

The producers' fee shall be paid to the director by the processor in conjunction with the report filed pursuant to Section 55601.5.

Any processor who crushes grapes and fails, neglects, or refuses to submit the producers' fee by the specified dates, is in violation of this article. Each day the fee is late shall be a separate and distinct violation. The director may impose a fine for each such violation as provided in Section 55901. The processor may not charge or receive reimbursement in any form for any fine imposed by the director from the producer who shipped the grapes.

41254. Any funds received pursuant to this article shall be deposited in the Department of Food and Agriculture Fund and are continuously appropriated to the director for expenditures in carrying out this article.

41255. The director may not release or otherwise make available any information furnished by an individual processor pursuant to this article, except in proceedings brought against the processor by the director for the purpose of enforcing this article.

41256. 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 or extends that date.

SEC. 4. Notwithstanding the provisions of former Section 41202 of the Food and Agricultural Code, as repealed by Section 1 of this act, the terms of office of the members of the Wine Grape Inspection Advisory Committee serving pursuant to the provisions of former Article 5 (commencing with Section 41201) of Chapter 3 of Division 16 of the Food and Agricultural Code, as repealed by Section 1 of this act, shall terminate on the effective date of this act. Notwithstanding Section 41203 of the Food and Agricultural Code, as added by Section 2 of this act, the terms of office of the members appointed to the Wine Grape Inspection Advisory Committee pursuant to Section 41201 of the Food and Agricultural Code, as added by Section 2 of this act, shall terminate 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 preserve the integrity and viability of the California wine industry and its national and international reputation, it is necessary to provide adequate funding to the Department of Food and Agriculture for wine grape varietal and appellation inspections and in order to implement the provisions of this act without delay, it is necessary that this act take effect immediately.

CHAPTER 93

An act to amend Section 1861.025 of the Insurance Code, to amend Section 1808.7 of the Vehicle Code, and to amend Section 8 of Chapter 1465 of the Statutes of 1989, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 16, 1990. Filed with Secretary of State May 16, 1990]

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

SECTION 1. Section 1861.025 of the Insurance Code is amended to read:

1861.025. A person is qualified to purchase a Good Driver Discount policy if he or she meets all of the following criteria:

(a) He or she has been licensed to drive a motor vehicle for the previous three years.

(b) During the previous three years, he or she has not done any of the following:

(1) Had more than one violation point count determined as provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section 12810 of the Vehicle Code, but subject to the following modifications:

For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault which resulted only in damage to property shall receive one violation point count, in addition to any other violation points which may be imposed for this accident.

If under Section 488 or 488.5 an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code which was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that

would have resulted in the imposition of more than one violation point count under paragraph (1) if the complaint had not been dismissed.

(3) Been found to be in violation of Section 23140 of the Vehicle Code.

(4) Was the driver of a motor vehicle involved in an accident which resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the their determination of fault for the purposes of this paragraph and paragraph (1) of subdivision (b).

SEC. 2. Section 1808.7 of the Vehicle Code is amended to read:

1808.7. The record of the department relating to the first proceeding and dismissal under Section 1803.5 in any 18-month period for participation by a person in a licensed school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, is confidential, shall not be disclosed to any person, except a court, and shall be used only for statistical purposes by the department.

SEC. 3. Section 8 of Chapter 1465 of the Statutes of 1989 is amended to read:

Sec. 8. Section 1.5 of this bill incorporates amendments to Section 1861.02 of the Insurance Code proposed by both this bill and AB 591. 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 591, in which case Section 1861.02 of the Insurance Code, as amended by AB 591, 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 1.3 of this bill shall not 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:

In order to clarify the provisions enacted by Chapter 1465 of the Statutes of 1989 at the earliest possible time it is necessary for this act to take effect immediately.

CHAPTER 94

An act to amend Sections 5536, 5536.1, 5536.2, 5536.25, and 5537 of the Business and Professions Code, relating to architecture.

[Approved by Governor May 16, 1990. Filed with Secretary of State May 16, 1990.]

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

SECTION 1. Section 5536 of the Business and Professions Code is amended to read:

5536. (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment, for any person who is not licensed to practice architecture under this chapter, to practice architecture in this state or to use any term confusingly similar to the word architect, or to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign or card or other device which might indicate to the public that he or she is an architect or that he or she is qualified to engage in the practice of architecture or is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person not registered or licensed by the state to prepare plans, specifications, and instruments of service for others to affix a stamp or seal which bears the legend "State of California" or words or symbols that represent or imply that he or she is so registered or licensed by the state to plans, specifications, or instruments of service for the construction, alteration, improvement, or repair of buildings or structures that are submitted to a state or local governmental entity for approval or the issuance of a permit.

(c) It is a misdemeanor, punishable as specified in subdivision (a), for any person to advertise or represent that he or she is a "registered building designer" or is registered or otherwise licensed by the state as a building designer.

SEC. 2. Section 5536.1 of the Business and Professions Code is amended to read:

5536.1. (a) All persons preparing plans, specifications, and instruments of service for others shall sign those plans, specifications, and other instruments of service and all contracts therefor, and if licensed under this chapter shall affix a stamp, as specified in subdivision (b). Failure of any person to comply with this subdivision is a misdemeanor punishable as provided in Section 5536. This section shall not apply to employees of persons licensed under this chapter while acting within the course of their employment.

(b) For the purposes of this chapter, any stamp used by any architect licensed under this chapter shall be of design authorized by the board which shall at a minimum bear the licensee's name, his or

her license number, the legend "licensed architect" and the legend "State of California," and which shall provide a means of indicating the renewal date of the license.

(c) The preparation of plans, specifications, or instruments of service for any building, except the buildings described in Section 5537, by any person who is not licensed to practice architecture in this state, is a misdemeanor punishable as provided in Section 5536.

(d) The board may adopt regulations necessary for the implementation of this section.

SEC. 3. Section 5536.2 of the Business and Professions Code is amended to read:

5536.2. Each county or city which requires the issuance of any permit as a condition precedent to the construction, alteration, improvement, or repair of any building or structure shall also require as a condition precedent to the issuance of the permit a signed statement that the person who has prepared the plans and specifications for the construction, alteration, improvement, or repair of the building or structure is licensed under this chapter to prepare the plans and specifications, or is otherwise licensed in this state to prepare the plans and specifications.

The signature and stamp on the plans and specifications of a person who is licensed to prepare the plans and specifications shall constitute compliance with this section.

It is the responsibility of the agency that issues the permit to determine that the person who signed and stamped the plans and specifications or who submitted the signed statement required by this section is licensed under this chapter or is otherwise licensed in this state to prepare the plans and specifications.

This section shall not apply to the issuance of permits where the preparation of plans and specifications for the construction, alteration, improvement, or repair of a building or structure is exempt from this chapter, except that the person preparing the plans and specifications for others shall sign the plans and specifications as provided by Section 5536.1.

SEC. 4. Section 5536.25 of the Business and Professions Code is amended to read:

5536.25. (a) A licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to or uses of those plans, specifications, reports, or documents, where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the architectural service rendered by the architect who signed and stamped the plans, specifications, reports, or documents was not also a proximate cause of the damage.

(b) The signing and stamping of plans, specifications, reports, or documents which relate to the design of fixed works shall not impose

a legal duty or responsibility upon the person signing the plans, specifications, reports, or documents to observe the construction of the fixed works which are the subject of the plans, specifications, reports, or documents. However, this section shall not preclude an architect and a client from entering into a contractual agreement which includes a mutually acceptable arrangement for the provision of construction observation services. This subdivision shall not modify the liability of an architect who undertakes, contractually or otherwise, the provision of construction observation services for rendering those services.

(c) "Construction observation services" means periodic observation of completed work to determine general compliance with the plans, specifications, reports, or other contract documents. However, "construction observation services" does not mean the superintendence of construction processes, site conditions, operations, equipment, or personnel, or the maintenance of a safe place to work or any safety in, on, or about the site.

For purposes of this subdivision, "periodic observation" means visits by an architect, or his or her agent, to the site of a work of improvement.

SEC. 5. Section 5537 of the Business and Professions Code is amended to read:

5537. (a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

(1) Single-family dwellings of woodframe construction not more than two stories and basement in height.

(2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.

(3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.

(4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.

(b) If any portion of any structure exempted by this section deviates from substantial compliance with conventional framing requirements for woodframe construction found in the most recent edition of Title 24 of the California Code of Regulations or tables of limitation for woodframe construction, as defined by the applicable building code duly adopted by the local jurisdiction or the state, the building official having jurisdiction shall require the preparation of plans, drawings, specifications, or calculations for that portion by, or under the direct supervision of, a licensed architect or registered engineer. The documents for that portion shall bear the stamp and

signature of the licensee who is responsible for their preparation. Substantial compliance for purposes of this section is not intended to restrict the ability of the building officials to approve plans pursuant to existing law and is only intended to clarify the intent of Chapter 405 of the Statutes of 1985.

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. It is the intent of the Legislature that Sections 5536, 5536.1, 5536.2, and 5536.25 of the Business and Professions Code, as amended by this act, shall not prohibit or otherwise affect any of the following:

(1) The ability of persons not registered or licensed by the state to use stamps or seals that do not violate subdivision (b) of Section 5536 of the Business and Professions Code on plans and specifications for exempt structures.

(2) The ability of persons not registered or licensed by the state to submit plans and specifications for approval of building permits for exempt structures.

(3) The ability of building officials to accept plans and specifications for exempt structures from persons not licensed or registered by the state.

CHAPTER 95

An act to amend Section 130051.5 of, to add Sections 30201.5, 130051.1, and 130051.8 to, and to add and repeal Section 130051.7 of, the Public Utilities Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 16, 1990 Filed with Secretary of State May 16, 1990]

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

SECTION 1. Section 30201.5 is added to the Public Utilities Code, to read:

30201.5. Notwithstanding Section 30201, with respect to appointments to the board made prior to July 1, 1992, if a director appointed by the Mayor of the City of Los Angeles is a member of the city council of that city, confirmation by the city council is not

required. If a director appointed by the mayor is not a member of the city council, the person appointed may serve for 60 days without confirmation.

SEC. 2. Section 130051.1 is added to the Public Utilities Code, to read:

130051.1. Notwithstanding subdivision (c) of Section 130051, with respect to appointments to the commission made prior to July 1, 1992, if a member appointed by the Mayor of the City of Los Angeles is not a member of the city council of that city, the person appointed may serve for 60 days without consent of the city council.

SEC. 3. Section 130051.5 of the Public Utilities Code is amended to read:

130051.5. (a) The appointing authority specified in subdivision (c), (d), or (e) of Section 130051 may appoint an alternate member to the Los Angeles County Transportation Commission to represent, on a temporary basis, a regular member it has appointed, but only in those cases where the regular member cannot attend the meeting.

(b) For purposes of this section, an alternate member shall be:

(1) In the case of the two members appointed by the Mayor of the City of Los Angeles, any person appointed by the mayor with the consent of the City Council of the City of Los Angeles. If the alternate member is a member of the city council, consent of the city council is not necessary.

(2) In the case of the Los Angeles County City Selection Committee, excluding the members representing the Cities of Long Beach and Los Angeles, any mayor or city councilman serving within Los Angeles County, excluding those two cities and the cities the regular members are from.

(3) In the case of the City of Long Beach, another member of the City Council of the City of Long Beach.

(c) Any alternate member appointed to the Los Angeles County Transportation Commission, including any appointed pursuant to Section 130051, shall act for, and in the interests, of his or her appointing authority.

(d) On and after July 1, 1992, no alternate member shall serve on both the Board of Directors of the Southern California Rapid Transit District and the Los Angeles County Transportation Commission.

SEC. 4. Section 130051.7 is added to the Public Utilities Code, to read:

130051.7. (a) The Los Angeles County Transportation Commission and the Southern California Rapid Transit District shall conduct joint regular meetings at least once during each quarter of the calendar year.

(b) Notwithstanding subdivisions (a) and (b) of Section 130051, the members of the Los Angeles County Board of Supervisors and the Mayor of the City of Los Angeles, rather than their alternates, shall personally serve at the joint meetings.

(c) Notwithstanding Section 30201, the members of the Los Angeles County Board of Supervisors, rather than their appointees,

shall personally serve at the joint meetings.

(d) Notwithstanding Section 30201, the Mayor of the City of Los Angeles, rather than the mayor's appointee, shall personally serve at the joint meetings as one of the two directors representing the City of Los Angeles.

(e) It is the intent of the Legislature that reasonable efforts be made to discuss major fiscal and policy items related to the Los Angeles County Transportation Commission and the Southern California Rapid Transit District at the meetings required by subdivision (a). This statement of legislative intent shall not be construed as requiring any action which would interfere with, delay, or otherwise impede the orderly and proper functioning of the Los Angeles County Transportation Commission or the Southern California Rapid Transit District.

(f) This section shall become inoperative on July 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. 5. Section 130051.8 is added to the Public Utilities Code, to read:

130051.8. (a) The Los Angeles County Transportation Commission and the Southern California Rapid Transit District shall jointly develop a plan for the reorganization of these agencies with a unified comprehensive institutional structure which insures maximum accountability to the people. The plan shall include a schedule of action steps, a recommended institutional structure, a recommended membership for governance, and a process for the transition of all powers, duties, obligations and liabilities, immunities, and exemptions of both agencies.

(b) The plan shall be approved by the governing bodies of both agencies, and shall be transmitted to the Legislature on or before January 1, 1992.

SEC. 5.5. Sections 1 to 5, inclusive, of this act shall be known and may be cited as the Katz-Robbins Los Angeles Transportation Act of 1990.

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. However, 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 the Southern California Rapid Transit District and the Los Angeles County Transportation Commission shall come from funds allocated to either entity by the California Transportation Commission for transportation purposes.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in 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 resolve conflicts between transportation agencies resulting in reduced efficiency and increased delays in providing an integrated transportation system in Los Angeles, it is necessary that this act take effect immediately.

CHAPTER 96

An act to add Section 77202.5 to the Government Code, relating to trial court funding, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 16, 1990 Filed with Secretary of State May 16, 1990.]

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

SECTION 1. Section 77202.5 is added to the Government Code, to read:

77202.5. (a) In any option year commencing with the 1989–90 fiscal year, in which the net county benefit for the County of Ventura is less than the sum of five million dollars ($5,000,000), increased each fiscal year by the same percentage adjustment as is applied to the block grant pursuant to Section 77201, the Controller shall allocate to the county a special supplemental subvention of vehicle license fee revenues pursuant to Section 11005 of the Revenue and Taxation Code in an amount equal to the amount by which the net county benefit is less than five million dollars ($5,000,000), as adjusted for the applicable fiscal year.

(b) For purposes of this section, the net county benefit for each fiscal year beginning in the 1989–90 fiscal year is the sum of the amount of the annual block grant to the county, as specified in Sections 77200 and 77201, and the supplemental block grant provided in subdivision (b) of Section 68206 for that fiscal year reduced by the amount subtracted from the county's proportionate share of property tax revenue pursuant to Section 97.38 of the Revenue and Taxation Code for that fiscal year.

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 intent of the Legislature in enacting Chapter 944 of the Statutes of 1988 and to provide urgently needed funding for Ventura County, it is necessary that this act take effect

immediately.

CHAPTER 97

An act to amend Sections 24200, 24200.2, 24203, and 24205 of, and to repeal and add Section 24206.5 of, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor May 17, 1990. Filed with Secretary of State May 17, 1990.]

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

SECTION 1. Section 24200 of the Education Code is amended to read:

24200. Any member prior to the effective date of the member's retirement may elect an option which is an actuarially modified retirement allowance payable throughout the life of the member and his or her option beneficiary as follows:

(a) Option 2. Upon the retirant's death, the modified retirement allowance equal to the modified amount the retirant was receiving shall be paid to the option beneficiary; or

(b) Option 3. Upon the retirant's death, one-half of the modified retirement allowance the retirant was receiving shall be paid to the option beneficiary; or

(c) Option 4. The modified retirement allowance shall be paid to the retirant so long as both the retirant and the option beneficiary are living. Upon the death of either the retirant or the option beneficiary, two-thirds of the modified retirement allowance shall be paid to the surviving retirant or the surviving option beneficiary; or

(d) Option 5. The modified retirement allowance shall be paid to the retirant so long as both the retirant and the option beneficiary are living. Upon the death of either the retirant or the option beneficiary, one-half of the modified retirement allowance shall be paid to the surviving retirant or surviving option beneficiary; or

(e) Option 6. Upon the retirant's death, the modified retirement allowance equal to the modified amount the retirant was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retirant, the retirement allowance without modification for the option shall be payable to the retirant; or

(f) Option 7. Upon the retirant's death, one-half of the modified retirement allowance the retirant was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retirant, the retirement allowance without modification for the option shall be payable to the retirant.

The option beneficiary, for purposes of this section, shall have been designated by the retirant by written designation duly executed and

filed with the system at the time of the member's retirement.

A member may revoke or change his or her election of an option at any time prior to the effective date of the member's retirement.

SEC. 2. Section 24200.2 of the Education Code is amended to read:

24200.2. (a) A retirant who elected Option 2, Option 3, Option 4, or Option 5 may name a new option beneficiary and select a second joint and survivor option described in Section 24200 if the option beneficiary designated at the time the option was elected predeceases the retirant.

The effective date of the election of the new joint and survivor option shall be one year following the date notification is received by the board, provided both the retirant and the designated option beneficiary are then living. The notification shall include a certified copy of the death certificate of the predeceased beneficiary and a properly executed form for the new joint and survivor option.

The selection of the new joint and survivor option under this subdivision and Section 24200 is subject to an actuarial modification in the amount of the retirement allowance; provided, that a retirant may not elect a joint and survivor option that would result in any additional liability to the fund.

(b) If the option beneficiary designated in the preretirement election of an Option 6 or 7 pursuant to Section 24203 dies prior to the member's retirement, preretirement election shall be automatically canceled as of the day following the date of death pursuant to Section 24205 and the member's subsequent retirement allowance shall be subject to the allowance reduction prescribed in that section.

(c) If the option beneficiary designated in the election of an Option 6 or Option 7 pursuant to Section 24200 or 24203 dies after the member's retirement, the retirement allowance without modification for the option shall be payable to the retirant upon notification to the board and shall commence to accrue to the retirant as of the day following the date of the death of the option beneficiary. Notification to the board shall include a certified copy of the death certificate of the predeceased beneficiary.

SEC. 3. Section 24203 of the Education Code is amended to read:

24203. Any member who has qualified to make application for retirement allowance under Section 23901 may elect, as provided in Section 24200, and except as provided in Section 24200.1, without right of revocation or change after the effective date of his or her retirement, to receive an actuarially modified retirement allowance as of the date of retirement, of the retirement allowance payable to the member when and if the member retires for service. If the death of the member occurs after the date upon which the election has been signed, then the election shall be in full force and effect. The election shall be void if not received in the system's office in Sacramento within 30 days after the date of signature.

Upon the member's death, prior to the effective date of

retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, upon the assumption that the member retired on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804 and the payment provided in subdivision (a) of Section 23801, except that if the beneficiary dies before all accumulated contributions are paid the balance if any shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Section 23800, shall be paid the designated beneficiary in a lump sum.

If the member subsequently retires, and the elected option has not been canceled pursuant to Section 24205, a modified retirement allowance computed under Section 24200 and the option elected shall be paid.

The amount of the retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement, or age on the last day of the month in which the member requested retirement be effective. The modification of the retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, at the date the election was signed.

Any member reinstated to membership pursuant to Section 23913 is not eligible to file a preretirement election of an option until one year after the date of reinstatement.

The system shall inform members who are qualified to make application for a preretirement election of an option, through the annual statement of accounts, that the option is available.

SEC. 4. Section 24205 of the Education is amended to read:

24205. If a member cancels the election of an option made pursuant to Section 24203, written cancellation shall be received by the board on or before the day preceding the effective date of retirement or during the period between reinstatement pursuant to Section 23913 and the effective date of the subsequent retirement. Regardless of how the member elects to receive his or her retirement allowance, that allowance shall be reduced by one-half of 1 percent for each year or partial year that Option 3, Option 5, or Option 7 is in effect, or by six-tenths of 1 percent for each year or partial year that Option 4 is in effect, or by three-fourths of 1 percent for each year or partial year or partial year that Option 2 or Option 6 is in effect.

SEC. 5. Section 24206.5 of the Education Code is repealed.

SEC. 6. Section 24206.5 is added to the Education Code, to read:

24206.5. A member who has a preretirement election of an option in effect on December 31, 1990, may change his or her preretirement election of Option 2, Option 3, Option 4, or Option 5 to either Option 6 or Option 7 without the allowance reduction prescribed in Sections 24205 and 24206, provided the change is made on or after January 1, 1991, and prior to the earlier of January 1, 1992, or the member's

retirement.

If the member elects to change his or her option under this section, then the member shall retain the same option beneficiary as named in the prior preretirement election. The election to change the preretirement election under this section shall be void if not received in the system's office in Sacramento at least 30 days prior to the death of the option beneficiary.

CHAPTER 98

An act to amend Section 39379 of the Education Code, relating to school district property.

[Approved by Governor May 17, 1990. Filed with Secretary of State May 17, 1990.]

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

SECTION 1. Section 39379 of the Education Code is amended to read:

39379. The governing board of any school district may, without complying with any other provision of this article, let in the name of the district any buildings, grounds, or space therein, together with any personal property located thereon, not needed for school classroom buildings upon any terms and conditions as may be agreed upon by the governing board of the district and the lessee thereof for a period not exceeding 30 separate or consecutive calendar days or portions thereof in each fiscal year.

CHAPTER 99

An act to make an appropriation in augmentation of Items 2140-001-136 and 3540-001-001 of Section 2.0 of the Budget Act of 1989, relating to state government, to take effect immediately, usual current expenses.

[Approved by Governor May 18, 1990. Filed with Secretary of State May 18, 1990.]

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

SECTION 1. (a) The sum of twenty-nine million three hundred five thousand dollars ($29,305,000) is hereby appropriated for expenditure in the 1989–90 fiscal year in augmentation of Items 2140-001-136 and 3540-001-001 of Section 2.0 of the Budget Act of 1989, in accordance with the following schedule:

(1) One million seven hundred fifty-five thousand dollars

($1,755,000) from the State Banking Fund to the State Banking Department for Category 30 of Item 2140-001-136.

(2) Twenty-seven million five hundred fifty thousand dollars ($27,550,000) from the General Fund to the Department of Forestry for categories A and B of Items 3540-001-001.

(b) The Director of Finance may withhold authorization for the 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. 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 100

An act to amend Sections 58554, 58562, 58574, 58576, 58577, and 58591 of, and to repeal Section 58581 of, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 18, 1990 Filed with Secretary of State May 18, 1990]

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

SECTION 1. Section 58554 of the Food and Agricultural Code is amended to read:

58554. "Agricultural commodities" means the products of California farms and ranches and items processed from these products, and includes forest products and fish and fish products produced in California and livestock fed in feedlots located in California.

SEC. 2. Section 58562 of the Food and Agricultural Code is amended to read:

58562. "Cooperator contributions" means contributions of money, personnel, materials, facilities, services, or supplies, expressed in terms of United States dollar value, that are furnished by the cooperator and any third party cooperator to help carry out the terms of a project agreement. Funds, services, or personnel provided by any state or federal agency, except funds from a state marketing order board, including those funds allocated to carry out commodity transportation offset programs, agricultural commission organized pursuant to this code, or a federal marketing order board for California-produced commodities, cannot be counted as a contribution.

SEC. 3. Section 58574 of the Food and Agricultural Code is amended to read:

58574. (a) State funds may be used to pay costs which are

essential to, and clearly identifiable with, the carrying out of the activities specified in the marketing plan approved by the director.

(b) The director shall adopt regulations similar to those developed by the Foreign Agriculture Service of the United States Department of Agriculture to proscribe the unauthorized use of state funds pursuant to this chapter.

(c) Not more than five hundred thousand dollars ($500,000) shall be annually appropriated for this program's state administrative costs, as specified in the annual Budget Act. The funds appropriated for administrative costs pursuant to this subdivision shall be derived from the redistribution of the total amount of funds that are appropriated in the annual Budget Act by the Legislature to carry out this chapter.

(d) Not more than 15 percent of the funds annually appropriated for this program shall be used for any one project agreement in any one year unless the director approves a higher level upon concurrence of a majority vote of the advisory committee authorized pursuant to Section 58576.

(e) Cooperators shall provide an annual contribution which is equal to or greater than the amount of state funds utilized for each project agreement.

SEC. 4. Section 58576 of the Food and Agricultural Code is amended to read:

58576. An advisory committee shall be established to review and make recommendations to the director on which project proposals to fund. The advisory committee consists of all of the following:

(a) The President of the State Board of Food and Agriculture or his or her designee.

(b) The Secretary of the Business, Transportation and Housing Agency or his or her designee.

(c) Two appointees of the director who have demonstrated international agricultural marketing experience and have had no fiduciary interest for the last two years in international marketing of agricultural products.

(d) Two appointees of the Governor who have demonstrated international agricultural marketing and financial experience and have had no fiduciary interest for the last two years in either marketing of agricultural products or finance.

(e) One appointee of the Senate Committee on Rules who has demonstrated international agricultural marketing experience and has had no fiduciary interest for the last two years in international marketing of agricultural products.

(f) One appointee of the Speaker of the Assembly who has demonstrated international agricultural marketing experience and has had no fiduciary interest for the last two years in international marketing of agricultural products.

(g) The Executive Director of the World Trade Commission or his or her designee.

The terms of the appointees shall be four years, except that the

appointees first appointed to the advisory committee shall classify themselves by lot so that the term of two appointees shall expire on January 15, 1988, the term of two appointees shall expire on January 15, 1989, and the term of two appointees shall expire on January 15, 1990. In no event shall any appointee serve more than two consecutive terms.

The director shall designate one member of the advisory committee as its chairperson.

SEC. 5. Section 58577 of the Food and Agricultural Code is amended to read:

58577. (a) The director, the Director of General Services, and the advisory committee shall take necessary precautions to assure the confidentiality of the information which is contained in proposals for project agreements, market development plans, progress reports, documents in support of claims for funding under a project agreement, and other pertinent information submitted by individual marketing organizations.

This information is exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the advisory committee may hold a closed meeting if an applicant requests that the submitted information not be discussed in an open meeting and the committee determines that it is in the best interest of the program to conduct a closed meeting for that purpose.

SEC. 6. Section 58581 of the Food and Agricultural Code is repealed.

SEC. 7. Section 58591 of the Food and Agricultural Code is amended to read:

58591. On or before December 31 of every odd-numbered year, the director shall report to the chairpersons of the policy committees which have the appropriate subject matter jurisdiction in the Assembly and the Senate, as determined by the respective rules committees, on the status of this chapter. The report shall include an assessment of the act's ability to create, maintain, or increase exports of California agricultural commodities.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the validity of foreign marketing export incentive programs for agricultural products during the current calendar year, it is necessary that this act take effect immediately.

CHAPTER 101

An act to amend Section 11005.3 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor May 18, 1990. Filed with Secretary of State May 18, 1990.]

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

SECTION 1. Section 11005.3 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 367 of the Statutes of 1988, is amended to read:

11005.3. (a) In the case of a city which incorporated subsequent to the 1980 federal census, the Controller shall determine that the population of the city is the greater of either:

(1) Multiplying the number of registered voters in the city by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The population determined pursuant to subdivision (c) of Section 11005. In the case of unincorporated territory being annexed to a city subsequent to the last federal census, or a subsequent census validated by the population research unit of the Department of Finance, the unit shall determine the population of the annexed territory by the use of any federal decennial or special census or any estimate prepared pursuant to Section 2107.2 of the Streets and Highways Code. On and after July 1, 1991, the Controller shall determine the population of the city pursuant to subdivision (c) of Section 11005.

(b) This section shall become inoperative on June 30, 1991, and as of that date is repealed.

SEC. 2. Section 11005.3 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 367 of the Statutes of 1988, is amended to read:

11005.3. (a) In the case of a city which incorporated on or after January 1, 1987, the Controller shall determine that the population of the city for its first eight full fiscal years, and any portion of the first year in which the incorporation is effective if less than a full fiscal year, is the greater of either:

(1) Multiplying the number of registered voters in the city by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The population determined pursuant to subdivision (c) of Section 11005.

(b) In the case of a city which incorporated on or after January 1, 1987, and for which the application for incorporation was filed with the executive officer of the local agency formation commission pursuant to subdivision (a) of Section 56828 of the Government Code on or after January 1, 1991, the Controller shall determine that the

population of the city for its first five full fiscal years, and any portion of the first year in which the incorporation is effective if less than a full fiscal year, is the greater of either:

(1) Multiplying the number of registered voters in the city by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The population determined pursuant to subdivision (c) of Section 11005.

(c) In the case of unincorporated territory being annexed to a city, during the eight- or five-year period following incorporation, as the case may be, subsequent to the last federal census, or a subsequent census validated by the population research unit of the Department of Finance, the unit shall determine the population of the annexed territory by the use of any federal decennial or special census or any estimate prepared pursuant to Section 2107.2 of the Streets and Highways Code.

(d) After the eight- or five-year period following incorporation, as the case may be, the Controller shall determine the population of the city pursuant to subdivision (c) of Section 11005.

(e) This section shall become operative July 1, 1991.

CHAPTER 102

An act to add Sections 1311.5 and 1315.5 to the Military and Veterans Code, and to amend Section 18515.2 of the Revenue and Taxation Code, relating to veterans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 18, 1990. Filed with Secretary of State May 21, 1990]

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

SECTION 1. Section 1311.5 is added to the Military and Veterans Code, to read:

1311.5. The commission may appoint an executive director, who shall be exempt from civil service, and who shall hold office either at the pleasure of the commission or pursuant to a contract with the commission. The salary and expenses of the executive director shall be funded by moneys derived from the contributions designated pursuant to Section 18515 and from private donations, and in no event shall moneys in the General Fund be expended for that purpose.

SEC. 2. Section 1315.5 is added to the Military and Veterans Code, to read:

1315.5. In bidding, or entering into, any contracts pursuant to its duties under this chapter or Section 18515.2 of the Revenue and

Taxation Code, the commission, notwithstanding any other provision of law, shall not be required to abide by any regulations and procedures, including any procedures in the State Administrative Manual, established by the Department of General Services. However, all statutes relating to state contracts and any regulations other than those adopted by the Department of General Services are applicable to contracts executed by the commission.

SEC. 3. Section 18515.2 of the Revenue and Taxation Code is amended to read:

18515.2. Notwithstanding Section 13340 of the Government Code, all money transferred to the Vietnam Veterans Memorial Account in the General Fund pursuant to Section 18515.1 is hereby continuously appropriated, without regard to fiscal years, for allocation as follows:

(a) To the Franchise Tax Board for reimbursement of all costs incurred by the Franchise Tax Board in connection with its duties under this article.

(b) To the Vietnam Veterans Memorial Commission established pursuant to Section 1300 of the Military and Veterans Code for use in the construction of a suitable memorial to Vietnam veterans at the State Capitol, including the amount of fifty thousand dollars ($50,000) for purposes of the recordation of additional names upon, and the repair of, the memorial. Any modifications or alterations of, or additions to, the Vietnam Veterans Memorial shall be performed in accordance with criteria established by the Vietnam Veterans Memorial Commission.

(c) If moneys in the account exceed the amount required to construct, improve, maintain, or repair a Vietnam Veterans Memorial, the balance shall be allocated by the Vietnam Veterans Memorial Commission to be used for the construction, improvement, or repair of other veterans' memorials as designated by that commission.

(d) Any moneys allocated to the Veterans Memorial Commission pursuant to subdivision (c) may be deposited by that commission in a trust account in a private financial institution.

(e) Those moneys identified in subdivision (b) for the purpose of funding the recordation of additional names upon, and the repair of, the Vietnam Veterans Memorial may be deposited in a separate special account to be disbursed as required by the Director of Veterans Affairs.

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 the proper care, improvement, construction, and administration of veterans' memorials in view of imminent changes with regard to the duties and responsibilities of memorial commissions, it is necessary that this act take effect immediately.

CHAPTER 103

An act to add Sections 4940.1, 4940.2, and 4940.3 to, and to add and repeal Section 4945.5 of, the Business and Professions Code, relating to acupuncture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1990. Filed with Secretary of State May 23, 1990.]

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

SECTION 1. Section 4940.1 is added to the Business and Professions Code, to read:

4940.1. The committee shall contract with a qualified, independent consultant with expertise in the professional licensure field, to conduct an evaluation of acupuncture tutorial programs. The independent consultant shall evaluate the tutorial programs and upon completion of the evaluation, make recommendations to the committee which shall include, but need not be limited to, the organization, administration, and monitoring of the tutorial programs, the necessary qualifications of the supervising acupuncturists acting as tutors, and the educational requirements needed to ensure that trainees who are enrolled in the tutorial programs receive training which is substantially equivalent to the training standards of acupuncture schools and colleges.

The committee shall develop formal regulations which will govern the operation of the tutorial programs.

SEC. 2. Section 4940.2 is added to the Business and Professions Code, to read:

4940.2. The committee shall contract with a qualified, independent consultant with expertise in the professional licensure field, to conduct an evaluation of the requirements which must be met by foreign-trained and out-of-state applicants, and the process for determining compliance with the requirements. Upon completion of the evaluation, the independent consultant shall make recommendations to the committee as to the nature and extent of the requirements needed to ensure that foreign-trained and out-of-state applicants have completed education and training which is substantially equivalent to that which is required of applicants trained in this state. The recommendations shall include proposals for a system to document and verify the training received by the applicant. The recommendations shall discuss whether the committee should adopt a requirement for foreign-trained or out-of-state applicants to complete a clinical training program in this state prior to taking the examination.

The committee shall develop formal regulations which will specify the requirements which must be met by foreign-trained applicants.

SEC. 3. Section 4940.3 is added to the Business and Professions

Code, to read:

4940.3. To assist in the development of reasonable standards for the tutorial program and the requirements of foreign-trained and out-of-state applicants, the committee shall authorize a qualified, independent consultant with expertise in the professional licensure field to conduct an analysis of the extent and nature of the educational and clinical training necessary to obtain a reasonable level of competency in the practice of acupuncture. The findings of this analysis shall be reported to the committee.

SEC. 4. Section 4945.5 is added to the Business and Professions Code, to read:

4945.5. As a condition of renewal of his or her license, each acupuncturist licensed prior to January 1, 1988, shall by January 1, 1993, submit to the committee evidence having satisfactorily completed 40 hours of continuing education which shall cover all of the following subjects: general oriental medical principles, technique, theory, basic Western clinical science, location and use of acupuncture points, and case studies. The committee shall determine the curriculum which shall be covered within each subject matter specified in this section. This section shall take precedence over Section 4945 until January 1, 1993, and no acupuncturist shall be made to comply with both Section 4945 and this section. The requirement for specified coursework within the continuing education mandate pursuant to this section is intended to address circumstances relating to the acupuncture profession, and is not intended to set a precedent for other licensure boards.

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 chaptered before January 1, 1993, deletes or extends that date.

SEC. 5. The sum of two hundred thousand dollars ($200,000) is appropriated from the Acupuncture Fund to the Acupuncture Examining Committee to carry out the purposes 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 applicants for state licensure in the practice of acupuncture are duly qualified, it is necessary for this act to take effect immediately.

CHAPTER 104

An act to amend Sections 1808.1, 2512, 12517, 12523, 12523.5, and 14900 of, and to repeal and add Section 15255 of, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1990. Filed with Secretary of State May 23, 1990.]

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

SECTION 1. Section 1808.1 of the Vehicle Code, as amended by Assembly Bill 1790 of the 1989–90 Regular Session, is amended to read:

1808.1. (a) The prospective employer of a driver who drives a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 12524, 12804.1, or 12804.3, shall obtain a report showing the driver's current public record as recorded by the department.

(b) The employer of a driver who drives a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 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.

(c) The employer of a driver of a vehicle requiring a class 1, class 2, class A, or class B driver's license 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 may notify the department to cancel any reports required by this section.

(e) For the purposes of the pull notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 3557 of the Public Utilities Code, and employers who drive vehicles described in subdivisions (b) and (c), shall be enrolled as if they were employees. Family members and volunteer drivers who drive vehicles described in subdivisions (b) and (c) shall also be enrolled as if they were employees.

(f) 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.

(g) 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, as defined in Section 99210 of the Public Utilities Code, 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.

(h) 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. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports in subdivision (c) to employers on a regular basis without the need for individual requests.

(j) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

(k) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a

casual driver to drive a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12521, 12524, 12804.1, or 12804.3. A report is current if it was issued less than six months prior to the date the employer employs the driver. As used in this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months. For purposes of this subdivision, "casual driver" does not include any driver who operates a vehicle that requires a passenger transportation endorsement.

SEC. 2. Section 2512 of the Vehicle Code is amended to read:

2512. (a) The commissioner, after consultation with, and pursuant to the recommendations of, the Emergency Medical Service Authority and the Department of Motor Vehicles, shall adopt and enforce reasonable regulations as the commissioner determines are necessary for the public health and safety regarding the operation, equipment, and certification of drivers of all ambulances used for emergency services. The regulations shall not conflict with standards established by the Emergency Medical Service Authority pursuant to Section 1797.170 of the Health and Safety Code. The commissioner shall exempt, upon request of the county board of supervisors that an exemption is necessary for public health and safety, noncommercial ambulances operated within the county from the regulations adopted under this section as are specified in the board of supervisors' request. The Emergency Medical Service Authority shall be notified by the county boards of supervisors of any exemptions. The commissioner may, with the consent of the director, authorize the director to administer any regulations adopted pursuant to this section which relate to the issuance, suspension, or revocation of ambulance drivers' certificates, to charge a fee of twenty-five dollars ($25) for the issuance of an original certificate and twelve dollars ($12) for the renewal of that certificate, and, in the administration thereof, to exercise the powers granted to the commissioner by this section.

(b) This section shall not preclude the adoption of more restrictive regulations by local authorities, except that inspection of ambulances pursuant to subdivision (b) of Section 2510 shall not be duplicated by local authorities. It is the intent of the Legislature that regulations adopted by the commissioner pursuant to this section shall be the minimum necessary to protect public health and safety, and shall not be so restrictive as to preclude compliance by ambulances operated in sparsely populated areas. This subdivision does not relieve the owner or driver of any ambulance from compliance with Section 21055.

(c) The Department of the California Highway Patrol shall prepare, and make available for purchase, an ambulance driver's handbook.

SEC. 3. Section 12517 of the Vehicle Code is amended to read:

12517. (a) No person shall operate a schoolbus unless that person has in his or her immediate possession a valid driver's license for the

appropriate class of vehicle to be driven. When transporting one or more pupils at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of schoolbuses.

(b) No person shall operate a school pupil activity bus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven. When transporting one or more pupils at or below the 12th-grade level to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of school pupil activity buses.

(c) The applicant for a certificate to operate a schoolbus or school pupil activity bus shall meet the eligibility and training requirements specified for schoolbus and school pupil activity busdrivers in the regulations adopted by the Department of the California Highway Patrol, and shall pay a fee of twenty-five dollars ($25) with the application for issuance of an original certificate, and a fee of twelve dollars ($12) for the renewal of that certificate.

SEC. 4. Section 12523 of the Vehicle Code is amended to read:

12523. (a) No person shall operate a youth bus without having in possession a valid driver's license of the appropriate class and a certificate issued by the department to permit the operation of a youth bus.

(b) Applicants for a certificate to drive a youth bus shall present evidence that they have successfully completed a driver training course administered by or at the direction of their employer consisting of a minimum of 10 hours of classroom instruction covering applicable laws and regulations and defensive driving practices and a minimum of 10 hours of behind-the-wheel training in a vehicle to be used as a youth bus. Applicants seeking to renew a certificate to drive a youth bus 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, and upon payment of a fee of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for the renewal of that certificate to 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 youth bus for the causes specified in regulations adopted by the Department of the California Highway Patrol for schoolbus drivers.

(d) An operator of a youth bus shall, at all times when operating a youth bus, do all of the following:

(1) Use seat belts.

(2) Refrain from smoking.

(3) Report any accidents reportable under Section 16000 to the Department of the California Highway Patrol.

SEC. 5. Section 12523.5 of the Vehicle Code is amended to read:

12523.5. (a) 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 to the Department of the California Highway Patrol of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for a renewal certificate. Applicants for an original certificate 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. Section 14900 of the Vehicle Code is amended to read:

14900. (a) Upon application for an original Class C or M driver's license, or for the renewal of a Class C or M driver's license, there shall be paid to the department a fee of ten dollars ($10). The payment of the fee entitles the person paying the fee to make application for a driver's license and to three examinations within a period of 12 months or during the period of an instruction permit issued from the application as provided in Section 12509.

(b) Any person who, by reason of physical disabilities, is unable to

move about as a pedestrian is exempt from the fee provided in this section, but only if the license issued to that person restricts that person to the operation of a self-propelled wheelchair or invalid tricycle.

SEC. 7. Section 15255 of the Vehicle Code is repealed.

SEC. 8. Section 15255 is added to the Vehicle Code, to read:

15255. (a) Except as otherwise specified in subdivisions (b) and (c), upon an application for an original commercial driver's license, there shall be paid to the department a fee of fifty-five dollars ($55). A fee of fifty-five dollars ($55) shall also be paid to the department upon an application to change a license classification or to remove a restriction if the change or removal requires a driving-skill test.

(b) Upon application for issuance of an original commercial driver's license by a currently licensed class 1 or class 2 driver who meets the driver record requirements and all other requirements established by Section 383.77 of Title 49 of the Code of Federal Regulations, there shall be paid to the department a fee of twenty-five dollars ($25).

(c) Upon application for an original Class C commercial driver's license which requires an endorsement as provided in Section 15278, there shall be paid to the department a fee of twenty-five dollars ($25).

(d) Following failure in taking a driving-skill test, there shall be paid to the department a fee of thirty dollars ($30) for each subsequent administration of the driving-skill test required by the application.

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 Department of Motor Vehicles to collect fees necessary to carry out the additional responsibilities of the Commercial Motor Vehicle Safety Program created by Chapter 1509 of the Statutes of 1988, and to ensure that certificated drivers who intend to carry school pupils have criminal background checks prior to driving those pupils, it is necessary that this act take effect immediately.

CHAPTER 105

An act to add Section 18333 to the Welfare and Institutions Code, relating to aging, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1990 Filed with Secretary of State May 23, 1990.]

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

SECTION 1. Section 18333 is added to the Welfare and Institutions Code, to read:

18333. (a) The Nutrition Reserve Fund shall also be used for the purpose of making loans to maintain existing levels of supportive services provided pursuant to Section 3030d of Title 42 of the United States Code, in order to compensate for cuts in federal funds for those services for the 1989–90 state fiscal year.

(b) The loans shall be repaid with one-time-only funds as defined in subdivision (e) of Section 9315, or with federal funds received in the fourth quarter of the 1989–90 federal fiscal year.

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:

Recent cuts in federal funding for the 1989–90 fiscal year place nutrition and supportive services programs in jeopardy of cutting back on services for older Californians. In order that these programs may continue to operate at current funding levels, it is necessary that this act take effect immediately.

CHAPTER 106

An act to amend Sections 1638.5 and 14234 of the Elections Code, relating to elections.

[Approved by Governor May 22, 1990 Filed with Secretary of State May 23, 1990]

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

SECTION 1. Section 1638.5 of the Elections Code is amended to read:

1638.5. When designating polling places, the clerk shall undertake necessary measures in the locating of polling places to ensure that polling places meet the guidelines promulgated by the Secretary of State for accessibility by the physically handicapped.

SEC. 2. Section 14234 of the Elections Code is amended to read:

14234. When a voter declares under oath, administered by any member of the precinct board at the time the voter appears at the polling place to vote, that the voter is then unable to mark a ballot, the voter shall receive the assistance of not more than two persons selected by the voter other than the voter's employer, an agent of the voter's employer, or an officer or agent of the union of which the voter is a member.

No person assisting a voter shall divulge any information regarding the marking of the ballot.

In those polling places which are inaccessible under the guidelines promulgated by the Secretary of State for accessibility by the physically handicapped, a physically handicapped person may appear outside the polling place and vote a regular ballot. The person may vote the ballot in a place which is as near as possible to the polling place and which is accessible to the physically handicapped. A precinct board member shall take a regular ballot to that person, qualify that person to vote, and return the voted ballot to the polling place. In those precincts in which it is impractical to vote a regular ballot outside the polling place, absentee ballots shall be provided in sufficient numbers to accommodate physically handicapped persons who present themselves on election day. The absentee ballot shall be presented to and voted by a physically handicapped person in the same manner as a regular ballot may be voted by that person outside the polling place.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and involves only "costs mandated by the federal government," as defined by Section 17513 of the Government Code. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in 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 107

An act to amend Section 425.15 of the Code of Civil Procedure, to amend Sections 5047.5, 5239, 7231.5, and 9247 of, and to repeal Section 5231.5 of, the Corporations Code, relating to liability.

[Approved by Governor May 22, 1990 Filed with Secretary of State May 23, 1990.]

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

SECTION 1. Section 425.15 of the Code of Civil Procedure is amended to read:

425.15. (a) No cause of action against a person serving without compensation as a director or officer of a nonprofit corporation

described in this section, on account of any negligent act or omission by that person within the scope of that person's duties as a director acting in the capacity of a board member, or as an officer acting in the capacity of, and within the scope of the duties of, an officer, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes that claim to be filed after the court determines that the party seeking to file the pleading has established evidence that substantiates the claim. The court may allow the filing of a pleading that includes that claim following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the petitioning party, shall permit the proposed pleading to be filed.

(b) Nothing in this section shall affect the plaintiff's right to discover evidence on the issue of damages.

(c) Nothing in this section shall be construed to affect any action against a nonprofit corporation for any negligent action or omission of a volunteer director or officer occurring within the scope of the person's duties.

(d) For the purposes of this section, "compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or officer shall not constitute compensation.

(e) (1) This section applies only to officers and directors of nonprofit corporations that are subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code that are organized to provide charitable, educational, scientific, social, or other forms of public service and that are exempt from federal income taxation under Section 501(c)(1), except any credit union, or Section 501(c)(4), 501(c)(5), 501(c)(7), or 501(c)(19) of the Internal Revenue Code.

(2) 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.

(f) 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 5047.5 of the Corporations Code is amended to read:

5047.5. (a) The Legislature finds and declares that the services

of directors and officers of nonprofit corporations 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 corporations 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 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 religious, charitable, literary, 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 claim against the director or officer may also be made directly against the corporation and a general liability insurance policy is in force both at the time of injury and at the time the claim against the corporation is made, so that a policy is applicable to the claim. If a general liability policy is found to cover the damages caused by the director or officer, no cause of action as provided in this section shall be maintained against the director or officer.

(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 5231.5 of the Corporations Code is repealed.

SEC. 4. Section 5239 of the Corporations Code is amended to read:

5239. (a) There shall be no personal liability to a third party for monetary damages on the part of a volunteer director or volunteer executive officer of a nonprofit corporation subject to this part, caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all of the following conditions are met:

(1) The act or omission was within the scope of the director's or executive officer's duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not reckless, wanton, intentional, or grossly negligent.

(4) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, either in the form of a general liability policy or a director's and officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the board of directors of the corporation and the person had made all reasonable efforts in good

faith to obtain available liability insurance.

(b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) "Executive officer" means the president, vice president, secretary, or treasurer of a corporation, or such other individual who serves in like capacity, who assists in establishing the policy of the corporation.

(d) Nothing in this section shall limit the liability of the corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

(e) This section does not eliminate or limit the liability of a director or officer for any of the following:

(1) As provided in Section 5233 or 5237.

(2) In any action or proceeding brought by the Attorney General.

(f) Nothing in this section creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or officer.

(g) This section is only applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988.

SEC. 5. Section 7231.5 of the Corporations Code is amended to read:

7231.5. (a) Except as provided in Section 7233 or 7236, there is no monetary liability on the part of, and no cause of action for damages shall arise against, any volunteer director or volunteer executive officer of a nonprofit corporation subject to this part based upon any alleged failure to discharge the person's duties as a director or officer if the duties are performed in a manner that meets all of the following criteria:

(1) The duties are performed in good faith.

(2) The duties are performed in a manner such director or officer believes to be in the best interests of the corporation.

(3) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) "Executive officer" means the president, vice president, secretary, or treasurer of a corporation or other individual serving in like capacity who assists in establishing the policy of the corporation.

(d) This section shall apply only to trade, professional, and labor organizations incorporated pursuant to this part which operate exclusively for fraternal, educational, and other nonprofit purposes, and under the provisions of Section 501(c) of the United States Internal Revenue Code.

(e) This section shall not be construed to limit the provisions of Section 7231.

SEC. 6. Section 9247 of the Corporations Code is amended to read:

9247. (a) There shall be no personal liability for monetary damages to a third party on the part of a volunteer director or volunteer executive officer of a nonprofit corporation subject to this part, caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all of the following conditions are met:

(1) The act or omission was within the scope of the director's or executive officer's duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not reckless, wanton, intentional, or grossly negligent.

(4) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, either in the form of a general liability policy or a director's or officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the board of directors of the corporation and the person had made all reasonable efforts in good faith to obtain available liability insurance.

(b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) "Executive officer" means the president, vice president, secretary, or treasurer of a corporation, or other individual serving in like capacity, who assists in establishing the policy of the corporation.

(d) Nothing in this section shall limit the liability of the corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

(e) This section does not eliminate or limit the liability of a director or officer for any of the following:

(1) As provided in Section 9243 or 9245.

(2) In any action or proceeding brought by the Attorney General.

(f) Nothing in this section creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or

officer.

(g) This section is only applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988.

CHAPTER 108

An act to amend Section 2891 of the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1990 Filed with Secretary of State May 23, 1990.]

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

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

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

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

(2) The residential subscriber's credit or other personal financial information, except when the corporation is ordered by the commission to provide this information to any electrical, gas, heat, telephone, telegraph, or water corporation, or centralized credit check system, for the purpose of determining the creditworthiness of new utility subscribers.

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

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

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

subscriber of the provisions of this subdivision whenever consent is requested pursuant to this subdivision.

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

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

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

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

(3) Postal Zip Code information.

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

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

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

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

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

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

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

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

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 remove obstructions to the proper regulatory process at the earliest possible time, it is necessary that this act take effect

immediately.

CHAPTER 109

An act to amend Section 8750 of the Business and Professions Code, relating to land surveying.

[Approved by Governor May 22, 1990. Filed with Secretary of State May 23, 1990.]

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

SECTION 1. Section 8750 of the Business and Professions Code is amended to read:

8750. Upon being licensed, each licensee may obtain a seal of the design authorized by the board bearing the licensee's name, number of certificate, and the legend "Licensed Land Surveyor," or "Professional Land Surveyor." The seal may contain the expiration date of the license.

CHAPTER 110

An act to amend Sections 4600 and 4601 of the Labor Code, relating to workers' compensation.

[Approved by Governor May 24, 1990. Filed with Secretary of State May 24, 1990.]

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

SECTION 1. 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. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician or

chiropractor shall be provided within five days of the request as required by Section 4601. 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. 2. Section 4601 of the Labor Code is amended to read:

4601. (a) If the employee so requests, the employer shall tender the employee one change of physician. The employee at any time may request that the employer tender this one-time change of physician. Upon request of the employee for a change of physician, the maximum amount of time permitted by law for the employer or insurance carrier to provide the employee an alternative physician or, if requested by the employee, a chiropractor, shall be five working days from the date of the request. Notwithstanding the 30-day time period specified in Section 4600, a request for a change of physician pursuant to this section may be made at any time. The employee is entitled, in any serious case, upon request, to the services of a consulting physician or chiropractor of his or her choice at the expense of the employer. The treatment shall be at the expense of the employer.

(b) If an employee requesting a change of physician pursuant to subdivision (a) has notified his or her employer in writing prior to the date of injury that he or she has a personal chiropractor, the alternative physician tendered by the employer to the employee, if the employee so requests, shall be the employee's personal chiropractor. For the purpose of this section, "personal chiropractor" means the employee's regular chiropractor licensed pursuant to Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code, who has previously directed treatment of the employee, and who retains the employee's

chiropractic treatment records, including his or her chiropractic history.

SEC. 3. The amendment made to Section 4601 of the Labor Code by Section 2 of this act does not constitute a change in, but is declaratory of, existing law.

CHAPTER 111

An act to amend Section 22523 of the Vehicle Code, relating to vehicles.

[Approved by Governor May 24, 1990 Filed with Secretary of State May 24, 1990]

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

SECTION 1. Section 22523 of the Vehicle Code is amended to read:

22523. (a) No person shall abandon a vehicle upon any highway.

(b) No person shall abandon a vehicle upon public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(c) Any person convicted of a violation of this section shall be punished by a fine of not less than one hundred dollars ($100) and shall provide proof that the costs of removal and disposition of the vehicle have been paid. No part of any fine imposed shall be suspended. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

(d) Proof that the costs of removal and disposition of the vehicle have been paid shall not be required if proof is provided to the court that the vehicle was stolen prior to abandonment. That proof may consist of a police report or other evidence acceptable to the court.

(e) The costs required to be paid for the removal and disposition of any vehicle determined to be abandoned pursuant to Section 22669 shall not exceed those for towing and seven days of storage. This subdivision does not apply if the registered owner or legal owner has completed and returned to the lienholder a "Declaration of Opposition" form within the time specified in Section 22851.8.

CHAPTER 112

An act to add Section 66519 to the Government Code, relating to transportation.

[Approved by Governor May 24, 1990. Filed with Secretary of State May 24, 1990]

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

SECTION 1. Section 66519 is added to the Government Code, to read:

66519. The commission may develop and adopt a long-range plan for implementing high-speed water transit on San Francisco Bay, including, but not limited to, all of the following:

(a) Policies and procedures for allocating capital and operating assistance from local, state, or federal funds.

(b) Criteria and standards for evaluating and selecting services to be funded with local, state, or federal funds, based upon, but not limited to, the following indicators:

(1) Fare box revenue to operating cost ratio.

(2) Amount of subsidy per passenger.

(3) Local financial support.

(4) Local support in providing ground access.

(5) Impact on bridge traffic.

CHAPTER 113

An act to amend Section 1502.2 of the Health and Safety Code, and to amend Section 9772 of the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor May 25, 1990. Filed with Secretary of State May 25, 1990.]

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

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

(a) Licensed social day care facilities are designed to assist a client population with moderate to severe functional impairments who require a structured therapeutic daytime program of care and supervision in order to reside in the least restrictive setting in the community.

(b) Of equal importance, licensed adult social day care programs assist family caregivers by providing respite from 24-hour a day care responsibility.

(c) Regulations for the new licensing category of social day care

facilities, as defined in Section 1502.2 of the Health and Safety Code, were issued on October 26, 1989. These regulations require a higher level of service than currently required of licensed adult day care facilities, as defined in paragraph (2) of subdivision (a) of Section 1502 of the Health and Safety Code.

(d) The term social day care facilities does not adequately describe the variety and intensity of professional and supportive social services provided by these facilities.

SEC. 2. Section 1502.2 of the Health and Safety Code is amended to read:

1502.2. For purposes of this chapter, a "community care facility" pursuant to Section 1502 includes a adult day support center. A "adult day support center" means a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care in a structured comprehensive program that provides a variety of social and related support services in a protective setting on less than a 24-hour basis.

SEC. 3. Section 9772 of the Welfare and Institutions Code is amended to read:

9772. For the purposes of this chapter, the following definitions shall apply:

(a) "Adult day care facility" and "adult day support center" mean a community care facility as defined respectively in paragraph (2) of subdivision (a) of Section 1502 of, and Section 1502.2 of, the Health and Safety Code.

(b) "Department" means the Department of Aging.

(c) "Adult day services" means community-based group programs providing services on less than a 24-hour basis to older disabled persons and functionally impaired adults, including, but not limited to, licensed adult day care and adult day support centers.

CHAPTER 114

An act to add Article 10 (commencing with Section 130450) to Chapter 4 of Division 12 of the Public Utilities Code, relating to transit, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 25, 1990 Filed with Secretary of State May 25, 1990.]

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

SECTION 1. Article 10 (commencing with Section 130450) is added to Chapter 4 of Division 12 of the Public Utilities Code, to read:

Article 10. Regional Transit Planning

130450. For purposes of this article:

(a) "Commissions" means the county transportation commissions of Los Angeles, Orange, Riverside, and San Bernardino Counties.

(b) "Region" means the multicounty region within the collective jurisdiction of the four commissions.

(c) "Regional transit service" means each existing and planned public transit service, including those which are privately owned and which either receive public funds or are opertated under an agreement purusant to Section 143 of the Streets and Highways Code, whether provided by rail or bus, which operates or is planned for operation between two or more counties within the region.

130451. (a) The commissions shall jointly develop an implementation program for regional transit services. In developing the program, the commissions shall consult with the Southern California Association of Governments, the California Transportation Commission, the Los Angeles-San Diego Rail Corridor Agency, and the South Coast Air Quality Management District.

(b) The program shall include, at a minimum, all of the following:

(1) A system plan and map of all regional transit services.

(2) An implementation plan and schedule to establish each regional transit service not already in existence, including, if appropriate, a schedule of necessary construction and procurement.

(3) A policy and implementation plan for the coordination of technologies, fares, and schedules to maximize the ability and convenience of passengers to transfer among regional transit services and to and from other publicly owned or privately owned mass transit services in each county connecting to the regional transit services.

(4) A program for the operation of regional transit services to provide as efficient and convenient a service as is appropriate.

(c) The program shall consider the specialized transportation needs of elderly and handicapped persons.

(d) The program shall be consistent with and implement the adopted regional transportation plan for the region.

130452. The commissions shall hold a joint public hearing in each county in their jurisdiction on the draft program no earlier than 30 days after the draft has been completed. Following the public hearings, the four commissions shall adopt the regional transit services program.

130453. The initial regional transit services draft program shall be completed by December 1, 1990. The initial program need not reflect intercounty bus services. The commissions shall, in accordance with this article, prepare, adopt, and implement a revised regional transit services program every two years. Revisions to the program shall include both intercounty rail and bus services.

130454. The adopted program shall serve as the basis for a

coordinated application submitted by the commissions for funds allocated by the California Transportation Commission. Nothing in this article precludes a commission from applying for funding prior to the adoption of the initial program.

130455. This article shall become operative only if the Los Angeles County Transportation Commission, the Orange County Transportation Commission, the Riverside County Transportation Commission, and the San Bernardino County Transportation Commission, each adopt a resolution making this article applicable to it, in which case the operative date of this article shall be the date upon which the latest of those resolutions is adopted.

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:

An urgent need exists to create a coordinated intercounty transit program in southern California. In order that this program may be developed as quickly as possible to take advantage of upcoming opportunities, it is necessary that this act take effect immediately.

CHAPTER 115

An act to amend Section 12804.2 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 25, 1990. Filed with Secretary of State May 25, 1990]

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

SECTION 1. Section 12804.2 of the Vehicle Code is amended to read:

12804.2. (a) Notwithstanding Section 15275, a person with at least a class 3 or class C driver's license is exempt from the endorsement requirements of Section 15275 if all of the following conditions are met:

(1) The person is employed in an agricultural operation, the load is not being transported for compensation, and the vehicle is controlled or operated by a farmer.

(2) (A) The person has completed an agricultural hazardous materials transportation program offered or approved by the Department of the California Highway Patrol. The Department of the California Highway Patrol shall make the program available at no cost, and the program shall contain information specifically applicable to the safe transportation of agricultural chemicals and shall not be less than two hours in length. If the commissioner determines that the program cannot be offered in a particular area

of the state because of personnel constraints, a person in that area may instead comply with this requirement by receiving agricultural hazardous materials training, in a program and manner approved by the Department of the California Highway Patrol, from an organization or a person in a supervisory position that has been certified by the Department of the California Highway Patrol.

(B) Upon successful completion of the program specified in subparagraph (A), a verification of training, valid for four years, shall be issued by the instructor and shall be carried by the person when operating an implement of husbandry or a motor vehicle required to display placards or markings pursuant to Section 27903 or which is hauling hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code. Within 10 days of issuance by the instructor, a copy of the verification shall be forwarded by the person completing the training to the department for inclusion on the permanent driving record of the person, together with a fee of twelve dollars ($12).

(C) The department, in consultation with the Department of the California Highway Patrol, shall develop a suitable form for verification of training.

(3) The person has, within the vehicle, informational material approved by the Department of the California Highway Patrol, in both English and Spanish, outlining basic safety procedures to be followed in the event of an accident. The Department of the California Highway Patrol shall provide the information required by this subdivision and make it available at no cost to the person.

(4) The person is operating a vehicle which is an implement of husbandry or a motor vehicle requiring a class 3 or class C driver's license and the distance which the vehicle is being operated between the final point of distribution and the ultimate point of application or from part of a farm to another part thereof, or from one farm to another, is not more than 50 miles.

(5) In lieu of a report of a medical examination required by Sections 12804 and 12804.9, an applicant for a certificate pursuant to paragraph (3) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(6) For the purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300) of Chapter 7, the operation of a vehicle pursuant to this subdivision is deemed to be the operation of a commercial motor vehicle.

(b) Implementation dates for this section may be established by the Department of Motor Vehicles by regulation in order to accomplish an orderly certification program.

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. 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 all commercial motor vehicle drivers in California, at the earliest possible time, meet the same driver qualifications, which have been established to ensure traffic safety, it is necessary that this act take effect immediately.

CHAPTER 116

An act to amend Section 6361 of, and to repeal Section 6361.1 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor June 1, 1990. Filed with Secretary of State June 1, 1990.]

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

SECTION 1. Section 6361 of the Revenue and Taxation Code is amended to read:

6361. (a) Any organization listed or described in subdivision (b) is a consumer and shall not be considered a retailer within the provisions of this part, of food products, nonalcoholic beverages, or other tangible personal property made or produced by members of the organization provided, however, that the organization's sales are made on an irregular or intermittent basis, and that the organization's profits from those sales are used exclusively in furtherance of the purposes of the organization.

(b) For purposes of this section, "organization" includes any of the following:

(1) Any nonprofit organization which meets all of the following conditions:

(A) The organization qualifies for tax-exempt status under Section 501(c) of the Internal Revenue Code.

(B) The organization's primary purpose is to provide a supervised program of competitive sports for youth, or to promote good citizenship in youth.

(C) The organization does not discriminate on the basis of race, sex, nationality, or religion.

(2) (A) Any youth group sponsored by or affiliated with a qualified educational institution, including, but not limited to, any student activity club, athletic group, or musical group.

(B) For purposes of this section, "qualified educational institution" means any of the following:

(i) Any public elementary, secondary, or vocational-technical school providing education for kindergarten, grades 1 to 12, inclusive, and college undergraduate programs, or any part thereof, operated by state or local government.

(ii) Any nonprofit private educational institution providing education for kindergarten, grades 1 to 12, inclusive, and college undergraduate programs, or any part thereof, that meets the requirements of the State Department of Education for a school. "Private educational institution" means any entity providing education which satisfies the requirements of state and local laws pertaining to private educational institutions in effect on January 1, 1990, and which does not discriminate on the basis of race, sex, nationality, or religion.

(3) 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.

(c) For purposes of this section, "irregular or intermittent" means associated directly with a particular event, such as fairs, galas, parades, scout-a-ramas, games, and similar activities. That term includes refreshment stands or booths that are utilized at scheduled events of organized leagues, but does not include storefront or mobile retail outlets which ordinarily require local business licenses.

SEC. 2. Section 6361.1 of the Revenue and Taxation Code is repealed.

SEC. 3. The Legislature finds and declares that in authorizing the State Board of Equalization to grant consumer status to certain beneficient youth organizations, and in statutorily enumerating specified beneficient youth organizations as consumers, there has been no intent to remove the longstanding statutory consumer status of any youth group sponsored by a school district with respect to food products, nonalcoholic beverages, and certain other tangible personal property which are sold on an irregular or intermittent basis, if the profits are used solely and exclusively in furtherance of the youth group's purpose.

SEC. 4. 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. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 117

An act to amend Section 1275 of the Penal Code, relating to bail.

[Approved by Governor June 1, 1990. Filed with Secretary of State June 1, 1990]

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

SECTION 1. Section 1275 of the Penal Code is amended to read:

1275. In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration. No bail shall be accepted unless the judge or magistrate be convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.

In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

In any case wherein a person is arrested for a violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code and the person is on probation for a violation of one of those sections or where an allegation pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code may be pleaded and proven, and a peace officer has reasonable cause to believe that the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for bail was feloniously obtained, the peace officer shall prepare a declaration under penalty of perjury setting forth the facts and circumstances in support of his or her belief and file it with a magistrate, as defined in Section 808, in the county in which the offense is alleged to have been committed or having jurisdiction of the person of the defendant, or a commissioner of the magistrate, requesting an order denying bail. The defendant either personally, or through his or her attorney, friend, or member of his or her family, may also make application to the magistrate for release

on bail. The magistrate or commissioner to whom the application is made may deny release on bail pending the hearing described in Section 825. If, after the application is made, no order granting or denying bail is issued within eight hours after booking, the defendant shall be entitled to release on posting the amount of bail set forth in the applicable bail schedule.

The preceding paragraph shall only apply for the period described in Section 825 in which an arrestee shall be taken to a magistrate.

The bail of any defendant found to have willfully mislead the court regarding the source of bail may be increased as a result of the misrepresentation. The misrepresentation may be a factor considered in any subsequent bail hearing.

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 118

An act to add and repeal Section 56728.7 to the Education Code, relating to education.

[Approved by Governor June 1, 1990. Filed with Secretary of State June 1, 1990.]

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

SECTION 1. Section 56728.7 is added to the Education Code, to read:

56728.7. (a) The Superintendent of Public Instruction may conduct a pilot program for the 1990–91, 1991–92, and 1992–93 fiscal years to enable and encourage school districts and county offices of education, either individually or through special education local plan areas, to establish programs in public schools for individuals with exceptional needs who are currently placed in nonpublic, nonsectarian schools and to develop plans for the return of these pupils to an appropriate public school program, with a view of determining whether these new programs can provide an effective mainstreaming education program in a less restrictive environment which is appropriate to each pupil's needs for services as specified in

his or her written individualized education program. Services provided pursuant to this section to each pupil by a written individualized education program, including, but not limited to, psychotherapy, mental health, residential, or other services provided under provisions of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, shall be continued unless otherwise agreed to by a review of the pupil's expanded individualized education program team. The superintendent shall select, for this purpose, no more than 10 school districts or county offices of education that are willing to participate in the pilot project, through an application process to be developed by the superintendent in accordance with subdivision (b). There shall be no more than 200 pupils participating in this statewide pilot program, of which no more than 50 pupils shall be from any one school district, and no more than 15 pupils from any one school district shall be funded pursuant to Article 8.5 (commencing with Section 56775).

(b) The superintendent shall ensure that the local application describes the program and fiscal resources that it shall use in implementing the pilot program, including, but not limited to, the establishment of the Local Pilot Program Advisory Committee and its implementing policies for the pilot program. The superintendent shall make every effort to ensure that the racial, ethnic, and socioeconomic composition of the Local Pilot Program Advisory Committee reflects the current racial, ethnic, and socioeconomic composition of the exceptional pupil population in the school districts in which the pilot programs are established.

In its preparation of the application for participation in the pilot program, the local education agency shall consult with the special education local plan area in which it is a member and describe the impact the pilot program would have on other programs and resources available within the special education local plan area.

In addition, the superintendent shall ensure that there is a sampling of multiple sizes of school districts and county offices of education, including special education local plan areas whose special education plan serves an average daily attendance of 30,000 or more. The sampling shall also include all of the following:

(1) Local education agencies in urban and rural settings.

(2) Local education agencies serving large populations of individuals with exceptional needs from low-income and ethnic and linguistic minority families.

(3) Local education agencies impacted by a large number of individuals with exceptional needs who are served by nonpublic, nonsectarian schools and agencies.

(4) Local education agencies impacted by a large number of individuals with exceptional needs who reside in a foster family home, licensed children's institution, hospital, or other similar medical facility and who are served by nonpublic, nonsectarian schools or agencies.

(c) Consistent with Section 56366 and other provisions of law, it

is the intent of the Legislature that programs developed pursuant to this section shall ensure the participation of, and coordination with, local contracted nonpublic, nonsectarian schools through the establishment of a Local Pilot Program Advisory Committee in order to develop, monitor, and evaluate policies to ensure that pupils' placements are changed when adequate progress is made and readiness for placement in a less restrictive environment located in a public school is achieved.

(1) The Local Pilot Program Advisory Committee shall be comprised of representatives of local public and contracted nonpublic school programs, parents, and other local public agencies providing services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Representatives of each Local Pilot Program Advisory Committee shall include two representatives of local contracted nonpublic schools designated by the California Association of Private Specialized Education and Services without regard to membership, one of whom shall be a representative of a licensed children's institution when it is determined that pupils in a licensed children's institution in a nonpublic school program placement may be considered for placement in a mainstreaming educational program, a representative of the special education local plan area administrative unit, a teacher representative of a local public school participating in the pilot, a parent representative of the local community advisory committee, pursuant to Public Law 94-142, a representative of a parent advocate, a representative of the local mental health advisory board, and a representative of each local public agency providing services to exceptional pupils within the special education local plan area under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) Notwithstanding any other provision of law, the Local Pilot Program Advisory Committee shall advise on the development, monitoring, and evaluation of policies and procedures which are necessary to implement the pilot program. The advisement shall include, but not necessarily be limited to, the following subjects:

(A) Pupil behaviors.

(B) Pupil achievement and classroom performance reports.

(C) Curriculum and class size.

(D) Adequate support services.

(E) Personnel qualifications.

(3) The Local Pilot Program Advisory Committee shall also advise on development procedures and criteria for evaluating the effectiveness of the pilot program pursuant to paragraph (1) of subdivision (e) and shall annually submit a written evaluation of the pilot program to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall evaluate selected pilot programs, based on the report of each advisory committee of how goals for an effective mainstream education program have been met in accordance with pupils' written individualized education

program.

(d) (1) Notwithstanding any other provision of law, in the 1990–91, 1991–92, and 1992–93 fiscal years the Superintendent of Public Instruction shall apportion to each of the school districts or county offices of education selected pursuant to subdivision (a), in addition to any funds to which that district or county office is entitled under this chapter, an amount for each pupil who is placed by that district or county office in a public school program pursuant to this section, that is equal to the average amount apportioned to the special education local plan area in which that district or county office is located for pupils under Sections 56740 and 56775 in the 1989–90 fiscal year, excluding the costs of room and board as identified by Section 56741. The costs resulting to that district or county office from the placement of any pupil in a public program operated by the district or county office pursuant to this section shall be funded from this apportionment. No school district or county office of education shall be entitled to receive any funding under Section 56740 or 56775 in any fiscal year based on the enrollment of any pupil for which that district or county office receives funding in that fiscal year under this subdivision.

(2) The apportionment authorized under paragraph (1) is subject to the condition that each pupil included under the calculation of the apportionment was enrolled in a nonpublic, nonsectarian school in the 1989–90 fiscal year, and the pupil's placement was changed, in accordance with this part, to a public school special education program as described under this section no later than December 31, 1992.

(3) The apportionment authorized under this section shall include the costs of one certificated person who shall serve as a mainstream education liaison. The workload of a mainstream education liaison shall not exceed a full-time equivalent per pupil caseload of 20.

(4) The apportionment authorized under paragraph (1) shall be used solely for purposes of providing special education programs. Any excess apportionment remaining from the costs of operating public programs pursuant to this section shall be adjusted from the subsequent year's apportionment which the district or county office of education may be eligible to receive.

(e) Notwithstanding any other provision of law, a pilot program operated by a school district or county office of education under this section shall not be considered in the calculation of the number of instructional personnel service units to which the district or county office is entitled, or in the calculation of pupil service ratios as provided in Section 56760.

(f) This section shall not be construed to authorize any increase in state apportionments for special education to which a participating school district or county office of education is entitled under this chapter.

(g) (1) The Superintendent of Public Instruction shall evaluate

the pilot program or programs operated under this section pursuant to criteria developed in consultation with the participating school districts or county offices of education and a statewide representative of contracted nonpublic, nonsectarian schools. The evaluation shall include, but not necessarily be limited to, descriptive information and supporting data provided by the Local Pilot Program Advisory Committee and others as appropriate in determining whether the program operated by each participating district or county office accomplished each of the following objectives:

(A) Provided pupils who were formerly placed in nonpublic, nonsectarian schools with an appropriate and effective mainstreaming education program which is consistent with the pupils' needs as specified in their individualized education program and located in a less restrictive environment in a public school.

(B) Served those pupils in age-appropriate, less restrictive environments, including interaction or receiving instruction with their nonhandicapped peers.

(C) Provided programs and services located in a public school to those pupils at a public cost no greater than that incurred in the nonpublic, nonsectarian school setting, including the public program costs for instruction, designated instruction and services, direct support services, indirect support services, and the costs of services provided by local public agencies under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. It is the intent of the Legislature that the comparison of the costs for services provided by public and nonpublic school programs shall be based on uniform program cost accounting procedures prescribed by the Superintendent of Public Instruction pursuant to Section 56730.5.

(2) The superintendent shall report the results of the evaluation to the Legislature no later than January 1, 1994.

(h) This section shall remain in effect only until September 1, 1995, and as of that date is repealed.

SEC. 2. (a) The Legislature finds and declares that a substantial number of pupils are individuals with exceptional needs, a high proportion of which are currently placed in special education programs in nonpublic, nonsectarian schools rather than in public school special education programs.

(b) Due to the unique circumstances specified in subdivision (a), the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 119

An act to amend Section 17145 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor June 1, 1990 Filed with Secretary of State June 1, 1990.]

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

SECTION 1. Section 17145 of the Revenue and Taxation Code is amended to read:

17145. (a) A management company, or series thereof, is qualified to pay exempt-interest dividends to its shareholders if, at the close of each quarter of its taxable year, at least 50 percent of the value of its total assets consists of obligations which, when held by an individual, the interest therefrom is exempt from taxation by this state under the Constitution or laws of this state or of the United States.

(b) For purposes of this section—

(1) "Exempt-interest dividend" means any dividend or part thereof paid by a management company or series thereof in an amount not exceeding the interest received by it during its taxable year on obligations which, when held by an individual, the interest therefrom is exempt from taxation by this state under the Constitution or laws of this state or the United States, and designated by it as an exempt-interest dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year.

(2) "Management company" means a corporation or business trust or other organization which meets the requirements of Section 24412.

(3) "Series" means a segregated portfolio of assets, the beneficial interest in which is owned by the holders of a class or series of stock of the management company that is exclusive of all other classes or series with respect to that portfolio of assets.

(4) "Value" means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of those securities; and with respect to other securities and assets, fair market value as determined in good faith by the board of directors or trustees, except that in the case of securities of majority-owned subsidiaries which are investment companies, as defined in the Investment Company Act of 1940, that fair value shall not exceed market value or asset value, whichever is higher.

(c) An exempt-interest dividend shall be treated by recipients thereof as an item of interest excludable from income.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 120

An act to amend Section 8232.5 of the Fish and Game Code, relating to salmon, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 1, 1990 Filed with Secretary of State June 1, 1990.]

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

SECTION 1. Section 8232.5 of the Fish and Game Code is amended to read:

8232.5. (a) Except as provided in this section, it is unlawful to take salmon for sport purposes on a permitted vessel.

(b) Subdivision (a) does not prohibit taking salmon for sport purposes under a sportfishing or a sport ocean fishing license, which is issued pursuant to Article 3 (commencing with Section 7145) of Chapter 1, on a vessel licensed as a commercial passenger fishing boat pursuant to Section 7920 and engaged in that business on any day when salmon are not being taken for commercial purposes on that vessel.

(c) Subdivision (a) does not prohibit taking salmon for sport purposes under a sportfishing or a sport ocean fishing license, which is issued pursuant to Article 3 (commencing with Section 7145) of Chapter 1, on a permitted vessel in the Klamath Management Zone, as designated by the federal Pacific Fisheries Management Council, when the commercial salmon season is closed and after 24 hours after the time when salmon taken during the commercial salmon season are required to be landed.

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 sportfishing season within the Klamath Management Zone will begin on May 9, 1990. Therefore, to prevent hardship to those persons eligible to take salmon under this act in this season, it is necessary that this act take effect immediately.

CHAPTER 121

An act to amend Section 1568.22 of the Health and Safety Code, relating to health.

[Approved by Governor June 6, 1990. Filed with Secretary of State June 6, 1990]

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

SECTION 1. Section 1568.22 of the Health and Safety Code is amended to read:

1568.22. This chapter 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.

CHAPTER 122

An act to amend Sections 10800, 10801, 10802, 10803, 10804, 10805, and 10806 of, and to repeal Sections 10800.4, 10802.1, and 10802.5 of, the Health and Safety Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 7, 1990 Filed with Secretary of State June 7, 1990]

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

SECTION 1. Section 10800 of the Health and Safety Code is amended to read:

10800. The Legislature hereby finds and declares that birth defects, stillbirths, and miscarriages represent problems of public health importance about which too little is known; that these conditions lead to severe mental anguish on the part of parents and relatives and frequently to high medical care costs; and that a system to obtain more information about these conditions could result in development of preventive measures to decrease their incidence in the future. Therefore, it is the intent of the Legislature in enacting this section to accomplish all of the following:

(a) To maintain an ongoing program of birth defects monitoring statewide. "Birth defect" as used in this division means any medical problem of organ structure, function, or chemistry of possible genetic or prenatal origin.

(b) To provide information on the incidence, prevalence, and trends of birth defects, stillbirths, and miscarriages.

(c) To provide information to determine whether environmental hazards are associated with birth defects, stillbirths, and

miscarriages.

(d) To provide information as to other possible causes of birth defects, stillbirths, and miscarriages.

(e) To develop prevention strategies for reducing the incidence of birth defects, stillbirths, and miscarriages.

(f) To conduct interview studies about the causes of birth defects.

(g) To affirm the authority of the state department to contract with a qualified entity to operate the birth defects monitoring program statewide.

SEC. 2. Section 10800.4 of the Health and Safety Code is repealed.

SEC. 3. Section 10801 of the Health and Safety Code is amended to read:

10801. The director shall maintain a system for the collection of information, necessary to accomplish the purposes of this division. The director shall require health facilities, with 15 days' notice, to make available to authorized program staff the medical records of children suspected or diagnosed as having birth defects, including the medical records of their mothers. In addition, health facilities shall make available the medical records of mothers suspected or diagnosed with stillbirths or miscarriages and other records of persons who may serve as controls for interview studies about the causes of birth defects. If it is necessary to photocopy records made available under this section, copying expenses shall be paid by the state department.

"Health facilities" as used in this section means general acute care hospitals, and physician-owned or operated clinics, as defined in Section 1200, which regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

SEC. 4. Section 10802 of the Health and Safety Code is amended to read:

10802. The birth defects monitoring program shall operate statewide. It is the intent of the Legislature that the adequacy of program resources shall be assessed annually, and that the annual assessment shall include a consideration of at least all the following factors:

(a) The numbers of births in the state.

(b) The scope of program activities.

(c) Any urgent situation requiring extraordinary commitment of present or planned program staff or resources.

SEC. 5. Section 10802.1 of the Health and Safety Code is repealed.

SEC. 6. Section 10802.5 of the Health and Safety Code is repealed.

SEC. 7. Section 10803 of the Health and Safety Code is amended to read:

10803. The director shall use the information collected pursuant to Section 10801 and information available from other reporting systems and health providers to conduct studies to investigate the causes of birth defects, stillbirths, and miscarriages and to determine and evaluate measures designed to prevent their occurrence. The

department's investigation of poor reproductive outcomes shall not be limited to geographic, temporal, or occupational associations, but may include investigation of past exposures.

SEC. 8. Section 10804 of the Health and Safety Code is amended to read:

10804. The director shall appoint an advisory committee to advise on the implementation of this division. Each of the disciplines of epidemiology, hospital administration, biostatistics, maternal and child health and public health shall be represented on the committee. At least one of the members shall be a representative of the manufacturing industry.

SEC. 9. Section 10805 of the Health and Safety Code is amended to read:

10805. (a) All information collected and analyzed pursuant to this division shall be confidential insofar as the identity of the individual patient is concerned and shall be used solely for the purposes provided in this division. Access to the information shall be limited to authorized program staff, and persons with a valid scientific interest, who meet qualifications as determined by the director, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree, in writing, to maintain confidentiality.

(b) The state department shall maintain an accurate record of all persons who are given access to the information in the system. The record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and the specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the state department.

(c) All research proposed to be conducted by persons other than program staff, using the information in the system, shall first be reviewed and approved by the director and the State Committee for the Protection of Human Subjects. Satisfaction of the terms of the director's rules for data access shall be deemed to establish a valid scientific interest for purposes of subdivision (a), entitling the researcher to review records collected pursuant to Section 10801 and to contact case subjects and controls.

(d) Whenever program staff, pursuing program objectives, deems it necessary to contact case subjects and controls, program staff shall submit a protocol describing the research to the director and to the State Committee for the Protection of Human Subjects. Once a protocol is approved by that committee, program staff shall be deemed to have established a bona fide research purpose, and shall be entitled to complete the approved project and contact case subjects and controls without securing any additional approvals or waivers from any entity.

(e) Nothing in this section shall prohibit the publishing by the state department of statistical compilations relating to birth defects, stillbirth, or miscarriage which do not in any way identify individual

cases or individual sources of information.

(f) Any person who, in violation of a written agreement to maintain confidentiality, discloses any information provided pursuant to this section, or who uses information provided pursuant to this section in a manner other than as approved pursuant to this section may be denied further access to any confidential information maintained by the state department. That person shall also be subject to a civil penalty of five hundred dollars ($500). The penalty provided in this section shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of the state department or any person.

SEC. 10. Section 10806 of the Health and Safety Code is amended to read:

10806. The state department may enter into a contract for the establishment and implementation of the birth defects monitoring program. The contract shall include provisions requiring full compliance with all the requirements of this division. The term of the contract may be in excess of one year, but no longer than three years. Funds shall be allocated in accordance with the state Budget Act. Funds withheld from the contractor at the conclusion of a fiscal year until specified tasks are completed shall be released promptly on proof of substantial completion, and shall not be offset against any funding for the subsequent fiscal year.

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 that this birth defects monitoring program may be expanded into Los Angeles County during the 1989–90 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 123

An act to add Section 43004 to the Food and Agricultural Code, relating to agriculture.

[Approved by Governor June 7, 1990. Filed with Secretary of State June 7, 1990.]

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

SECTION 1. Section 43004 is added to the Food and Agricultural Code, to read:

43004. Any action for any civil penalty or other civil remedy which is provided for under this division shall be commenced within three years from the date of the alleged violation.

CHAPTER 124

An act to add Section 25503.23 to the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 7, 1990 Filed with Secretary of State June 7, 1990]

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

SECTION 1. Section 25503.23 is added to the Business and Professions Code, to read:

25503.23. Notwithstanding any other provision of this chapter, a beer manufacturer or winegrower may purchase advertising space and time from, or on behalf of, an on-sale retail licensee who is the owner of a stadium with a seating capacity in excess of 3,000 seats during the use of the stadium for an annual water ski show.

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 authorize a beer manufacturer or winegrower to purchase advertising space from the owner of a specified stadium during the summer of 1990, it is necessary that this act take effect immediately.

CHAPTER 125

An act to amend Section 1105 of, and to add Division 11 (commencing with Section 11101) to, the Commercial Code, relating to commercial law.

[Approved by Governor June 11, 1990 Filed with Secretary of State June 11, 1990]

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

SECTION 1. Section 1105 of the Commercial Code is amended to read:

1105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is

effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2402.

Applicability of the division on leases. Sections 10105 and 10106.

Applicability of the division on bank deposits and collections. Section 4102.

Bulk transfers subject to the division on bulk transfers. Section 6102.

Applicability of the division on investment securities. Section 8106.

Perfection provisions of the division on secured transactions. Section 9103.

Governing law in the division on funds transfers. Section 11507.

SEC. 2. Division 11 (commencing with Section 11101) is added to the Commercial Code, to read:

DIVISION 11. FUNDS TRANSFERS

CHAPTER 1. SUBJECT MATTER AND DEFINITIONS

11101. This division may be cited as Uniform Commercial Code--Funds Transfers.

11102. Except as otherwise provided in Section 11108, this division applies to funds transfers defined in Section 11104.

11103. (a) In this division:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if all of the following apply:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment.

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender.

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with paragraph (1) of subdivision (a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

11104. In this division:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

11105. (a) In this division:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this division.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact under subdivision (8) of Section 1201.

(b) Other definitions applying to this division and the sections in which they appear are:

Acceptance: Section 11209.

Beneficiary: Section 11103.

Beneficiary's bank: Section 11103.
Executed: Section 11301.
Execution date: Section 11301.
Funds transfer: Section 11104.
Funds-transfer system rule: Section 11501.
Intermediary bank: Section 11104.
Originator: Section 11104.
Originator's bank: Section 11104.
Payment by beneficiary's bank to beneficiary: Section 11405.
Payment by originator to beneficiary: Section 11406.
Payment by sender to receiving bank: Section 11403.
Payment date: Section 11401.
Payment order: Section 11103.
Receiving bank: Section 11103.
Security procedure: Section 11201.
Sender: Section 11103.

(c) The following definitions in Division 4 (commencing with Section 4101) apply to this division:

Clearinghouse: Section 4104.
Item: Section 4104.
Suspends payments: Section 4104.

(d) In addition Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

11106. (a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in subdivision (27) of Section 1201. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this division refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this division.

11107. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this division to the extent of the inconsistency.

11108. This division does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as amended from time to time.

CHAPTER 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

11201. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

11202. (a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be

bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this division includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subdivision (a), or it is effective as the order of the customer under subdivision (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in paragraph (1) of subdivision (a) of Section 11203, rights and obligations arising under this section or Section 11203 may not be varied by agreement.

11203. (a) If an accepted payment order is not, under subdivision (a) of Section 11202, an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to subdivision (b) of Section 11202, the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

11204. (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 11202, or (ii) not enforceable, in whole or in part, against the customer under Section 11203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the

customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subdivision (a) may be fixed by agreement as stated in subdivision (1) of Section 1204, but the obligation of a receiving bank to refund payment as stated in subdivision (a) may not otherwise be varied by agreement.

11205. (a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 11206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of this subdivision, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of this subdivision, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subdivision (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

11206. (a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is

deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

11207. (a) Subject to subdivision (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subdivision (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subdivision (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by paragraph (1) of subdivision (b), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the

information to which the notice relates.

(d) In a case governed by paragraph (1) of subdivision (b), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subdivision (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

11208. (a) This subdivision applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subdivision applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by paragraph (1) of subdivision (b), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time

it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in paragraph (1) of subdivision (a) of Section 11302.

11209. (a) Subject to subdivision (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subdivisions (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (i) pays the beneficiary as stated in subdivision (a) or (b) of Section 11405, or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order.

(2) When the bank receives payment of the entire amount of the sender's order pursuant to paragraph (1) or (2) of subdivision (a) of Section 11403.

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under paragraph (2) or (3) of subdivision (b) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment

order before the payment date and the payment order is subsequently canceled pursuant to subdivision (b) of Section 11211, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

11210. (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subdivision applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to subdivision (d) of Section 11211 or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

11211. (a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subdivision (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable

opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with paragraph (2) of subdivision (c).

11212. If a receiving bank fails to accept a payment order that it

is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this division, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this division or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 11209, and liability is limited to that provided in this division. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this division or by express agreement.

CHAPTER 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

11301. (a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

11302. (a) Except as provided in subdivisions (b) to (d), inclusive, if the receiving bank accepts a payment order pursuant to subdivision (a) of Section 11209, the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a

payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless paragraph (2) of subdivision (a) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first-class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

11303. (a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under subdivision (c) of Section 11402 if that subdivision is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under subdivision (c) of Section 11402 if (i) that subdivision is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the

amount of the erroneous order. This subdivision does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

11304. If the sender of a payment order that is erroneously executed as stated in Section 11303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under subdivision (d) of Section 11402 for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

11305. (a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 11302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subdivision (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 11302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subdivision (a), resulting from the improper execution. Except as provided in subdivision (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subdivisions (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was

obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subdivision (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subdivision (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subdivision (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subdivisions (a) and (b) may not be varied by agreement.

CHAPTER 4. PAYMENT

11401. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

11402. (a) This section is subject to Sections 11205 and 11207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subdivision is subject to subdivision (e) and to Section 11303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 11204 and 11304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subdivision (c) and an intermediary bank is obliged to refund payment as stated in subdivision (d) but is unable to do so because it is not permitted by applicable law or because the bank suspends payments, a sender in

the funds transfer that executed a payment order in compliance with an instruction, as stated in paragraph (1) of subdivision (a) of Section 11302, to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subdivision (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subdivision (c) or to receive refund under subdivision (d) may not be varied by agreement.

11403. (a) Payment of the sender's obligation under Section 11402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subdivision has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 11402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with

respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subdivision (a), the time when payment of the sender's obligation under subdivision (b) or (c) of Section 11402 occurs is governed by applicable principles of law that determine when an obligation is satisfied.

11404. (a) Subject to subdivision (e) of Section 11211, and subdivisions (d) and (e) of Section 11405, if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subdivision (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subdivision (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

11405. (a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under subdivision (a) of Section 11404 occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the

beneficiary of a payment order, the time when payment of the bank's obligation under subdivision (a) of Section 11404 occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subdivisions (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 11406.

(e) This subdivision applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under Section 11406, and (iv) subject to subdivision (e) of Section 11402, each sender in the funds transfer is excused from its obligation to pay its payment order under subdivision (c) of Section 11402 because the funds transfer has not been completed.

11406. (a) Subject to subdivision (e) of Section 11211 and subdivisions (d) and (e) of Section 11405, the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subdivision (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subdivision (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under subdivision (a) of Section 11404.

(c) For the purpose of determining whether discharge of an obligation occurs under subdivision (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

CHAPTER 5. MISCELLANEOUS PROVISIONS

11501. (a) Except as otherwise provided in this division, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this division, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this division and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in subdivision (c) of Section 11404, subdivision (d) of Section 11405, and subdivision (c) of Section 11507.

11502. (a) As used in this section, "creditor process" means levy,

attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subdivision applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

11503. For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

11504. (a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first

withdrawn or applied.

11505. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

11506. (a) If, under this division, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subdivision (a), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

11507. (a) The following rules apply unless the affected parties otherwise agree or subdivision (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subdivision (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or

processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subdivision may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subdivision (b) and a choice-of-law rule under subdivision (c), the agreement under subdivision (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

SEC. 3. Division 11 (commencing with Section 11101) of the Commercial Code shall apply only to a funds transfer in which the originator's payment order was transmitted on or after January 1, 1991.

CHAPTER 126

An act to amend Section 61753 of the Government Code, and to amend Sections 51.5, 63.1, 75.31, 75.41, 213.6, 213.7, 214.8, 441, 531.2, 830, 862, 1605, 1840, 2191.3, 2821, 2928, 3003, 3101, 4107, 4377, 4656.2, 4673.1, 4837.5, 4920, 4986.8, 5147, and 5802 of, to amend and renumber Section 2611.5 of, to add Sections 2509.1, 2611.5, 2635.5, and 2927.7 to, and to repeal Sections 259.12 and 4377.1 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 11, 1990. Filed with Secretary of State June 11, 1990.]

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

SECTION 1. Section 61753 of the Government Code is amended to read:

61753. All taxes shall be collected by the tax collectors of the counties in which the district is situated.

SEC. 2. Section 51.5 of the Revenue and Taxation Code is amended to read:

51.5. (a) Notwithstanding any other provision of the law, any error or omission in the determination of a base year value pursuant to paragraph (2) of subdivision (a) of Section 110.1, including the failure to establish that base year value, which does not involve the exercise of an assessor's judgment as to value, shall be corrected in any assessment year in which the error or omission is discovered.

(b) An error or an omission described in subdivision (a) which involves the exercise of an assessor's judgment as to value may be corrected only if it is placed on the current roll or roll being prepared, or is otherwise corrected, within four years after July 1 of the assessment year for which the base year value was first established.

(c) An error or an omission involving the exercise of an assessor's judgment as to value shall not include errors or omissions resulting from the taxpayer's fraud, concealment, misrepresentation, or failure to comply with any provision of law for furnishing information required by Sections 441, 470, 480, 480.1, and 480.2, or from clerical errors.

(d) If a correction authorized by subdivision (a) or (b) reduces the base year value, appropriate cancellations or refunds of tax shall be granted in accordance with this division. If the correction increases the base year value, appropriate escape assessments shall be imposed in accordance with this division.

(e) The existence of a clerical error shall be proved by a preponderance of the evidence, except that if the correction is made more than four years after July 1 of the assessment year for which the base year value was first established the clerical error shall be proved by clear and convincing evidence, including the papers in the assessor's office. Nothing in this subdivision shall be construed to change the standard of proof applicable to a determination of the value of property.

(f) For purposes of this section:

(1) "Assessment year" means an assessment year as defined in Section 118.

(2) "Clerical errors" means only those defects of a mechanical, mathematical, or clerical nature, not involving judgment as to value, where it can be shown from papers in the assessor's office or other evidence that the defect resulted in a base year value that was not intended by the assessor at the time it was determined.

SEC. 3. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase

or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowner's exemption or a disabled veteran's residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence which consists of an area of reasonable size which is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children.

(2) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents.

For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(3) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(4) "Eligible transferor" means a parent or child of an eligible transferee.

(5) "Eligible transferee" means a parent or child of an eligible transferor.

(6) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(7) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(d) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(1) A written certification by the transferee made under penalty of perjury that the transferee is a parent or child of the transferor.

(2) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a parent or child of the transferee. The written certification shall also include either or both of the following:

(A) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(B) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor which is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property.

(C) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee of the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed within three years after the date of the purchase or transfer of real property for which the claim is filed.

The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to this subdivision. Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the Social Security number of each eligible transferor, and any other information as the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(e) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(f) This section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, which occurred prior to that date.

SEC. 4. Section 75.31 of the Revenue and Taxation Code is amended to read:

75.31. (a) Whenever the assessor has determined a new base year value as provided in Section 75.10, the assessor shall send a notice to the assessee showing the following:

(1) The new base year value of the property which has changed ownership, or the new base year value of the completed new construction which shall be added to the existing taxable value of the remainder of the property.

(2) The taxable value appearing on the current roll, and if the change in ownership or completion of new construction occurred between March 1 and May 31, the taxable value on the roll being prepared.

(3) The date of the change in ownership or completion of new construction.

(4) The amount of the supplemental assessments.

(5) The exempt amount, if any, on the current roll or the roll being prepared.

(6) The date the notice was mailed.

(7) A statement that the supplemental assessment was determined in accordance with Article XIII A of the California Constitution which generally requires reappraisal of property whenever a change in ownership occurs or property is newly constructed.

(8) Any other information which the board may prescribe.

(b) In addition to the information specified in subdivision (a), the notice shall inform the assessee of the procedure for filing a claim for exemption which is to be filed within 30 days of the date of the notice.

(c) The notice shall advise the assessee of the right to appeal the supplemental assessment, and, unless subject to subdivision (d), that the appeal must be filed within 60 days of the date of the notice. For the purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(d) For counties in which the board of supervisors has adopted the provisions of subdivision (c) of Section 1605, the notice shall advise the assessee of the right to appeal the supplemental assessment, and that the appeal must be filed within 60 days of the date of the mailing of the tax bill. For the purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(e) The notice shall advise the assessee that if the supplemental assessment is a negative amount the auditor shall make a refund of a portion of taxes paid on assessments made on the current roll, or the roll being prepared, or both.

(f) The notice shall be furnished by the assessor to the assessee by regular United States mail directed to the assessee at the assessee's latest address known to the assessor.

SEC. 5. Section 75.41 of the Revenue and Taxation Code is amended to read:

75.41. (a) The auditor shall apply the current year's tax rate, as defined in Section 75.4, to the supplemental assessment or assessments, computing the amount of taxes that would be due for a full year. For property on the supplemental roll, the taxes due shall be computed in two equal installments.

(b) The taxes due shall be adjusted by a proration factor to reflect the portion of the tax year remaining as determined by the date on which the change in ownership occurred or the new construction was completed. In computing the portion of the tax year remaining, the change in ownership or completion of new construction shall be presumed to have occurred on the first day of the month following the date on which change in ownership or completion of new construction occurred.

(c) (1) If the presumed date specified in subdivision (b) is April

1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.25; and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(2) If the presumed date specified in subdivision (b) is May 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.17; and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(3) If the presumed date specified in subdivision (b) is June 1, the taxes on the supplemental assessment for the current roll shall be multiplied by 0.08; and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(4) If the presumed date specified in subdivision (b) is July 1, no supplemental assessment shall be made on the current roll, and the taxes on the supplemental assessment for the roll being prepared shall be multiplied by 1.00.

(5) If the presumed date specified in subdivision (b) is on or after August 1, and on or before March 1, the following table of factors shall be used:

If the presumed date is:	The taxes on the supplemental assessment on the current roll shall be multiplied by:
August 1	.92
September 1	.83
October 1	.75
November 1	.67
December 1	.58
January 1	.50
February 1	.42
March 1	.33

(d) After computing the taxes due on the tax bill, if the total amount of all taxes due is twenty dollars ($20) or less, the auditor may cancel the taxes as provided by Section 4986.8.

(e) If the supplemental assessment is a negative amount, the auditor shall follow the procedures of this section to determine the amount of refund to which the assessee is entitled.

SEC. 6. Section 213.6 of the Revenue and Taxation Code is amended to read:

213.6. (a) Personal property owned and operated by an organization incorporated by an act of the United States Congress whose purposes are to provide adequate facilities to assist in meeting local and national emergencies and to promote the public welfare and provide aviation and aerospace education and training which is used exclusively for those purposes shall be exempt from taxation, provided that the organization qualifies for exemption under Section 501 (c) (3) of the Internal Revenue Code.

(b) This section shall be effective commencing with the lien date in 1986.

(c) This section shall remain in effect to and including the lien date in 1995, after which it shall become inoperative. This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 7. Section 213.7 of the Revenue and Taxation Code is amended to read:

213.7. (a) As used in Section 214, "property used exclusively for religious, hospital, scientific or charitable purposes" shall include the property of a volunteer fire department which is used exclusively for volunteer fire department purposes, provided that the department qualifies for exemption either under Section 23701d or 23701f of this code or under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. This section shall not be construed to enlarge the "welfare exemption" to apply to organizations qualified under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, but not otherwise qualified for the "welfare exemption" under other provisions of this code.

As used in this section, "volunteer fire department" means any fund, foundation or corporation regularly organized for volunteer fire department purposes, which qualified as an exempt organization on or before January 1, 1969, either under Section 23701d or 23701f of this code or under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, having official recognition and full or partial support of the government of the county, city or district in which such volunteer fire department is located, and which has functions having an exclusive connection with the prevention and extinguishing of fires within the area of the county, city or district extending official recognition for the benefit of the public generally and to lessen the burdens of the entity of government which would otherwise be obligated to furnish such fire protection.

(b) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor duplicate copies of a valid, unrevoked letter or ruling from either the Franchise Tax Board or, in the alternative, the Internal Revenue Service, which states that the organization qualifies as an exempt organization under the appropriate provisions of the Bank and Corporation Tax Law or the Internal Revenue Code.

SEC. 8. Section 214.8 of the Revenue and Taxation Code is amended to read:

214.8. (a) Except as provided in Sections 213.7 and 231, the "welfare exemption" shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701d of this code or Section 501(c)(3) of the Internal Revenue Code. This section shall not be construed to enlarge the "welfare exemption" to apply to organizations qualified under Section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified for the "welfare exemption" under other provisions of this code.

The exemption for veterans' organizations shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701f of this code or under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code. This section shall not be construed to enlarge the "veterans' organization exemption" to apply to organizations qualified under Section 501(c)(4) or 501(c)(19) but not otherwise qualified for the "veterans' organization exemption" under other provisions of this code.

(b) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor duplicate copies of a valid, unrevoked letter or ruling from either the Franchise Tax Board or, in the alternative, the Internal Revenue Service, which states that the organization qualifies as an exempt organization under the appropriate provisions of the Bank and Corporation Tax Law or the Internal Revenue Code.

SEC. 9. Section 259.12 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 441 of the Revenue and Taxation Code is amended to read:

441. Every person owning taxable personal property, other than a mobilehome subject to Part 13 (commencing with Section 5800), having an aggregate cost of thirty thousand dollars ($30,000) or more shall file a signed property statement with the assessor. Every person owning personal property which does not require the filing of a property statement or real property shall upon request of the assessor file a signed property statement. Failure of the assessor to request or secure the property statement does not render any assessment invalid.

(a) The property statement shall be declared to be true under the penalty of perjury and filed with the assessor between the lien date and 5 p.m. on the last Friday in May, annually, or between the lien date and such earlier time as the assessor may appoint.

(b) If the assessor appoints a time other than the last Friday in May, it shall be no earlier than April 1. In this event the penalty provided by Section 463 shall apply if the property statement is not filed with the assessor by 5 p.m. on the last Friday in May or if all of the following apply:

(1) The property statement is not filed within the time appointed by the assessor.

(2) The assessor has given notice by certified or registered mail, or by first-class mail, properly addressed with postage prepaid, no earlier than 15 days after the time appointed by the assessor of nonreceipt of the property statement within the appointed time. If the notice is given by first-class mail, the assessor shall obtain a certificate of mailing issued by the United States Postal Service verifying the fact and date of mailing of the notice.

(3) The property statement has not been filed with the assessor within 15 days following the date of receipt of the notice, if the notice

is given by certified or registered mail, or within 20 days following the date shown on the certificate of mailing, if the notice is given by first-class mail.

(c) The property statement may be filed with the assessor through the United States mail, properly addressed with postage prepaid. This subdivision shall be applicable to every taxing agency, including but not limited to, a chartered city and county, or chartered city.

(d) At any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.

(e) In the case of a corporate owner of property, the property statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation.

(f) The assessor may refuse to accept any property statement he or she determines to be in error.

SEC. 11. Section 531.2 of the Revenue and Taxation Code is amended to read:

531.2. When the property is real property which subsequent to July 1 of the year of escape for purposes of this article, or subsequent to July 1 of the year in which the property should have been lawfully assessed, for purposes of Article 3 (commencing with Section 501), but prior to the date of that assessment and the showing thereof on the secured roll, with the date of entry specified thereon, has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to either of these articles shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured tax rate of the year in which the property escaped assessment.

If the real property escaped assessment as a result of an unrecorded change in ownership or change in control for which a change in ownership statement required by Section 480, 480.1, or 480.2 is not filed, the assessor shall appraise the property as of the date of transfer and enroll the difference in taxable value for each of the subsequent years on the secured roll, with the date of entry specified thereon. However, if prior to the date of the assessment the property has (1) been transferred or conveyed to a bona fide purchaser for

value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to this paragraph shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured rate of the year in which the property escaped assessment. Notwithstanding the provisions of Section 532, escaped assessments resulting from these unrecorded changes in ownership or changes in control shall be made within eight years after July 1 of the assessment year in which the real property escaped taxation or was underassessed. "Assessment year" means the period defined in Section 118.

In the event of a failure to file a change in ownership statement required by Section 480, 480.1, or 480.2, the interest provided in Section 506 may, by the order of the board of supervisors, be added.

SEC. 12. Section 830 of the Revenue and Taxation Code is amended to read:

830. (a) If the request of the board is mailed before the lien date as defined in Section 722, the property statement shall be filed with the board by March 1, and shall be in such detail as the board may prescribe.

(b) If the request of the board is mailed on or after the first day of January following the lien date, the property statement shall be filed with the board within 60 days after the request is mailed.

(c) Except as hereinafter provided, if any person fails to file the property statement, in whole or in part, by March 1, or by that later date to which the filing period is extended pursuant to subdivision (b) or Section 830.1, a penalty shall be added to the full value of the assessment of so much of the property as is not timely reported as follows:

(1) For any part of the property statement relating to the development of the unit value of operating property, the penalty shall be 10 percent of the unit value.

(2) For any part of the property statement that lists or describes specific operating property, the penalty shall be 10 percent of the allocated value of the property, which penalty shall be added to the unit value.

(3) For any part of the property statement that lists or describes specific nonunitary property, the penalty shall be 10 percent of the value of the property.

(4) If the failure to timely file a property statement is due to a fraudulent or willful attempt to evade the tax, a penalty of 25 percent of the assessed value of the estimated assessment shall be added to the assessment. A willful failure to file a property statement as required by Article 5 (commencing with Section 826) shall be deemed to be a willful attempt to evade the tax.

(5) No penalty added pursuant to paragraph (1), (2), (3), or (4) shall exceed twenty million dollars ($20,000,000) of full value. In

addition, if a penalty has been added pursuant to paragraph (1), (2), or (3), if a claim for refund seeking the recovery of that penalty has been filed by the state assessee contesting the penalty within three months of the due date of the second installment, and the state assessee initiates an action in the superior court within one year of the filing of the claim for refund, the state assessee shall not be subject to any further penalties on subsequent assessments for failure to comply with any subsequent request seeking information or data with respect to the same issue as set forth in the claim for refund filed within the time limits set forth above, until the assessment year after a final decision of the court, and then only with respect to a failure to comply with a request for information with respect to assessments after a final decision of the court. For purposes of this paragraph, "same issue" means the type of information which is the subject of the disputed request for information.

(d) Any person who subscribes to the board's tax rate area change service and who receives a change mailed between April 1 and May 1, shall file a corrected statement no later than May 30 with respect to those parts of the property statement which are affected by the change.

If that person receives a change mailed after May 1, a corrected statement shall be filed no later than the 60th day following the mailing of that change.

(e) Penalties incurred for filings received after June 30 may be included with the assessments for the succeeding fiscal year.

(f) If the assessee establishes to the satisfaction of the board that the failure to file the property statement or any of its parts within the time required by this section was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

SEC. 13. Section 862 of the Revenue and Taxation Code is amended to read:

862. When an assessee, after a request by the board, fails to file a property statement by the date specified in Section 830 or files with the board a property statement or report on a form prescribed by the board with respect to state-assessed property and the statement fails to report any taxable tangible property information accurately, regardless of whether or not this information is available to the assessee, to the extent that these failures cause the board not to assess the property or to assess it at a lower valuation than it would have if the property information been reported accurately, the property shall be assessed in accordance with Section 864, and a penalty of 10 percent shall be added to the additional assessment. If the failure to report or the failure to report accurately is willful or fraudulent, a penalty of 25 percent shall be added to the additional assessment. If the assessee establishes to the satisfaction of the board that the failure

to file an accurate property statement was due to reasonable cause and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the board shall order the penalty abated, provided, the assessee has filed with the board written application for abatement of the penalty within the time prescribed by law for the filing of applications for assessment reductions.

SEC. 14. Section 1605 of the Revenue and Taxation Code is amended to read:

1605. (a) An assessment made outside of the regular assessment period is not effective for any purpose, including its review, equalization and adjustment by the county board, until the assessee has been notified thereof personally or by United States mail at the assessee's address as contained in the official records of the county assessor. Receipt by the assessee of a tax bill based on that assessment shall suffice as the notice.

(b) Upon application for reduction pursuant to subdivision (a) of Section 1603, the assessment shall be subject to review, equalization and adjustment by the county board. The application shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. For counties of the first class, the application shall be filed within 60 days of the date of the mailing of the tax bill.

(c) The board of supervisors of any county may by resolution require that the application for reduction pursuant to subdivision (a) of Section 1603 be filed with the clerk no later than 60 days after the date of the mailing of the tax bill.

(d) In counties where assessment appeals boards have not been created and are not in existence, at any regular meeting, the board of supervisors, on the request of the assessor or any taxpayer, shall sit as the county board to equalize any assessments made by the assessor outside the regular assessment period for those assessments. Notwithstanding any other provision of law to the contrary, in any county in which assessment appeals boards have been created and are in existence, the time for equalization of assessments made outside the regular assessment period for those assessments, including assessments made pursuant to Sections 501, 503, 504, 531, and 531.1, shall be prescribed by rules adopted by the board of supervisors.

(e) If an audit of the books and records of any profession, trade, or business pursuant to Section 469 discloses property subject to an escaped assessment for any year, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to this chapter, except in those instances when that property had previously been equalized for the year in question by the county board of equalization or assessment appeals board. The application shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. Receipt by the assessee of a tax bill based upon that assessment shall suffice as that

notice.

(f) For purposes of subdivision (a), "regular assessment period" means March 1 to and including July 1 of the calendar year in which the assessment, other than escape assessments, should have been enrolled if it had been timely made.

SEC. 15. Section 1840 of the Revenue and Taxation Code is amended to read:

1840. If any county, city and county, or municipal corporation desires to secure a review, equalization, or adjustment of the assessment of its property by the board pursuant to subdivision (g) of Section 11 of Article XIII of the California Constitution, it shall apply to the board therefor in writing on or before the third Monday in July, or within two weeks after the completion and delivery by the assessor of the local roll containing the assessment to the auditor as provided in Section 617, whichever is the later. If the assessment objected to is one made outside the regular period for such assessments, the application for review shall be filed with the board within 60 days from the date the tax bill is mailed to the assessee.

Every application shall show the facts claimed to require action of the board, and a copy thereof shall be filed with the assessor whose assessment is questioned. Upon receipt of a timely application, the board shall afford the applicant notice and a hearing in accordance with such rules and regulations as the board may prescribe. The failure to file a timely application shall bar the applicant from relief under subdivision (g) of Section 11 of Article XIII or this section.

SEC. 16. Section 2191.3 of the Revenue and Taxation Code is amended to read:

2191.3. Where there is a tax on:

(a) (1) A possessory interest secured only by a lien on that taxed possessory interest, or on

(2) Goods in transit, not secured by any lien on real property, or on

(3) Improvements that have been assessed pursuant to Section 2188.2, or on

(4) Off-roll taxes on escape assessments where the error was not the fault of the assessee and the escape taxes are being paid pursuant to the provisions of Section 4837.5, or on unsecured property not secured by a lien on any real property, and where the tax has become delinquent, or on

(5) Unsecured property not secured by a lien on any real property, and the tax has become delinquent; or where a tax has been:

(b) (1) Entered on the unsecured roll pursuant to Section 482, 531.2, or 4836.5, or

(2) Transferred to the unsecured roll pursuant to any provision of law:

The tax collector may file for record without fee in the office of the county recorder of any county a certificate specifying the amount due, the name, federal social security number, if known, and last

known address of the assessee liable for the amount, and the fact, if applicable, that all provisions of this division in the computation and levy of the tax have been complied with. The procedure authorized by this section is cumulative to the procedure provided by Sections 2951 and 3003.

SEC. 17. Section 2509.1 is added to the Revenue and Taxation Code, to read:

2509.1. Notwithstanding any other provision of law, after the return to the depositing county officer of any unpaid negotiable paper, the tax collector may charge the person who attempted payment through the unpaid negotiable paper a fee not to exceed the cost of making required notifications to the person, processing the returned unpaid negotiable paper, and making the required cancellations on the tax roll. The fee amount shall be set by the board of supervisors and be subject to the fee review procedures required by Section 54986 of the Government Code. The fee may be added to the tax bill and collected in the same manner as costs recovered under Section 2621.

SEC. 18. Section 2611.5 of the Revenue and Taxation Code is amended and renumbered to read:

2611.6. The following information shall be included in each county tax bill or in a separate statement accompanying the bill:

(a) The full value of locally assessed property, including assessments made for irrigation district purposes in accordance with Section 26625.1 of the Water Code.

(b) The tax rate required by Article XIII A of the California Constitution.

(c) The rate or dollar amount of taxes levied in excess of the 1-percent limitation to pay for voter-approved indebtedness incurred before July 1, 1978, or bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

(d) The amount of any special taxes and special assessments levied.

(e) The amount of any tax rate reduction pursuant to Section 100 of this code, with the notation: "Tax reduction by (name of jurisdiction)."

(f) The amount of any exemptions. Exemptions reimbursable by the state shall be separately shown.

(g) The total taxes due on the property covered by the bill.

(h) Instructions on tendering payment, including the name and mailing address of the tax collector.

SEC. 19. Section 2611.5 is added to the Revenue and Taxation Code, to read:

2611.5. At the option of a county and when authorized by resolution of the board of supervisors pursuant to Article 4 (commencing with Section 29370) of Chapter 2 of Division 3 of Title 3 of the Government Code, a cash difference fund may be used to increase the amount tendered to the county for the payment of any

tax, assessments, penalty, cost or interest which is due and owing the county, when a difference of ten dollars ($10) or less exists. A record of each use of the fund shall be maintained, containing sufficient information to identify the name of the person whose account was credited and listing the amount of the difference.

Notwithstanding any provision of law, including Sections 29372, 29373, 29374, and 29375 of the Government Code, the cash difference fund may be expended, maintained, or replenished by accounting entries into a cash difference account and an overage account maintained in the county automated accounting system. All transfers between the fund and the accounts may be made and retained in electronic data processing equipment and no written report pursuant to Section 29073 of the Government Code, warrant, special warrant, or check warrant need be prepared by the auditor or treasurer. If approved pursuant to Section 29380.1 of the Government Code, replenishment of the cash difference account may be accomplished by the county auditor by a journal entry or electronic funds transfer from the county's general fund.

When an amount paid to the county on any tax, assessment, penalty, cost, and interest exceed the amount due the county and the excess does not exceed ten dollars ($10), the excess amount may be deposited into the overage account. If the excess amount is not so deposited, it shall be refunded to the person making the payment.

SEC. 20. Section 2635.5 is added to the Revenue and Taxation Code, to read:

2635.5. Notwithstanding any other provision of law, with the exception of Chapter 2.3 (commencing with Section 2780) of Part 5, the tax collector may apply any refund due a taxpayer, or the taxpayer's agent, to any delinquent taxes due on the same property for which the same taxpayer, or his or her agent, is liable.

SEC. 21. Section 2821 of the Revenue and Taxation Code is amended to read:

2821. Any person filing an affidavit of interest may apply to the tax collector to have any parcel separately valued on the current roll for the purpose of paying taxes. A county may, upon approval of the board of supervisors, require that the applicant notify the property owner.

The application shall be made during the current fiscal year, and shall set forth the fact that a duly executed and recorded deed, purchase contract, deed of trust, mortgage, or final decree of court describes the parcel sought to be separately valued. A county may, upon approval of the board of supervisors, prohibit these applications during the 10 working days preceding each tax installment delinquency date and during the 10 working days preceding June 30th of each year.

The application may request that the tax created by the assessment of personal property, or leasehold improvements, or possessory interests on the whole assessment be allowed to remain as a lien on the parcel sought to be separately valued.

If any lien not determined by the application of a tax rate on a valuation of property has been levied or placed on the whole assessment, the application may be accompanied by the certification of the taxing agency or revenue district authorized by law to levy or place the lien, setting forth the specific amount of that portion of the lien levied or placed on the whole assessment which is to continue to be levied or placed on the parcel sought to be separately valued.

The board of supervisors may provide that a parcel with a lien against it and other property, pursuant to the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code) or the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) will not be separately valued unless a request has been made to the agency levying the bond lien for a division of land and bond. A copy of the requested division of land and bond shall accompany the request for separate property tax valuation.

Any separations of property pursuant to this section are for valuing property for tax purposes only, and are not intended to create a legal building site or to supersede requirements pursuant to zoning, building, lot split or subdivision ordinances.

Once created, an individual interest parcel may be entered as a separate assessment on subsequent assessment rolls until the time that ownership of the interest is conveyed or until the original applicant or his or her agent requests that the parcel be recombined.

Upon authorization by ordinance by the board of supervisors, the tax collector may charge an application fee for actual costs incurred for the processing of an application for the separate valuation of any parcel on the current roll. Fees shall be governed by the provisions of Chapter 12.5 (commencing with Section 54985) of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 22. Section 2927.7 is added to the Revenue and Taxation Code, to read:

2927.7. Notwithstanding any other provision of law, if the tax collector can determine that an assessee on the unsecured roll has a recorded, undivided interest in the property assessed, the tax collector may, at the assessee's request, accept pro rata payment of taxes due. The assessee shall pay to the tax collector an amount equal to the percentage of the total property comprised by the assessee's undivided interest assessed as a pro rata payment to the total amount due at the time of payment. Upon proper payment, the assessee shall be discharged from the tax lien.

SEC. 23. Section 2928 of the Revenue and Taxation Code is amended to read:

2928. Any original unsecured roll containing the information set forth in the delinquent roll or in an abstract list may be destroyed by the county officer in possession of the rolls if (a) the destruction, in all cases, has first been approved by order of the board of supervisors, (b) the delinquent roll or abstract list has first been certified as correct and complete by the county auditor, and (c) a certified,

permanent record on a substitute media has been prepared in accordance with Section 26205 of the Government Code and the substitute media will be retained for at least five years from the date of the creation of the original document. The substitute media may also be destroyed following the expiration of the five-year retention period.

SEC. 24. Section 3003 of the Revenue and Taxation Code is amended to read:

3003. Where delinquent taxes or assessments, including those on personal property, are not a lien on real property sufficient, in the judgment of the tax collector or the board of supervisors, to secure the payment of the taxes or assessments, the county may, in any civil action, sue the taxpayer in its own name, including general partners of a partnership assessee, persons who have assumed the liability to pay the assessed taxes by contract or lease, or those persons who are the alter ego or successor in interest of a corporate assessee, for the recovery of the delinquent taxes or assessments, with penalties and costs. The county seat of the county in which the property was assessed shall be a proper place of trial.

SEC. 25. Section 3101 of the Revenue and Taxation Code is amended to read:

3101. If any unsecured tax, interest, or penalty imposed under this part is not paid by the last day of the month succeeding the delinquency date, the tax collector may file, no sooner than 10 days after the mailing of the notice required in subdivision (b), in the office of the county clerk, without fee, a certificate specifying as follows:

(a) The fact that a notice of intent to file the certificate had been sent, by registered mail, to the assessee, at his or her last known address, not less than 10 days prior to the date of the certificate.

(b) The fact that the notice required in subdivision (a) set forth the following information:

(1) The name of the assessee.

(2) The description of the property assessed.

(3) The assessed value of the property.

(4) The fact that judgment will be sought in the amount of the tax, penalty, or interest that will remain unpaid at the time of the filing of the certificate.

(5) The fact that, upon the issuance and recordation of that judgment, additional penalties will continue to accrue at the rate prescribed by law, and that any bond premium posted or other costs to enforce the judgment shall be an added charge.

(6) The fact that a recording fee in the amount set forth in Section 27361.3 of the Government Code will be required to be paid for the purpose of the recordation of any release of the judgment lien.

(c) The name of the assessee.

(d) The amount for which judgment is to be entered.

(e) The fact that the county has complied with all provisions of this part in the computation and the levy of the tax, penalty, or

interest.

(f) The fact that a request is therein made for the issuance and entry of judgment against the assessee.

SEC. 26. Section 4107 of the Revenue and Taxation Code is amended to read:

4107. Any redemption certificate may be destroyed by the county tax collector if (a) the destruction has been approved by order of the board of supervisors of the county, and (b) a certified, permanent record on a substitute media has been prepared in accordance with Section 26205 of the Government Code and the substitute media will be retained for at least 12 years from the date of creation of the original document. The substitute media may also be destroyed following the expiration of the 12-year retention period.

SEC. 27. Section 4377 of the Revenue and Taxation Code is amended to read:

4377. Any delinquent tax roll more than 12 years old and original secured roll on which it is based containing the information set forth in the abstract list may be destroyed by the county officer or officers in possession of the rolls if (a) the destruction, in all cases, has first been approved by order of the board of supervisors of the county, (b) the abstract list has first been certified as correct and complete by the county auditor, and (c) a certified, permanent record on a substitute media has been prepared in accordance with Section 26205 of the Government Code and the substitute media will be retained for at least 12 years from the date of the creation of the original document. The substitute media may also be destroyed following the expiration of the 12-year retention period.

The abstract list prepared under Section 4373, or any photographic record thereof, shall be retained by the tax collector for at least two years after the time the lien has been removed.

SEC. 28. Section 4377.1 of the Revenue and Taxation Code is repealed.

SEC. 29. Section 4656.2 of the Revenue and Taxation Code is amended to read:

4656.2. Taxes, including taxes paid in accordance with provisions of Section 4837.5, and all delinquent penalties, interest and redemption penalties accruing thereon, shall be distributed to each fund on the basis of the tax rate established for the fiscal year preceding that in which distribution is made and in the same proportion as the tax rate for each fund bears to the total tax rate applicable.

SEC. 30. Section 4673.1 of the Revenue and Taxation Code is amended to read:

4673.1. After satisfaction of the amount specified in Sections 4672, 4672.1, and 4673, the proceeds shall be distributed as follows:

(a) An amount of the proceeds up to but no greater than the amount required, at the time of sale, to redeem the property from tax default and the sale to any taxing agency entitled to share in the proceeds shall be distributed as follows:

(1) A pro rata share shall be distributed to each assessment fund in an amount bearing the same proportion as the assessment due each fund bears to the total amount of taxes and assessments necessary to redeem the property at the time of sale.

(2) The remaining balance of the proceeds to be distributed under this section shall be distributed to each tax fund in an amount bearing the same proportion to the balance remaining as the tax rate for each fund bears to the total tax rate applicable to the property for the fiscal year preceding that in which the property was sold.

(b) After satisfaction of the amounts specified in subdivision (a), an amount of the proceeds necessary to satisfy current taxes and assessments and applicable penalties and costs thereon shall be distributed as provided in Chapter 1a (commencing with Section 4653) of this part. Current taxes and assessments referred to herein include taxes and assessments which would have been levied on the property if the property were not tax-deeded to any taxing agency and remains subject to sale by, or redemption from, the taxing agency. In the case of sales completed between March 1 and July 1, "current taxes and assessments" shall include amounts representing tax liens disencumbered by the tax sale.

SEC. 31. Section 4837.5 of the Revenue and Taxation Code is amended to read:

4837.5. Notwithstanding any other provision of law, taxes due, whether secured or unsecured, on escape assessments for prior fiscal years, where the error causing the escape assessment was not that of the assessee, or taxes due because of the correction of any assessor's error for prior fiscal years under this article, where that error was made without fault on the part of the assessee, may be paid over a four-year period at the option of the assessee if: (1) the additional tax is over one hundred dollars ($100), and (2) a written request for installment payment is filed by the assessee with the tax collector prior to the time the second installment of taxes on the secured roll becomes delinquent, or by the last day of the month following the month in which the tax bill is mailed, whichever is later. The tax collector shall include with the property tax bill a notice of the payment provisions of this section.

If payment by installments is requested, 20 percent or more of the tax shall be paid no later than the deadline for filing the written request. The current taxes and prior year taxes with penalties and costs thereon shall be paid with or prior to the initial installment payment. In each succeeding fiscal year, the assessee shall pay, before the delinquency date of the second installment of current taxes on the secured roll, all current year taxes, and a sum at least sufficient to reduce the outstanding balance of the tax by 20 percent of the original amount.

No penalties shall be charged so long as installment payments are made timely; and, in the case of secured taxes, so long as all payments are made timely, an affidavit regarding the property shall not be published pursuant to Section 3371.

If any installment is not paid timely, or if the property on the secured roll becomes tax defaulted, or if the property changes ownership, or if taxes for the property on the unsecured roll are not paid before becoming delinquent, the balance of the tax remaining to be paid shall immediately become due and payable, and no further installment payments for that escape assessment or correction shall be authorized. The tax collector shall inform the auditor of the defaulted, off-roll installment plan and of the delinquent amount remaining unpaid.

The auditor shall add the unpaid balance, plus penalties and costs thereon, to the current roll, adjust the tax collector's charge accordingly, and the remaining balance of the tax shall become subject to all of the provisions of this division applicable to delinquent taxes.

The tax collector shall maintain records listing the current status of all the installment accounts authorized under this section. The status of each installment account shall be entered on the current roll and the tax collector may file for record with the county recorder a certificate pursuant to Section 2191.3.

When the installment account is paid in full or placed on the tax rolls due to a defaulted payment plan and the tax collector has filed for record a certificate of lien, the tax collector shall also file for record a release of lien. The filings of the certificates of lien and release of lien shall not be subject to recording fees.

SEC. 32. Section 4920 of the Revenue and Taxation Code is amended to read:

4920. This article shall be applicable only if all of the following requirements of subdivision (a) or (b) are met:

(a) (1) By substantial evidence, a redemptioner convinces the tax collector that money paid by him or her in redemption of any property or for the use of any property pursuant to Chapter 3 (commencing with Section 4186) of Part 7 was intended by him or her to be paid in connection with any other property or that the payment was, without his or her fault, credited to unintended property.

(2) The right of redemption has not terminated on the property in connection with which the payment was intended.

(3) Two years have not elapsed since the date of the payment.

(4) Since the date of payment, the property has not been transferred or conveyed to a bona fide purchaser for value or become subject to a bona fide encumbrancer for value.

When all of the foregoing requirements are met, the tax collector shall transfer the payment to the property in connection with which the payment was intended, and in case the payment caused the redemption of the property in connection with which the payment was not intended, cancel the redemption of that property.

(b) (1) By substantial evidence, a redemptioner convinces the tax collector that money paid by him or her in redemption of any property or for the use of any property pursuant to Chapter 3

(commencing with Section 4186) of Part 7 was, without his or her fault, credited to unintended property.

(2) The right of redemption has not terminated on the property in connection with which the payment was intended.

(3) Two years have not elapsed since the date of the payment.

(4) Since the date of payment, the property has been transferred or conveyed to a bona fide purchaser for value or become subject to a bona fide encumbrancer for value.

When all of the foregoing requirements are met, the tax collector shall transfer the payment to the property in connection with which the payment was intended to be made, and shall cancel the credit on the unintended property. In the event that a transfer is made, the person owning the unintended property immediately before issuance of the guaranty or certificate shall be personally liable for the amount so transferred which shall be collected in the manner specified for the collection of taxes on the unsecured roll.

SEC. 33. Section 4986.8 of the Revenue and Taxation Code is amended to read:

4986.8. (a) On recommendation of the tax collector, the auditor may cancel any tax assessment, special district tax, or special assessment if the amount is so small as not to justify the cost of collection.

(b) The total amount of all taxes due which may be canceled pursuant to this section shall not exceed twenty dollars ($20) per parcel.

(c) Any penalties, costs, or fees that are the result of nonpayment of any tax which is canceled pursuant to this section may also be canceled.

SEC. 34. Section 5147 of the Revenue and Taxation Code is amended to read:

5147. (a) No refund action hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and any refund action hereafter commenced shall be dismissed by the court in which the action was commenced, on the court's own motion or on the motion of any defendant therein, unless the summons was issued and served and the return thereon was made within one year after the commencement of the action, except where the parties have filed a stipulation in writing that the time may be extended or the party against whom the action is prosecuted has made a general appearance in the action.

(b) For purposes of this section, none of the following constitutes a general appearance in the action:

(1) A stipulation pursuant to Section 583.230 of the Code of Civil Procedure extending the time within which service must be made.

(2) A motion to dismiss made pursuant to this chapter, whether joined with a motion to quash service or a motion to set aside a default judgment, or otherwise.

(3) An extension of time to plead after a motion to dismiss made pursuant to this chapter.

SEC. 35. Section 5802 of the Revenue and Taxation Code is amended to read:

5802. (a) Except as provided in subdivision (b), "base year value" as used in this part means the full cash value of a mobilehome on the date the mobilehome is purchased or changes ownership. If the mobilehome undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a mobilehome for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

SEC. 36. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 37. 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 as soon as possible for the orderly and proper administration of taxes at both the state and local levels, it is necessary that this act take effect immediately.

CHAPTER 127

An act to amend Section 1794.4 of the Civil Code, relating to consumer warranties.

[Approved by Governor June 11, 1990 Filed with Secretary of State June 11, 1990]

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

SECTION 1. Section 1794.4 of the Civil Code, is amended to read:

1794.4. (a) Nothing in this chapter shall be construed to prevent the sale of a service contract to the buyer in addition to or in lieu of an express warranty if that contract fully and conspicuously discloses in simple and readily understood language the terms, conditions, and exclusions of that contract, provided that nothing in this section shall apply to a home protection contract issued by a home protection company that is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(b) Except as otherwise expressly provided in the service

contract, every service contract shall obligate the service contractor to provide to the buyer of the product all of the services and functional parts that may be necessary to maintain proper operation of the entire product under normal operation and service for the duration of the service contract and without additional charge.

(c) The service contract shall contain all of the following items of information:

(1) A clear description and identification of the covered product.

(2) The point in time or event when the term of the service contract commences, and its duration measured by elapsed time or an objective measure of use.

(3) If the enforceability of the service contract is limited to the original buyer or is limited to persons other than every consumer owner of the covered product during the term of the service contract, a description of the limits on transfer or assignment of the service contract.

(4) A statement of the general obligation of the service contractor in the same language set forth in subdivision (b), with equally clear and conspicuous statements of (A) any services, parts, characteristics, components, properties, defects, malfunctions, causes, conditions, repairs or remedies that are excluded from the scope of the service contract; (B) any other limits on the application of the language in subdivision (b) such as a limit on the total number of service calls; (C) any additional services which the service contractor will provide; (D) whether the obligation of the service contractor includes preventive maintenance and, if so, the nature and frequency of the preventive maintenance that the service contractor will provide; and (E) whether the buyer has an obligation to provide preventive maintenance or perform any other obligations and, if so, the nature and frequency of the preventive maintenance and of any other obligations, and the consequences of any noncompliance.

(5) A step-by-step explanation of the procedure which the buyer should follow in order to obtain performance of any obligation under the service contract including (A) the full legal and business name of the service contractor; (B) the mailing address of the service contractor; (C) the persons or class of persons that are authorized to perform service; (D) the name or title and address of any agent, employee or department of the service contractor that is responsible for the performance of any obligations; (E) the method of giving notice to the service contractor of the need for service; (F) whether in-home service is provided or, if not, whether the costs of transporting the product, for service or repairs will be paid by the service contractor; (G) if the product must be transported to the service contractor, either the place where the product may be delivered for service or repairs or a toll-free telephone number which the buyer may call to obtain that information; (H) all other steps which the buyer must take to obtain service; and (I) all fees, charges, and other costs that the buyer must pay to obtain service.

(6) An explanation of the steps that the service contractor will take to carry out its obligations under the service contract.

(7) A description of any right to cancel the contract if the buyer returns the product or the product is sold, lost, stolen, or destroyed, or, if there is no right to cancel or the right to cancel is limited, a statement of the fact.

(8) Information respecting the availability of any informal dispute settlement process.

(d) Subdivisions (b) and (c) of this section are applicable to service contracts on new or used home appliances and home electronic products entered into on or after July 1, 1989. They are applicable to service contracts on all other new or used products entered into on and after July 1, 1991.

CHAPTER 128

An act to amend Section 26561 of the Public Resources Code, relating to Geologic Hazard Abatement Districts.

[Approved by Governor June 11, 1990 Filed with Secretary of State June 11, 1990]

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

SECTION 1. Section 26561 of the Public Resources Code is amended to read:

26561. Notice of the hearing set pursuant to Section 26557 or subdivision (c) of Section 26558 shall be mailed first-class, postage prepaid, in the United States mail, at least 20 days preceding the date of the public hearing, to each owner of real property within the proposed district as shown on the last equalized county assessment roll, or the State Board of Equalization assessment roll, as the case may be.

CHAPTER 129

An act to add Section 5.10 to the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to county water authorities.

[Approved by Governor June 11, 1990. Filed with Secretary of State June 11, 1990.]

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

SECTION 1. Section 5.10 is added to the County Water Authority Act (Chapter 545 of the Statutes of 1943), to read:

Sec. 5.10. Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance fixing and establishing either a water standby availability charge pursuant to Section 5.2, or a connection or capacity charge pursuant to Section 5.9, shall be commenced within 120 days after adoption of the ordinance or prior to May 1, 1991, for ordinances adopted prior to January 1, 1991.

CHAPTER 130

An act to amend Section 224n of the Civil Code, relating to adoption.

[Approved by Governor June 11, 1990. Filed with Secretary of State June 11, 1990]

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

SECTION 1. Section 224n of the Civil Code is amended to read:

224n. (a) 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.

(b) 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.

This subdivision does not apply to a child who has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(c) For purposes of this section, the "department" means the State Department of Social Services.

CHAPTER 131

An act to add Article 9.2 (commencing with Section 19605) to Chapter 4 of Division 8 of, and to repeal Sections 19596.2, 19596.4, 19596.5, 19596.6, 19596.7, 19596.8, 19596.9, 19596.10, 19596.11, 19596.12, 19596.14, 19596.15, 19605.6, 19605.7, and 19605.71 of, the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 11, 1990. Filed with Secretary of State June 11, 1990.]

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

SECTION 1. Section 19596.2 of the Business and Professions Code is repealed.

SEC. 2. Section 19596.4 of the Business and Professions Code is repealed.

SEC. 3. Section 19596.5 of the Business and Professions Code, as amended by Section 1 of Chapter 3 of the Statutes of 1990, is repealed.

SEC. 4. Section 19596.5 of the Business and Professions Code, as

amended by Section 2 of Chapter 3 of the Statutes of 1990, is repealed.

SEC. 5. Section 19596.6 of the Business and Professions Code, as amended by Section 3 of Chapter 3 of the Statutes of 1990, is repealed.

SEC. 6. Section 19596.6 of the Business and Professions Code, as amended by Section 4 of Chapter 3 of the Statutes of 1990, is repealed.

SEC. 7. Section 19596.7 of the Business and Professions Code is repealed.

SEC. 8. Section 19596.8 of the Business and Professions Code is repealed.

SEC. 9. Section 19596.9 of the Business and Professions Code is repealed.

SEC. 10. Section 19596.10 of the Business and Professions Code is repealed.

SEC. 11. Section 19596.11 of the Business and Professions Code is repealed.

SEC. 12. Section 19596.12 of the Business and Professions Code is repealed.

SEC. 13. Section 19596.14 of the Business and Professions Code is repealed.

SEC. 14. Section 19596.15 of the Business and Professions Code is repealed.

SEC. 15. Article 9.2 (commencing with Section 19605) is added to Chapter 4 of Division 8 of the Business and Professions Code, to read:

Article 9.2. Satellite Wagering

19605. Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure subject to all of the conditions specified in Section 19605.3, and may authorize an association licensed to conduct a racing meeting in the central or southern zone to operate a satellite wagering facility for wagering on races conducted in the central or southern zone at its racetrack inclosure subject to the conditions specified in subdivisions (a) to (e), inclusive, of Section 19605.3 and the conditions and limitations set forth in Section 19605.6.

19605.1. With respect to the northern zone, the board may, with the approval of the Department of Food and Agriculture, also authorize any county fair, district agricultural association fair, or citrus fruit fair in the northern zone that is 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 19605.6, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the northern zone if all of the conditions

specified in Section 19605.3 are satisfied.

19605.2. With respect to the central and southern zones, the board may, with the approval of the Department of Food and Agriculture, subject to the conditions and limitations set forth in Section 19605.6, also authorize 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, to locate a satellite wagering facility at its fairgrounds for wagering on races conducted in the central or southern zone if all of the conditions specified in subdivisions (a) to (e), inclusive, of Section 19605.3 are satisfied.

19605.3. (a) An organization described in Section 19608.2 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 will be included in the appropriate conventional or exotic pool at the racetrack where the racing meeting is conducted.

(b) The accommodations and equipment used in conducting wagering at the satellite wagering facility and their location have been approved by the board.

(c) 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.

(d) (1) Any association or fair that operates a satellite wagering facility shall conduct wagering on all racing that is offered to the satellite wagering facility, except as otherwise provided in Section 19607.5 with respect to the northern zone, 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 the satellite wagering facility is reimbursed for that loss by either an organization described in Section 19608.2 or an association. Any association that operates a satellite wagering facility may, but is not required to, accept an audiovisual signal.

(2) 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 the 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.

(e) Notwithstanding any other law or any agreement under subdivision (a), 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.

(f) 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.

19605.4. Notwithstanding Section 19605.3, the live audiovisual signal of night harness, quarter horse, Appaloosa, or Arabian races in the central or southern zone may be offered to satellite wagering facilities in the northern zone and the signal of those races in the northern zone may be offered to satellite wagering facilities in the central or southern zone. However, racing associations may, but are not required to, accept that audiovisual signal, and satellite wagering facilities located at fairs are not required to accept more than five night racing programs per week.

19605.5. Notwithstanding Sections 19605, 19605.1, and 19605.2, a satellite wagering facility may not be located within the County of Los Angeles or within the County of Orange, except as follows:

(a) If all of the conditions specified in subdivisions (a) to (d), inclusive, of Section 19605.3 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 central and southern zones.

(b) If all other conditions are met, any fair or association licensed to conduct racing meetings in the County of Los Angeles, and any 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. However, if 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.

19605.6. (a) In addition to satellite wagering facilities authorized pursuant to Sections 19605, 19605.1, and 19605.2, the board, with the approval of the Department of Food and Agriculture, may authorize any county fair, district agricultural association fair, or citrus fruit fair in the County of Kern or Santa Barbara, eligible for an allocation of racing days pursuant to Section 19549, to operate a satellite wagering facility at its fairgrounds even though the fair is not licensed to conduct a racing meeting, and the fair may operate the facilities except for those functions to be performed by an organization described in Section 19608.2. Except as otherwise provided in this section, Sections 19605, 19605.3, 19605.4, 19605.7, 19605.73, 19605.8, 19606, 19606.1, 19606.2, 19606.3, and 19606.4 apply to satellite wagering facilities authorized pursuant to this section. A satellite wagering facility in the County of Kern or Santa Barbara may receive the audiovisual signal from the northern, central, or southern zone,

or from more than one of these zones at the same time.

(b) It is the intent of the Legislature that, prior to extending the termination date in subdivision (d), the Legislature shall find that the multisignal authorized by this section is successful.

(c) It is the intent of the Legislature that the board provide, when feasible, for periods of at least 10 minutes between post times at the satellite wagering facilities operating under this section.

(d) 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.

19605.7. The total percentage deducted from wagers at satellite wagering facilities in the northern zone shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section until January 1, 1992. Amounts deducted under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent 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, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, 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 retained by the satellite wagering facility as a commission, and the amount of actual operating expenses, as determined by the board, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617; and one-tenth of 1 percent 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 the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivision (a) or (b), for thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility 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 Section 19608.2 for promotion of the program at satellite wagering facilities.

(d) In addition to the distributions specified in subdivisions (a), (b), and (c), for thoroughbred meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility 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.

(e) In addition to the distributions specified in subdivisions (a), (b), and (c), for fair meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this subdivision, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this subdivision, "actual cost" does not include fixed overhead or administrative expenses which would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(f) Any of the promotional funds distributed pursuant to subdivision (c) that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess

amount.

(g) Any of the stabling and vanning reimbursement funds distributed pursuant to subdivision (d) or (e) 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 subdivision (c).

(h) Additionally, for thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(i) 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.

19605.71. The total percentage deducted from wagers at satellite wagering facilities in the central and southern zone shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section until January 1, 1992. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent 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, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, 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 retained by the satellite wagering facility as a commission, and the amount of actual operating expenses, as determined by the board, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes

Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617; and one-tenth of 1 percent 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 the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition, for thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year. If promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. 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) 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.

19605.73. Commencing on January 1, 1992, the total percentage deducted from wagers at satellite wagering facilities in all zones shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent 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, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, 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 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, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617; and one-tenth of 1 percent 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 the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivisions (a) and (b), for 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 Section 19608.2 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. 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) This section shall become operative on January 1, 1992.

19605.8. For thoroughbred meetings, the funds remaining after distribution of the amounts set forth in Sections 19605.7, 19605.71, and 19605.73 shall be distributed 50 percent as commissions to the association which conducts the racing meeting and 50 percent as purses to the horsemen participating in the racing meeting. However, 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.

19605.9. In the central and southern zones, all of the funds distributed for purses from satellite wagering facilities shall go to the purse program of the association conducting the racing meeting. However, 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, are 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.

19606. For harness, quarter horse, Appaloosa, mixed breed, and fair meetings, the funds remaining after the distribution of the amounts set forth in Sections 19605.7, 19605.71, and 19605.73 shall be distributed 50 percent as commissions to the association which conducts the racing meeting and 50 percent to the horsemen participating in the racing meeting in the form of purses. However, 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.

19606.1. (a) Except as otherwise provided in Sections 19606.2 and 19606.3 and subdivision (b), 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 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 required for allocations pursuant to paragraphs (1) and (2):

(1) For the 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 agency, 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 provision of 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 the repayment of expenses incurred by fairs in establishing and operating satellite wagering facilities.

(3) For health and safety repair projects at fairs, which includes fire and life safety improvement projects, California Code of Regulations compliance projects, and long-term deferred maintenance projects.

(4) For support of fairs generally. The Director of Food and Agriculture may not make an allocation for purposes of this paragraph until the projects in paragraph (3) have been funded.

(b) Notwithstanding subdivision (a), if the revenues deposited in the separate account exceed 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.

(c) All of the costs of administering the account created by subdivision (a) shall be charged to the account.

19606.2. (a) Seven and one-half percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs in the northern zone shall be deposited in the General Fund.

(b) Fifty-eight percent of the revenues payable to the state from satellite wagering facilities at fairs in the central or southern zone and all revenues payable to the state from satellite wagering facilities located in the central or southern zone other than at fairs shall be deposited in the General Fund.

19606.3. Up to 10 percent of all revenues payable to the state as license fees from satellite wagering facilities located at fairs in the northern zone shall be deposited in a special account in the fund and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated to the Department of Food and Agriculture for supplementing purses at fair meetings to achieve the purposes of Section 19606.4. 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 Section 19606.4.

19606.4. It is the intent of the Legislature that funds allocated pursuant to Section 19606.3 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 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 associations in the northern zone.

19606.5. 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 in the central or southern zone, 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.

19606.6. Of the total breakage arising in a parimutuel pool which includes wagers at satellite wagering facilities in the central or southern zone, 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.

19607. Notwithstanding Sections 19605.8 and 19605.9, when satellite wagering is conducted on thoroughbred races at associations or fairs in the central or southern zone, an amount not to exceed 1.25 percent of the total amount handled by all of those 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.

19607.1. (a) The funds distributed to the organization formed pursuant to Section 19607 shall be used to reimburse racing associations that 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.

(b) The funds shall also be used to 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, is liable for any injury occurring to any individual or horse during vanning from an offsite stabling facility.

(c) 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.

(d) 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.

(e) 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 may accumulate sufficient funds to fully reimburse those associations for those expenses.

(f) 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 article in the central or southern zone on thoroughbred racing, but that allocation may be adjusted by the board, in its discretion. However, 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.

19607.5. Notwithstanding any other provision of law, if there is an overlap in the northern zone between a racing fair, other than the Fresno fair or Ferndale fair, and any other association that races in the daytime, the racing fair has the exclusive right to send its signal to the satellite wagering facilities in the northern zone if the board determines that it is operationally possible for the racing fair to send its signal. However, any association that is not a fair that races in the northern zone may send its signal to a satellite wagering facility located at another association that is not a fair in the northern zone.

19608. An association other than a fair which conducts a horseracing meeting with an average daily handle of one million five hundred thousand dollars ($1,500,000) or more shall produce a live

audiovisual signal of its racing program and shall make this signal available, in accordance with subdivision (a) of Section 19605.3 to any satellite wagering facility authorized to conduct wagering pursuant to Section 19605, 19605.1, 19605.2, or 19605.6.

19608.1. Unless the board finds it impractical to do so, any fair or any association with an average daily handle of less than one million five hundred thousand dollars ($1,500,000) may produce, at its option, a live audiovisual signal of its racing program. If the fair or association produces a signal of its program, the signal shall be made available, in accordance with subdivision (a) of Section 19605.3 to any satellite wagering facility authorized to conduct wagering pursuant to Section 19605, 19605.1, 19605.2, or 19605.3.

19608.2. (a) In order to permit associations providing audiovisual signals the ability to do so without undue burden and expense, to avoid unnecessary duplication of facilities, to permit the associations to protect the security of their signals, and to permit the associations to protect the integrity of their parimutuel pools and to account for wagering proceeds included in those parimutuel pools, associations and fairs providing audiovisual signals pursuant to Section 19608 or 19608.1 may form an organization to operate, pursuant to board supervision, the audiovisual signal system.

(b) An organization operating under board supervision pursuant to this section may consist of any combination of associations and fairs.

(c) Nothing in this section precludes any other person or business entity from participating in, or holding a financial interest in, an organization formed by associations or fairs to operate satellite wagering, except that the person or business entity shall be approved by the board.

(d) Any organization formed shall provide horsemen's organizations contracting with associations and fairs for racing meetings and nonracing fairs operating satellite wagering facilities meaningful representation on its governing board, and shall administer the audiovisual signal and parimutuel operations at satellite wagering facilities.

(e) (1) An organization shall bear the costs of operating the audiovisual signal system, including the costs of leasing or purchasing and operation of equipment for transmission and decoding of audiovisual signals and wagering data, the costs of totalisator equipment, mutuel department labor and equipment charges, and the costs, including labor, and overhead of the organization administering the satellite wagering program.

(2) A satellite wagering facility shall bear the costs of satellite receiving dishes, head-end assemblies, television monitors or screens, facility buildings, labor at the satellite wagering facility other than mutuel department labor, and any and all other costs at the satellite wagering facility not specifically referred to in paragraph (1).

(3) The board shall approve all costs and resolve any differences

between an organization and a satellite wagering facility as to which party is required to bear the costs for a disputed item.

19608.3. (a) Funds allocated by the Director of Food and Agriculture pursuant to paragraph (3) of subdivision (a) of Section 19606.1 for fire and life safety improvement projects, California Code of Regulations compliance projects, and long-term maintenance projects at fairs in the northern zone shall be allocated in accordance with a project schedule determined by the Department of Food and Agriculture in compliance with this section.

(b) The department shall prepare a three-year schedule of these projects which commences July 1, 1987, and shall annually update the schedule. The initial schedule and the annual updates shall be submitted to the Legislature. The schedule shall list individual project costs, contain a project description, and specify estimated project completion dates.

19608.4. A satellite wagering facility, an organization established pursuant to Section 19608.2 or any of their subcontractors or entities under contract to perform any of the functions specified in this article shall, as a condition of operating, enter into a written contractual agreement with the bona fide labor organization which has historically represented the same or similar classifications of employees at the nearest horseracing meeting. Permanent state or county employees and nonprofit organizations who have historically performed certain services at county, state, or agricultural district fairs may continue to provide those services notwithstanding this section.

19608.5. All revenues payable to the state and deposited in a separate account in the fund pursuant to Section 19606.1 that are allocated by the Director of Food and Agriculture for the purposes of paragraph (1) of subdivision (a) of Section 19606.1 are hereby pledged for the repayment of the principal of, and interest on, bonds issued by a joint powers agency, or of other debt service or expense incurred for the purposes described in that paragraph (1).

19608.6. (a) Any joint powers agency requesting money in connection with the issuance of bonds for the purposes described in paragraph (1) of subdivision (a) of Section 19606.1 shall file an application with the Director of Food and Agriculture, in the form required by the director.

(b) The director shall, upon review of the applications, prepare a statement of allocation of money to the joint powers agency, in the priority the director deems appropriate.

(c) The director shall adopt regulations governing the allocation procedures to be followed in implementing this section.

19608.7. It is the intent of the Legislature in enacting Sections 19608.5, 19608.6, and 19608.8 to provide the revenues necessary for the financing by joint powers agencies of the described facilities and projects which shall be deemed to be public capital improvements within the meaning of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code. Deposits

into the account in the fund in accordance with paragraph (1) of subdivision (a) of Section 19606.1 shall continue through and including either the 20th year after the initial calendar year in which the revenues are collected, or whatever period of time is necessary to repay any borrowings of joint powers funding mechanism, including, but not limited to, retirement of bonded indebtedness, loan repayments, and monthly payments involving lease-purchase programs made by a joint powers agency to finance described facilities and projects, whichever time is longer.

19608.8. The State of California does hereby pledge to and agree with the holders of any bonds or other indebtedness issued, and with those joint powers agencies which may enter into project agreements with fairs or other third parties or authorize bonds or other indebtedness to be issued, in reliance on the allocations set forth in subdivision (a) of Section 19606.1, that the state will not alter or change the structure of funding and deposits set forth in, or the pledge of funds for debt service, security, including any coverage factors, and expenses, pursuant to that section until the bonds and other indebtedness are fully paid or discharged and the project is fully performed or discharged. However, nothing precludes any alteration or change, if and when, adequate provision has been made by law for the protection from impairment of the contracts represented by the bonds, other indebtedness and projects, and the right to so alter or change is hereby reserved. Joint powers agencies may include this pledge and undertaking of the state in the bonds, agreements evidencing other indebtedness, and project agreements.

19608.9. (a) Notwithstanding subdivisions (a) and (b) of Section 19605.7, subdivisions (a) and (b) of Section 19605.71, subdivisions (a) and (b) of Section 19605.73, or any other provision of law, of the amounts deducted from wagers at satellite wagering facilities pursuant to Sections 19605.7, 19605.71, and 19605.73 for 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 Section 19605.8, for thoroughbred meetings, the funds remaining after distribution of the amounts set forth in Sections 19605.7, 19605.71, and 19605.73 shall be distributed 50 percent as commissions to the 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. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the technical corrections made by this act to take effect as soon as possible, it is necessary that this act take effect

immediately.

CHAPTER 132

An act to add Chapter 5.5 (commencing with Section 13847) to Title 6 of Part 4 of the Penal Code, relating to American Indians, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 11, 1990 Filed with Secretary of State June 11, 1990.]

I am deleting the $35,000 appropriation contained in Section 3 of Assembly Bill No 2761.

This bill would establish a Rural Indian Crime Prevention Program within the Office of Criminal Justice Planning to finance local law enforcement efforts as specified on reservations and rancherias. It would appropriate $35,000 from the General Fund to operate this program from April 1, 1990 through June 30, 1990.

During the past two years a similar Rural Indian/Law Enforcement Crime Prevention Program has been established through the Office of Criminal Justice Planning (OCJP) with federal grant funds. OCJP has redirected money from the Community Crime Resistance Projects to fund the existing programs from April 1, to June 30, 1990. Thus, this appropriation is unnecessary Ongoing funding for the program created in this bill can be considered in the annual budget process.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Chapter 5.5 (commencing with Section 13847) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 5.5. RURAL INDIAN CRIME PREVENTION PROGRAM

13847. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial and technical assistance for local law enforcement, called the Rural Indian Crime Prevention Program. The program shall target the relationship between law enforcement and Native American communities to encourage and to strengthen cooperative efforts and to implement crime suppression and prevention programs.

(b) The Executive Director of the Office of Criminal Justice Planning may allocate and award funds to those local units of government, or combinations thereof, in which a special program is established in law enforcement agencies that meets the criteria set forth in Sections 13847.1 and 13847.2.

(c) The allocation and award of funds shall be made upon application executed by the chief law enforcement officer of the applicant unit of government and approved by the legislative body. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Rural Indian Crime Prevention Program, be made available to support the suppression and prevention of crime on reservations and rancherias.

(d) The executive director shall prepare and issue administrative guidelines and procedures for the Rural Indian Crime Prevention Program consistent with this chapter.

(e) The guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders, or standards of general application.

(f) Every three years, commencing on and after January 1, 1991, the executive director shall prepare a report to the Legislature describing in detail the operation of the program and the results obtained from law enforcement rural Indian crime prevention programs receiving funds under this chapter.

13847.1. Law enforcement agencies receiving funds under this chapter shall meet the following criteria:

(a) Training of law enforcement personnel to be culturally sensitive in the delivery of services to the Native American communities. This training shall include, but shall not be limited to, all of the following:

(1) The creation of an Indian community officer position.

(2) The recruiting and training of Native American volunteers to assist in implementing and conducting reservation or rancheria crime prevention programs.

(b) Increasing community crime awareness by establishing community involvement programs, such as community or neighborhood watch programs, tailored for reservations and rancherias.

(c) Establishing drug traffic intervention programs on reservations through the increased use of law enforcement and special assignment officers.

(d) Developing a delinquency prevention or diversion program for Indian teenagers and young adults.

13847.2. (a) The Rural Indian and Law Enforcement Local Advisory Committee shall be composed of a chief executive of a law enforcement agency, two tribal council members, two tribal elders, one Indian law enforcement officer, one Indian community officer, one representative of the Bureau of Indian Affairs, and any additional members that may prove to be crucial to the committee. All members of the advisory committee shall be designated by the executive director, who shall provide staff services to the advisory committee.

(b) The executive director, in consultation with the advisory committee, shall develop specific guidelines, and administrative procedures, for the selection of projects to be funded by the Rural Indian Crime Prevention Program which guidelines shall include the selection criteria described in this chapter.

(c) Administration of the overall program and the evaluation and monitoring of all grants made under this chapter shall be performed by the Office of Criminal Justice Planning, provided that funds

expended for these functions shall not exceed 5 percent of the total annual amount made available for the purpose of this chapter.

SEC. 2. It is the intent of the Legislature that funds to accomplish the purposes of the Rural Indian Crime Prevention Program (Chapter 5.5 (commencing with Section 13847) of Title 6 of Part 4 of the Penal Code) be appropriated in the annual Budget Act.

SEC. 3. The sum of thirty-five thousand dollars ($35,000) is hereby appropriated from the General Fund for purposes of implementing this act for the period commencing April 1, 1990, and ending June 30, 1990.

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

Because federal funding for a similar program which is presently being implemented through the Office of Criminal Justice Planning will expire on March 31, 1990, it is necessary that this act take effect immediately.

CHAPTER 133

An act to amend Section 1636 of the Business and Professions Code, relating to dentistry.

[Approved by Governor June 12, 1990 Filed with Secretary of State June 12, 1990]

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

SECTION 1. Section 1636 of the Business and Professions Code is amended to read:

1636. (a) Notwithstanding subdivision (b) of Section 1628, a person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school shall be eligible for examination as provided in this section upon complying with subdivisions (a) and (c) of Section 1628 and furnishing all of the following documentary evidence satisfactory to the board, that:

(1) He or she has completed in a dental school or schools a resident course of professional instruction in dentistry for the full number of academic years of undergraduate courses required for graduation.

(2) Subsequent thereto, he or she has been issued by the dental school, a dental diploma or a dental degree, as evidence of the completion of the course of dental instruction required for graduation.

(b) An applicant who is a graduate of a foreign dental school accredited by a body which has a reciprocal accreditation agreement with any commission or accreditation agency whose findings are

accepted by the board shall be exempt from the qualifying examination provided for in paragraph (2) of subdivision (c).

(c) Examination by the board of a foreign-trained dental applicant shall be a progressive examination given in the following sequence:

(1) Examination in writing which shall be comprehensive and sufficiently thorough to test the knowledge, skill, and competence of the applicant to practice dentistry, and both questions and answers shall be written in the English language.

The written examination may be the National Board of Dental Examiners' examination. A foreign-trained applicant who passes the written examination shall be permanently exempt from retaking the examination.

Those applicants who have passed the California written examination are permanently exempt from retaking any written examination, except any examination required for continuing education purposes.

(2) Demonstration of the applicant's skill in restorative technique. An applicant shall obtain a minimum grade of 75 percent in each subsection of the restorative technique examination to be deemed to have passed the examination. However, an applicant who obtains a grade of 85 percent in any subsection of the examination is exempt from retaking the subsection for two years following the date of the examination in which a grade of 85 percent was obtained. Every applicant who passes the entire restorative technique examination is permanently exempt from retaking the examination.

(d) An applicant who has successfully completed the written examination and the restorative technique examination shall be eligible to take and shall pass the examinations in diagnosis-treatment planning, prosthetic dentistry, diagnosis and treatment of periodontics, and operative dentistry in the identical manner in which the examinations are taken by and administered to other dental applicants. Exemptions in the examinations shall be applied to foreign-trained applicants in the same manner as they are applied to other dental applicants.

CHAPTER 134

An act to amend Sections 29066, 29080, 29081, 29088, 29093, 29100, 29100.6 and 29109 of the Government Code, relating to county budgets, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 12, 1990. Filed with Secretary of State June 12, 1990.]

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

SECTION 1. Section 29066 of the Government Code is amended to read:

29066. On or before August 10 of each year, the board shall publish a notice once in a newspaper of general circulation throughout the county, stating that:

(a) The proposed budget documents are available to members of the general public.

(b) On a date stated in the notice, not less than 10 days after the budget documents are available, and at a time and place also stated in the notice, the board will meet for the purpose of conducting a public hearing on the proposed budget preparatory to making a final determination thereon, and,

(c) Any member of the general public may appear at the hearing and be heard regarding any item of the budget or for the inclusion of additional items.

The board may, by resolution, extend on a permanent basis or for a limited period the date required by this section from August 10 to September 8.

SEC. 2. Section 29080 of the Government Code is amended to read:

29080. On or before August 20 of each year, as the board directs, it shall meet at the time and place designated in the published notice, at which meeting any member of the general public may appear and be heard regarding any item in the proposed budget or for the inclusion of additional items. Any official whose estimates have been or are proposed to be revised, reduced, or increased, or who desires to change his or her estimates, shall be given the opportunity to be heard thereon. All proposals for the increase or the inclusion of additional items shall be submitted in writing to the clerk of the board before the close of the public hearing.

The board may, by resolution, extend on a permanent basis or for a limited period the date required by this section from August 20 to September 18.

SEC. 3. Section 29081 of the Government Code is amended to read:

29081. The hearing may be continued from day to day until concluded, but not to exceed a total of 10 calendar days, and shall be concluded before the expiration of 10 calendar days if there are no requests or applications on file with the clerk of the board for further hearings prior to the close of the hearings.

The board may, by resolution, extend on a permanent basis or for a limited period the number of days for a continuance under this section from 10 to 14.

SEC. 4. Section 29088 of the Government Code is amended to

read:

29088. After the conclusion of the hearing, and not later than August 30 of each year, and after making any revisions of, deductions from, or increases or additions to, the proposed budget it deems advisable during or after the public hearing, the board shall by resolution adopt the budget as finally determined. Increases or additions shall not be made after the public hearing, unless the items were proposed in writing and filed with the clerk of the board before the close of the public hearing.

The board may, by resolution, extend on a permanent basis or for a limited period the date specified by this section from August 30 to October 2.

SEC. 5. Section 29093 of the Government Code is amended to read:

29093. A copy of the completed budget as finally determined and adopted shall be filed by the auditor in the office of the clerk of the board and the office of the Controller not later than November 1 of each year.

If the auditor, after receipt of written notice from the Controller, fails to transmit a copy of the budget within 20 days, he or she shall forfeit to the state one thousand dollars ($1,000) to be recovered in an action brought by the Attorney General, in the name of the Controller.

The board may, by resolution, extend on a permanent basis or for a limited period the date specified by this section from November 1 to December 1.

SEC. 6. Section 29100 of the Government Code is amended to read:

29100. On or before the first business day of September of each year, the board shall adopt by resolution the rates of taxes on the secured roll, not to exceed the 1-percent limitation specified in Article XIII A of the Constitution and Sections 93 and 100 of the Revenue and Taxation Code; for voter-approved indebtedness, the board shall adopt the rates on the secured roll by determining the percentage of full value of property on the secured roll legally subject to support the annual debt requirement. Each rate shall be such as will produce the amount determined as necessary to be raised by taxation on the secured roll after due allowance for delinquency, anticipated changes to the roll, disputed tax revenues anticipated to be impounded pursuant to Section 26906.1, amounts subject to Section 33000 and following of the Health and Safety Code, and other available financing sources.

The board may, by resolution, extend on a permanent basis or for a limited period the date specified by this section from the first business day of September to October 3.

SEC. 7. Section 29100.6 of the Government Code is amended to read:

29100.6. On or before November 1 of each year each county auditor shall file with the Controller in such form as the Controller

directs, a statement of the amounts of exempt values granted for the homeowners' property tax exemption under subdivision (k) of Section 3 and Section 25 of Article XIII of the Constitution for the county, each city and school district or portion thereof within the county, each special district or subdivision or zone thereof or portion thereof within the county, for which a tax levy is carried on the county assessment roll. The auditor shall therein compute and show the total amount of ad valorem tax loss to the county and the cities and districts resulting from the exemption and the statement shall claim such amount against the state for payment of reimbursement.

The board may, by resolution, extend on a permanent basis or for a limited period the date specified by this section from November 1 to December 1.

SEC. 8. Section 29109 of the Government Code is amended to read:

29109. On or before November 1 of each year, the auditor shall forward to the Controller, in such form as the Controller directs, a statement of the rates of taxation, the assessed valuation as shown on the current equalized assessment roll, the amount of taxes to be levied and allocated pursuant to the Revenue and Taxation Code.

If the auditor, after receipt of written notice from the Controller fails to transmit the statements within 20 days, he or she shall forfeit to the state, one thousand dollars ($1,000) to be recovered in an action brought by the Attorney General, in the name of the Controller.

The board may, by resolution, extend on a permanent basis or for a limited period the date specified in this section from November 1 to December 1.

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 the board of supervisors of each county with more time to consider and adopt a final budget for the 1990–91 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 135

An act to amend Sections 25206, 25236, 25239, and 25503.16 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor June 12, 1990 Filed with Secretary of State June 13, 1990.]

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

SECTION 1. Section 25206 of the Business and Professions Code is amended to read:

25206. No retailer shall dispense any draught beer upon which the proper tap sign or draught beer sign is not displayed or the manufacturer or bottler of which has not complied with this article. The department may seize any draught beer displayed to the public in violation of this section and may dispose of the beer pursuant to Section 25355.

SEC. 2. Section 25236 of the Business and Professions Code is amended to read:

25236. Only dry wine produced entirely from grapes grown within the Counties of Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin may be labeled with the words "California central coast counties dry wine." It is unlawful to label any other wine with a label containing the words "California central coast counties dry wine."

The department may seize wine labeled in violation of this section, regardless of where found and may dispose of the wine pursuant to Section 25355.

SEC. 3. Section 25239 of the Business and Professions Code is amended to read:

25239. Every person who, with intent to defraud, either falsely makes, alters, forges, or counterfeits the label for any wine or uses the label or bottle of any wine belonging to another, without his or her consent, is guilty of a misdemeanor. The department may seize wine labeled in violation of this section, regardless of where found and may dispose of the wine pursuant to Section 25355.

SEC. 4. Section 25503.16 of the Business and Professions Code is amended to read:

25503.16. (a) Nothing in this division shall prohibit the issuance or transfer of any retail onsale or offsale license to any person with respect to premises which are an integral part of the operations of a hotel or motel owned by, or operated by or on behalf of, the licensee notwithstanding that a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler has any interest, directly or indirectly, in the premises, in the retail license, or in the retail licensee, and notwithstanding that the issuance or transfer would otherwise result in a violation of subdivision (a) of Section 25500, subdivision (a) or (b) of Section 25501, or Section 25502, if each of the following conditions is met:

(1) The hotel or motel consists of not less than 100 guestroom accommodations.

(2) No more than one-quarter of the total gross annual revenues of the hotel or motel is derived from the sale by the hotel or motel of alcoholic beverages.

(3) The retail licensee shall purchase no beer or distilled spirits for sale in this state other than from a wholesale licensee, and the retail licensee shall purchase no alcoholic beverages for sale in this state from any wholesale licensee which has any interest, directly or

indirectly, in the premises, in the retail license, or in the retail licensee.

(b) For purposes of this section, "hotel" and "motel" shall mean an establishment containing guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest; for purposes of this subdivision, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

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

CHAPTER 136

An act to amend Section 68121 of the Government Code, relating to the Commission on Judicial Appointments.

[Approved by Governor June 12, 1990. Filed with Secretary of State June 13, 1990]

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

SECTION 1. Section 68121 of the Government Code is amended to read:

68121. A confirmation by the Commission on Judicial Appointments, pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, is effective when adopted by the commission. Promptly thereafter, the commission shall file a written notice of the confirmation with the Secretary of State.

CHAPTER 137

An act to amend Section 25351 of the Government Code, relating to local government.

[Approved by Governor June 12, 1990 Filed with Secretary of State June 13, 1990.]

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

SECTION 1. Section 25351 of the Government Code is amended to read:

25351. (a) The board may construct, expand, lease, build, rebuild, furnish, refurnish, or repair buildings for a hospital, almshouse, courthouse, jail, historical museum, aquarium, library, art gallery, art institute, exposition building for exhibiting and advertising farming, mining, manufacturing, livestock raising, and other resources of the county, stadium, coliseum, sports arena, or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibition, spectacles and other public meetings, and such other public buildings as are necessary to carry out the work of the county government.

(b) Whenever the board of supervisors of a county decides to go out to bid to construct a county building, expand an existing building, expand the use of an existing building, or enter into a lease of an existing building within the incorporated territory of a city, the board shall notify in writing, at least 60 days prior to going to bid or entering into a lease, the city clerk of the city where the building is to be constructed, expanded, or leased.

(c) In those instances where the board is exempt from the bidding process, the board shall notify the city clerk in writing, at least 60 days prior to the construction, expansion, or lease of a building.

(d) The 60-day notification requirements imposed by subdivisions (b) and (c) may be waived if the city council consents, by resolution, thereto.

CHAPTER 138

An act to amend Section 1370 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor June 14, 1990 Filed with Secretary of State June 15, 1990]

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

SECTION 1. Section 1370 of the Health and Safety Code is amended to read:

1370. Every plan shall establish procedures in accordance with department regulations for continuously reviewing the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person who participates in quality of care or utilization reviews by peer review committees which are composed chiefly of physicians and surgeons or dentists, psychologists, or optometrists, or any of the above, for any act performed during the reviews if the person acts without malice, has made a reasonable effort to obtain the facts of the matter, and believes that the action taken is warranted by the facts, and neither the proceedings nor the records of the reviews shall be subject to discovery, nor shall any person in attendance at the reviews be required to testify as to what transpired thereat. Disclosure of the proceedings or records to the governing body of a plan or to any person or entity designated by the plan to review activities of the committees shall not alter the status of the records or of the proceedings as privileged communications.

The above prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at a review who is a party to an action or proceeding the subject matter of which was reviewed, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits, or to the commissioner in conducting surveys pursuant to Section 1380.

This section shall not be construed to confer immunity from liability on any health care service plan. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a health care service plan, the cause of action shall exist notwithstanding the provisions of this section.

CHAPTER 139

An act to amend Section 19286.7 of the Revenue and Taxation Code, and to amend Sections 11025 and 11026 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 14, 1990. Filed with Secretary of State June 15, 1990.]

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

SECTION 1. Section 19286.7 of the Revenue and Taxation Code is amended to read:

19286.7. (a) Notwithstanding any other provision of law, the

State Department of Social Services and the State Department of Health Services shall inform the Franchise Tax Board of the names and social security numbers of applicants for or recipients of public social services programs under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(b) The Franchise Tax Board, upon receipt of this information, may inform the departments of any applicant or recipient who received unearned income within the most recent available tax year, as reflected on magnetic tape information returns supplied to the Franchise Tax Board by payers, or on the magnetic tape prepared by the Franchise Tax Board which reflects paper information returns supplied to the Franchise Tax Board by payers. In addition, the Franchise Tax Board may provide, from those sources, the departments with the payee's name, social security number, and address; the payer's name and federal employer identification number, including branch code numbers, if applicable, and address; the dollar amount and type of the unearned income; and any identifying account numbers.

(c) The Franchise Tax Board shall return all information received from the departments after completing the exchange of information.

(d) This section shall be implemented only to the extent it is funded in the annual Budget Act

SEC. 2. Section 11025 of the Welfare and Institutions Code is amended to read:

11025. (a) The State Department of Social Services and the State Department of Health Services shall utilize the records of the Franchise Tax Board to match unearned income against reported income of applicants for and recipients of aid or public social services under this division. The matching information shall then be forwarded to the appropriate county welfare department for use in determining the eligibility of, and proper grant amount for, applicants for, and recipients of, aid or public social services under this division. Any and all documents and records which result from the matching of records with the Franchise Tax Board shall be subject to the confidentiality requirements of Section 10850.

(b) This section shall not be construed to supersede the requirements and protections in the California Right to Financial Privacy Act under Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code in obtaining information in possession of any financial institution.

(c) This section shall be implemented only to the extent is is funded in the annual Budget Act.

SEC. 3. Section 11026 of the Welfare and Institutions Code is amended to read:

11026. (a) Notwithstanding any other provision of law, the State Department of Social Services and the State Department of Health Services shall annually inform the Franchise Tax Board of the names and social security numbers of all applicants or recipients of public social services or public assistance programs. The Franchise Tax

Board, upon receipt of that information, shall furnish to the departments the information required by Section 19286.7 of the Revenue and Taxation Code.

(b) This section shall be implemented only to the extent it is funded in the annual Budget Act.

SEC. 4. Sections 1, 2, and 3 of this act shall become operative on the date the report required by Section 5 is submitted to the Legislature.

SEC. 5. The State Department of Social Services and the State Department of Health Services shall conduct a study to assess the impact of the adoption of this act on county administrative costs. The study shall include, but not be limited to, a time study to evaluate the eligibility worker's time spent on asset verification as provided under this act and a component to assess the amount of savings in comparison to the county administrative costs to implement this act. The study shall be conducted in at least five counties for a period of not less than six months. The study results shall be utilized by the State Department of Social Services and the State Department of Health Services as the basis of projecting county administrative costs of statewide implementation. The State Department of Social Services and the State Department of Health Services, in consultation with the County Welfare Directors Association, shall evaluate the results of the study and report to the Joint Legislative Budget Committee on the program and fiscal impact.

SEC. 6. The State Department of Health Services shall not transfer any new recipient asset verification responsibilities resulting from this act to the counties.

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 conduct the study specified in this act as soon as possible, and in order to coordinate the implementation of this act with the 1990 legislative budget process, it is necessary that this act take effect immediately.

CHAPTER 140

An act to amend Section 353 of, and to repeal Section 353.5 of, the Code of Civil Procedure, and to amend and repeal Sections 551, 6611, 7664, 9050, 9051, 9052, 9100, 9103, 9201, 9391, 11429, 13109, 13156, 13204, and 13554 of, and to add and repeal Section 9392 of, the Probate Code, relating to creditors of a decedent.

[Approved by Governor June 14, 1990. Filed with Secretary of State June 15, 1990.]

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

SECTION 1. Section 353 of the Code of Civil Procedure is amended to read:

353. (a) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by the person's representatives, after the expiration of that time, and within six months from the person's death.

(b) Except as provided in subdivisions (c) and (d), if a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced within one year after the date of death, and the time otherwise limited for the commencement of the action does not apply. Subject to Chapter 8 (commencing with Section 9350) of Part 4 of Division 7 of the Probate Code, the time provided in this subdivision for commencement of an action is not tolled or extended for any reason.

(c) If a person against whom an action may be brought died before July 1, 1988, and before the expiration of the time limited for the commencement of the action, and the cause of action survives, an action may be commenced against the person's representatives before the expiration of the later of the following times:

(1) July 1, 1989, or one year after the issuing of letters testamentary or of administration, whichever is the earlier time.

(2) The time limited for the commencement of the action.

(d) If a person against whom an action may be brought died on or after July 1, 1988, and before January 1, 1991, and before the expiration of the time limited for the commencement of the action, and the cause of action survives, an action may be commenced before the earlier of the following times:

(1) January 1, 1992.

(2) One year after the issuing of letters testamentary or of administration, or the time otherwise limited for the commencement of the action, whichever is the later time.

SEC. 2. Section 353.5 of the Code of Civil Procedure is repealed.

SEC. 3. Section 551 of the Probate Code is amended to read:

551. Notwithstanding Section 353 of the Code of Civil Procedure, if the limitations period otherwise applicable to the action has not expired at the time of the decedent's death, an action under this chapter may be commenced within one year after the expiration of the limitations period otherwise applicable.

NOTE: See Stats. 1990, Ch. 79 for SEC. 3.1.

SEC. 4. Section 6611 of the Probate Code is amended to read:

6611. (a) Subject to the limitations and conditions specified in this section, the person or persons in whom title vested pursuant to Section 6609 are personally liable for the unsecured debts of the decedent.

(b) The personal liability of a person under this section shall not exceed the fair market value at the date of the decedent's death of the property title to which vested in that person pursuant to Section 6609, less the total of all of the following:

(1) The amount of any liens and encumbrances on that property.

(2) The value of any probate homestead interest set apart under Section 6520 out of that property.

(3) The value of any other property set aside under Section 6510 out of that property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the surviving spouse of the decedent, the child or children of the decedent, or the guardian of the minor child or children of the decedent, may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the person liable under this section with the complaint therein prior to the expiration of the time for filing claims.

(2) Creditors who have or who secure an acknowledgment in writing of the person liable under this section that that person is liable for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

(e) Section 353 of the Code of Civil Procedure applies in an action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 4.1.

SEC. 5. Section 7664 of the Probate Code is amended to read:

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed, valued as

of the date of the distribution, less the amount of any liens and encumbrances on the property on that date. Section 353 of the Code of Civil Procedure applies in an action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 5.1.

SEC. 6. Section 9050 of the Probate Code is amended to read:

9050. (a) If a general personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor, subject to Section 9054. The notice shall be given as provided in Section 1215. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication of the notice under Section 8120.

NOTE: See Stats. 1990, Ch. 79 for SEC. 6.1.

SEC. 7. Section 9051 of the Probate Code is amended to read:

9051. (a) Except as provided in subdivision (b) or (c), the notice shall be given within four months after the date letters are first issued to a general personal representative.

(b) If the personal representative first has knowledge of a creditor less than 30 days before expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

(c) If the personal representative first has knowledge of a creditor after expiration of the time provided in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

NOTE. See Stats. 1990, Ch. 79 for SEC. 7.1.

SEC. 8. Section 9052 of the Probate Code is amended to read:

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____, DECEDENT

Notice to creditors:

Administration of the estate of _____ (deceased) has been commenced by _____ (personal representative) in Estate No. _____ in the Superior Court of California, County of _____. You must file your claim with the court and mail or deliver a copy to the personal representative within the last to occur of four months after _____ (the date letters were issued to the personal representative), or 30 days after the date this notice was mailed to you or, in the case of personal delivery, 30 days after the date this notice was delivered to you, as provided in Section 9100 of the California Probate Code, or you must petition to file a late claim as provided in Section 9103 of the California Probate Code. A claim

form may be obtained from the court clerk. For your protection, you are encouraged to file your claim by certified mail, with return receipt requested.

(Date of mailing this notice)	(Name and address of personal representative or attorney)

NOTE: See Stats. 1990, Ch. 79 for SEC. 8.1.

SEC. 9. Section 9100 of the Probate Code is amended to read:

9100. (a) A creditor shall file a claim before expiration of the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Thirty days after the date notice of administration is given to the creditor, if notice is given within the time provided in subdivision (a) or (b) of Section 9051.

(b) Notwithstanding Section 9103, a reference in another statute to the time for filing a claim means the time provided in this section, unless the provision or context requires otherwise.

NOTE: See Stats. 1990, Ch. 79 for SEC. 9.1.

SEC. 10. Section 9103 of the Probate Code is amended to read:

9103. (a) Upon petition by a creditor and notice of hearing given as provided in Section 1220, the court may allow a claim to be filed after expiration of the time for filing a claim if the creditor establishes that either of the following conditions is satisfied:

(1) Neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had actual knowledge of the administration whichever occurred first.

(2) Neither the creditor nor the attorney representing the creditor in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had knowledge of the existence of the claim whichever occurred first.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the time letters are first issued to a general personal representative. Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 353 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the

creditor's petition if a preliminary distribution to beneficiaries or a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among beneficiaries or creditors.

(d) Regardless of whether the claim is later established in whole or in part, property distributed under court order and payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Section 9392 and subject to Section 9053, the personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

NOTE: See Stats. 1990, Ch. 79 for SEC. 10.1.

SEC. 11. Section 9201 of the Probate Code is amended to read:

9201. (a) Notwithstanding any other statute, if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

(1) The public entity may use a form as is necessary to effectively administer the law, act, or code. Where appropriate, the form may require the decedent's social security number, if known.

(2) The claim is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the remedies, and is barred at the time, otherwise provided in the law, act, or code.

(b)

Law, Act, or Code	Applicable Section
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code

Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

NOTE: See Stats. 1990, Ch. 79 for SEC. 11.1.

SEC. 12. Section 9391 of the Probate Code is amended to read:

9391. The holder of a mortgage or other lien on property in the decedent's estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part,

if in the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 353 of the Code of Civil Procedure does not apply to an action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 12.1.

SEC. 13. Section 9392 is added to the Probate Code, to read:

9392. (a) Subject to subdivision (b), a person to whom property is distributed is personally liable for the claim of a creditor, without a claim first having been filed, if all of the following conditions are satisfied:

(1) The identity of the creditor was known to, or reasonably ascertainable by, a general personal representative within four months after the date letters were first issued to the personal representative, and the claim of the creditor was not merely conjectural.

(2) Notice of administration of the estate was not given to the creditor under Chapter 2 (commencing with Section 9050) and neither the creditor nor the attorney representing the creditor in the matter has actual knowledge of the administration of the estate before the time the court made an order for final distribution of the property.

(3) The statute of limitations applicable to the claim under Section 353 of the Code of Civil Procedure has not expired at the time of commencement of an action under this section.

(b) Personal liability under this section is applicable only to the extent the claim of the creditor cannot be satisfied out of the estate of the decedent and is limited to a pro rata portion of the claim of the creditor, based on the proportion that the value of the property distributed to the person out of the estate bears to the total value of all property distributed to all persons out of the estate. Personal liability under this section for all claims of all creditors shall not exceed the value of the property distributed to the person out of the estate. As used in this section, the value of property is the fair market value of the property on the date of the order for distribution, less the amount of any liens and encumbrances on the property at that time.

(c) Nothing in this section affects the rights of a purchaser or encumbrancer of property in good faith and for value from a person who is personally liable under this section.

NOTE: See Stats 1990, Ch. 79 for SEC. 13.1

SEC. 14. Section 11429 of the Probate Code is amended to read:

11429. (a) Where the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor who is not paid, whether or not included in the order for payment, has no right to require contribution from creditors who are paid or from distributees except to the extent provided in Section 9392.

(b) Nothing in this section precludes recovery against the personal representative personally or on the bond, if any, by a

creditor who is not paid, subject to Section 9053.

NOTE: See Stats. 1990, Ch. 79 for SEC. 14 1.

SEC. 15. Section 13109 of the Probate Code is amended to read:

13109. A person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable, to the extent provided in Section 13112, for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 353 of the Code of Civil Procedure applies in an action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 15.1.

SEC. 16. Section 13156 of the Probate Code is amended to read:

13156. (a) Subject to subdivisions (b), (c), and (d), the petitioner who receives the decedent's property pursuant to an order under this chapter is personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the petitioner may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

(e) Section 353 of the Code of Civil Procedure applies in an action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 16 1

SEC. 17. Section 13204 of the Probate Code is amended to read:

13204. Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defense,

cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 353 of the Code of Civil Procedure applies in an action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 17.1.

SEC. 18. Section 13554 of the Probate Code is amended to read:

13554. (a) Except as otherwise provided in this chapter, any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died.

(b) In any action or proceeding based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

(c) Section 353 of the Code of Civil Procedure applies in any action under this section.

NOTE: See Stats. 1990, Ch. 79 for SEC. 18.1.

SEC. 19. Section 3.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 551 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 3.1 of this act shall become operative on July 1, 1991, and Section 551 of the Probate Code, as amended by Section 3 of this act shall be repealed on that date.

SEC. 20. Section 4.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 6611 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 4.1 of this act shall become operative on July 1, 1991, and Section 6611 of the Probate Code, as amended by Section 4 of this act shall be repealed on that date.

(next page is 1187)

SEC. 21. Section 5.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 7664 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 5.1 of this act shall become operative on July 1, 1991, and Section 7664 of the Probate Code, as amended by Section 5 of this act shall be repealed on that date.

SEC. 22. Section 6.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9050 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 6.1 of this act shall become operative on July 1, 1991, and Section 9050 of the Probate Code, as amended by Section 6 of this act shall be repealed on that date.

SEC. 23. Section 7.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9051 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 7.1 of this act shall become operative on July 1, 1991, and Section 9051 of the Probate Code, as amended by Section 7 of this act shall be repealed on that date.

SEC. 24. Section 8.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9052 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 8.1 of this act shall become operative on July 1, 1991, and Section 9052 of the Probate Code, as amended by Section 8 of this act shall be repealed on that date.

SEC. 25. Section 9.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9100 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 9.1 of this act shall become operative on July 1, 1991, and Section 9100 of the Probate Code, as added by Section 9 of this act shall be repealed on that date.

SEC. 26. Section 10.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9103 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 10.1 of this act shall become operative on July 1, 1991, and Section 9103 of the Probate Code, as amended by Section 10 of this act shall be repealed on that date.

SEC. 27. Section 11.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9201 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 11.1 of this act shall become operative on July 1, 1991, and Section 9201 of the Probate Code, as amended by Section 11 of this act shall be repealed on that date.

SEC. 28. Section 12.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 9391 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 12.1 of this act shall become operative on July 1, 1991, and Section 9391 of the Probate Code, as amended by Section 12 of this act shall be repealed on that date.

SEC. 29. Section 13.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and this bill is enacted and is chaptered after AB 759, in which case Section 13.1 of this act shall become operative on July 1, 1991, and Section 9392 of the Probate Code, as added by Section 13 of this act shall be repealed on that date.

SEC. 30. Section 14.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 11429 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 14.1 of this act shall become operative on July 1, 1991, and Section 11429 of the Probate Code, as amended by Section 14 of this act shall be repealed on that date.

SEC. 31. Section 15.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 13109 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 15.1 of this act shall become operative on July 1, 1991, and Section 13109 of the Probate Code, as added by Section 15 of this act shall be repealed on that date.

SEC. 32. Section 16.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 13156 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 16.1 of this act shall become operative on July 1, 1991, and Section 13156 of the Probate Code, as added by Section 16 of this act shall be repealed on that date.

SEC. 33. Section 17.1 of this act shall become operative only if AB

759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 13204 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 17.1 of this act shall become operative on July 1, 1991, and Section 13204 of the Probate Code, as added by Section 17 of this act shall be repealed on that date.

SEC. 34. Section 18.1 of this act shall become operative only if AB 759 of the 1989–90 Regular Session is enacted and becomes operative on July 1, 1991, and enacts Section 13554 of the Probate Code, and this bill is enacted and is chaptered after AB 759, in which case Section 18.1 of this act shall become operative on July 1, 1991, and Section 13554 of the Probate Code, as added by Section 18 of this act shall be repealed on that date.

CHAPTER 141

An act to amend Section 188.2 of, and to repeal and add Section 188.3 of, the Health and Safety Code, relating to acquired immune deficiency syndrome, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 15, 1990 Filed with Secretary of State June 15, 1990]

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

SECTION 1. Section 188.2 of the Health and Safety Code is amended to read:

188.2. (a) The state department shall establish uniform standards of financial eligibility for the drugs under the program established under this chapter.

(b) Nothing in the financial eligibility standards shall prohibit drugs to an otherwise eligible person whose adjusted gross income does not exceed fifty thousand dollars ($50,000) per year. However, the director may authorize drugs for persons with incomes higher than fifty thousand dollars ($50,000) per year if the estimated cost of those drugs in one year is expected to exceed 20 percent of the person's adjusted gross income.

(c) The state department shall establish and may administer a repayment schedule to determine the repayment obligation of a person receiving drugs. No person shall be obligated for repayment whose adjusted gross income is less than four times the federal poverty level. The repayment obligation shall be the lesser of the following:

(1) Two times the person's annual state income tax liability, less funds expended by the person for health insurance premiums.

(2) The cost of drugs.

(d) Persons who have been determined to have a repayment

obligation pursuant to subdivision (c) shall be advised by the state department of their right to request a reconsideration of that determination to the state department. Written notice of the right to request a reconsideration shall be provided to the person at the time that notification is given that he or she is subject to a repayment obligation. The repayment determination shall be reconsidered if one or more of the following apply:

(1) The determination was based on an incorrect calculation made pursuant to subdivision (b).

(2) There has been a substantial change in income since the previous eligibility determination which has resulted in a current income that is inadequate to meet the calculated repayment obligation.

(3) Unavoidable family or medical expenses which reduce the disposable income and which result in current income that is inadequate to meet the repayment obligation.

(4) Any other situation which imposes undue financial hardship on the person and would restrict his or her ability to meet the repayment obligation.

(e) The state department may exempt a person, who has been determined to have a repayment obligation pursuant to subdivision (c), from the obligation if both of the following criteria are satisfied:

(1) One or more of the circumstances specified in subdivision (d) exist.

(2) The state department has determined that the repayment obligation will impose an undue financial hardship on the person.

SEC. 2. Section 188.3 of the Health and Safety Code is repealed.

SEC. 3. Section 188.3 is added to the Health and Safety Code, to read:

188.3. (a) Effective on the date the state department begins implementing this chapter, a person determined eligible for benefits under this chapter shall be subject to the repayment obligation specified in subdivision (c) of Section 188.2.

(b) Persons who are receiving benefits under a HIV drug treatment subsidy program administered by the state department on the day prior to the date the state department begins implementing this chapter shall not be subject to the repayment obligation specified in subdivision (c) of Section 188.2.

(c) Notwithstanding subdivision (b), if any person is disenrolled from eligibility in a HIV drug treatment subsidy program administered by the state department for any reason after the date the state department begins implementing this chapter, the subsequent enrollment of that person for benefits under this chapter shall be in accordance with the repayment obligation specified in subdivision (c) of Section 188.2.

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

Because changes to the HIV drug treatment program are necessary in order to provide the State Department of Health Services with the means to fully implement the program no later than the enactment of the Budget Act of 1990, it is necessary that this act go into immediate effect.

CHAPTER 142

An act to add Section 31460.1 to the Government Code, relating to county employee retirement.

[Approved by Governor June 15, 1990. Filed with Secretary of State June 15, 1990]

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

SECTION 1. Section 31460.1 is added to the Government Code, to read:

31460.1. "Compensation" shall not include employer payments, including cash payments, made to, or on behalf of, their employees who have elected to participate in a flexible benefits program, where those payments reflect amounts that exceeds their employees' salaries.

This section shall not be operative in any county until the time the board of supervisors shall, by resolution adopted by a majority vote, makes this section applicable in that county.

CHAPTER 143

An act to amend Sections 11553 and 11555 of the Government Code, relating to solid waste.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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 January 1, 1988, an annual salary of eighty-one thousand six hundred thirty-five dollars ($81,635) shall 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) Chairperson and each member of the California Integrated Waste Management Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 2. Section 11555 of the Government Code is amended to read:

11555. Effective January 1, 1988, an annual salary of seventy-one thousand five hundred eighty-seven dollars ($71,587) shall be paid to the following:

(a) Chairperson of the Board of Prison Terms.

(b) Chairperson of the Youthful Offender Parole Board.

(c) Chairperson of the Occupational Safety and Health Appeals Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

CHAPTER 144

An act to amend Sections 11018.1 and 11018.6 of the Business and Professions Code, relating to common interest developments.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 11018.1 of the Business and Professions Code is amended to read:

11018.1. (a) A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. The requirement of this section extends to lots or parcels offered by the subdivider after repossession. A receipt shall be taken

from the prospective purchaser in a form and manner as set forth in regulations of the Real Estate Commissioner.

(b) A copy of the public report shall be given by the owner, subdivider or agent at any time, upon oral or written request, to any member of the public. A copy of the public report and a statement advising that a copy of the public report may be obtained from the owner, subdivider or agent at any time, upon oral or written request, shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made.

(c) At the same time that a public report is required to be given by the owner, subdivider, or agent pursuant to subdivision (a) with respect to a common interest development, as defined, in subdivision (c) of Section 1351 of the Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a copy of the following statement:

"COMMON INTEREST DEVELOPMENT GENERAL INFORMATION

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities which will be owned or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&R's), Articles of Incorporation (or association) and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed

to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you." Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community . . . the management can serve you well, but you will have to work for its success."

Failure to provide the statement in accordance with this subdivision shall not be deemed a violation subject to Section 10185.

SEC. 2. Section 11018.6 of the Business and Professions Code is amended to read:

11018.6. Any person offering to sell or lease any interest subject to the requirements of subdivision (a) of Section 11018.1 in a subdivision described in Section 11004.5 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy thereof to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the subdivision.

(b) Articles of incorporation or association for the subdivision owners association.

(c) Bylaws for the subdivision owners association.

(d) Any other instrument which establishes or defines the common, mutual, and reciprocal rights, and responsibilities of the owners or lessees of interests in the subdivision as shareholders or members of the subdivision owners association or otherwise.

(e) To the extent available, the current financial information and related statements as specified in subdivision (a) of Section 1365 of the Civil Code, for subdivisions subject to those provisions.

(f) A statement prepared by the governing body of the association setting forth the outstanding delinquent assessments and related charges levied by the association against the subdivision interests in question under authority of the governing instruments for the subdivision and association.

CHAPTER 145

An act to amend Sections 40000, 40052, 40116, 40135, 40196, 40402, 40403, 40412, 40413, 40433, 40500, 40600, 40900, 41000, 41030, 41053, 41054, 41204, 41230, 41250, 41260, 41300, 41330, 41350, 41352, 41353, 41354, 41370, 41372, 41400, 41402, 41430, 41450, 41701, 41780, 41786, 41900, and 48000 of, to amend the heading of Chapter 6 (commencing with Section 41780) of, to amend and renumber the headings of the second Article 3 (commencing with Section 41825) and Article 4 (commencing with Section 41850) of Chapter 7 of, Part 2 of Division 30 of, to amend, repeal, and add Section 41781 of, and to add Sections 40196.5, 41031, 41032, 41033, 41331, 41332, and 41333 to, the Public Resources Code, and to amend and supplement the Budget Act of 1989 by adding Items 0860-001-387 and 3380-002-387 to Section 2 thereof, relating to integrated waste management, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 18, 1990 Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 40000 of the Public Resources Code is amended to read:

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 1,500 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.

SEC. 2. Section 40052 of the Public Resources Code is amended to read:

40052. The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible to conserve water, energy and other natural resources, to protect air and water quality, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

SEC. 3. Section 40116 of the Public Resources Code is amended to read:

40116. "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility. "Compost" includes vegetable, yard, and wood wastes which are not hazardous waste.

SEC. 4. Section 40135 of the Public Resources Code, as added by Chapter 35 of the Statutes of 1990, is amended to read:

40135. "Fund" means the Integrated Waste Management Fund, which is hereby created in the State Treasury. Any reference in this division or any other provision of law to the Solid Waste Management Fund shall mean the Integrated Waste Management Fund.

SEC. 5. Section 40196 of the Public Resources Code is amended to read:

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. "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.

SEC. 6. Section 40196.5 is added to the Public Resources Code, to read:

40196.5. "State board" means the State Board of Equalization.

SEC. 7. Section 40402 of the Public Resources Code is amended to read:

40402. Except the member appointed pursuant to subdivision (a) of Section 40401, 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. For the purposes of this section, "income" does not include the salary or expenses received by a member of a city council or a county supervisor in carrying out their official duties.

SEC. 8. Section 40403 of the Public Resources Code is amended to read:

40403. (a) Except as provided under subdivision (b), no board member may derive any earned income directly or indirectly, except income from a vested retirement plan, 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.

(b) No board member appointed pursuant to subdivision (a) of Section 40401 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. For purposes of this subdivision, "earned income" means wages, salaries, professional fees, directors fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount received as a pension or annuity, dividends, interest, or any other return on a security including proceeds from the sale of a security.

SEC. 9. Section 40412 of the Public Resources Code is amended to read:

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 40510.

(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.

SEC. 10. Section 40413 of the Public Resources Code is amended to read:

40413. Any person who violates Section 40411 or 40412 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.

SEC. 11. Section 40433 of the Public Resources Code is amended to read:

40433. The Governor shall appoint one adviser for each member of the board upon the recommendation 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.

SEC. 12. Section 40500 of the Public Resources Code is amended to read:

40500. The board may appoint a committee of not less than three 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.

SEC. 13. Section 40600 of the Public Resources Code is amended to read:

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.

(c) If the board, as it is constituted as of July 1, 1990, fails to disapprove a contract entered into by the board for the purposes of preparing the report and model legislation pursuant to subdivision (a) by August 1, 1990, the contract shall be deemed approved.

SEC. 14. Section 40900 of the Public Resources Code is amended to read:

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 Chapter 1 of Part 1.

(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 it is the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the public through public hearings and informative meetings and that, at those hearings and other public forums, the public be granted the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(d) The Legislature further declares that it is the policy of the state and the intent of the Legislature 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.

SEC. 15. Section 41000 of the Public Resources Code is amended to read:

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).

(b) Notwithstanding subdivision (a), if a city determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 (commencing with Section 21000), to the extent that division requires the preparation and certification of an environmental impact report for the element, the city shall do all of the following:

(1) On or before July 1, 1991, the city shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the element. The resolution shall also state a date when the city will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the element.

(2) On or before July 1, 1991, the city shall submit its draft source reduction and recycling element and a copy of the resolution adopted pursuant to paragraph (1) to the county within which the city is located.

(3) Upon completion and certification of the environmental impact report for the source reduction and recycling element, or December 1, 1991, whichever is sooner, the city shall submit its final source reduction and recycling element to the county.

SEC. 16. Section 41030 of the Public Resources Code is amended to read:

41030. (a) For the initial source reduction and recycling element of a countywide integrated waste management plan which is

required to be submitted to the board pursuant to Section 41791, 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 representative of the solid waste generated and disposed of 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.

(b) In adopting or revising regulations implementing subdivision (a), the board shall do all of the following:

(1) Permit the use of studies or data developed on a county or regional basis and adapted to the conditions which exist in a city preparing its waste characterization component.

(2) Permit the use of preexisting data or studies, including those data and studies prepared by local governments with similar waste characteristics.

(3) Require only that amount of seasonal sampling, and waste characterization only of those categories of waste, necessary to achieve the source reduction, recycling, and composting requirements established under paragraph (1) of subdivision (a) of Section 41780.

SEC. 17. Section 41031 is added to the Public Resources Code, to read:

41031. Any waste characterization component prepared by a city pursuant to Section 41030, and any other information submitted by a city to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (1) of subdivision (a) of Section 41780.

SEC. 18. Section 41032 is added to the Public Resources Code, to read:

41032. For the first revision, and any subsequent revision, of a source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41770, 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 and disposed of 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.

SEC. 19. Section 41033 is added to the Public Resources Code, to

read:

41033. Any waste characterization component prepared by a city pursuant to Section 41033, and any other information submitted by a city to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (2) of subdivision (a) of Section 41780.

SEC. 20. Section 41053 of the Public Resources Code is amended to read:

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 component.

SEC. 21. Section 41054 of the Public Resources Code is amended to read:

41054. The city source reduction component shall evaluate and identify rate structures and fees 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.

SEC. 22. Section 41204 of the Public Resources Code is amended to read:

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 composted 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.

SEC. 23. Section 41230 of the Public Resources Code is amended to read:

41230. The city funding component shall identify and specifically describe projected costs, revenues, and revenue sources the city will use to implement all components of the city source reduction and recycling element.

SEC. 24. Section 41250 of the Public Resources Code is amended to read:

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. The component shall address the disposition of sewage sludge generated in the jurisdiction of the city.

SEC. 25. Section 41260 of the Public Resources Code is amended

to read:

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, disposing, 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.

SEC. 26. Section 41300 of the Public Resources Code is amended to read:

41300. (a) On or before July 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).

(b) Notwithstanding subdivision (a), if a county determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 (commencing with Section 21000), to the extent that division requires the preparation and certification of an environmental impact report for the element, the county shall do all of the following:

(1) On or before July 1, 1991, the county shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the element. The resolution shall also state a date when the county will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the element.

(2) On or before July 1, 1991, the county shall submit a copy of the resolution adopted pursuant to paragraph (1) to the board.

(3) Upon completion and certification of the environmental impact report for the source reduction and recycling element, or December 1, 1991, whichever is sooner, the county shall adopt its source reduction and recycling element.

SEC. 27. Section 41330 of the Public Resources Code is amended to read:

41330. (a) For the initial source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41791, 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 representative of the solid waste generated and disposed of 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.

(b) In adopting or revising regulations implementing subdivision (a), the board shall do all of the following:

(1) Permit the use of studies or data developed on a regional basis and adapted to the conditions which exist in a county preparing its waste characterization component.

(2) Permit the use of preexisting data or studies, including those data and studies prepared by local governments with similar waste characteristics.

(3) Require only that amount of seasonal sampling, and waste characterization only of those categories of waste, necessary to achieve the source reduction, recycling, and composting requirements established under paragraph (1) of subdivision (a) of Section 41780.

SEC. 28. Section 41331 is added to the Public Resources Code, to read:

41331. Any waste characterization component prepared by a county pursuant to Section 41330, and any other information submitted by a county to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (1) of subdivision (a) of Section 41780.

SEC. 29. Section 41332 is added to the Public Resources Code, to read:

41332. For the first revision, and any subsequent revision, of a source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41770, 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 and disposed of 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.

SEC. 30. Section 41333 is added to the Public Resources Code, to read:

41333. Any waste characterization component prepared by a county pursuant to Section 41332, and any other information submitted by a county to the board on the quantities of solid waste

generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent feasible, to accurately measure the diversion requirements established under paragraph (2) of subdivision (a) of Section 41780.

SEC. 31. Section 41350 of the Public Resources Code is amended to read:

41350. The county source reduction component shall include a program and implementation schedule which shows the methods by which the county 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.

SEC. 32. Section 41352 of the Public Resources Code is amended to read:

41352. The county source reduction component shall describe the methods the county will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through source reduction.

SEC. 33. Section 41353 of the Public Resources Code is amended to read:

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 component.

SEC. 34. Section 41354 of the Public Resources Code is amended to read:

41354. The county source reduction component shall evaluate and identify rate structures and fees 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.

SEC. 35. Section 41370 of the Public Resources Code is amended to read:

41370. The county recycling component shall include a program and implementation schedule which shows the methods by which the county 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.

SEC. 36. Section 41372 of the Public Resources Code is amended to read:

41372. The county recycling component shall describe the methods the county will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through recycling.

SEC. 37. Section 41400 of the Public Resources Code is amended to read:

41400. The county composting component shall include a program and implementation schedule which shows the methods by which the county 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.

SEC. 38. Section 41402 of the Public Resources Code is amended to read:

41402. The county composting component shall describe the methods the county will use to determine the amount and categories of solid wastes to be diverted from landfill disposal through composting.

SEC. 39. Section 41430 of the Public Resources Code is amended to read:

41430. The county funding component shall identify and specifically describe projected costs, revenues, and revenue sources the county will use to implement all components of the county source reduction and recycling element.

SEC. 40. Section 41450 of the Public Resources Code is amended to read:

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. The component shall address the disposition of sewage sludge generated in the jurisdiction of the county.

SEC. 41. Section 41701 of the Public Resources Code is amended to read:

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 that will be needed for a 15-year period to safely handle solid wastes generated with the county which cannot be reduced, recycled, or composted.

(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.

SEC. 42. The heading of Chapter 6 (commencing with Section

41780) of Part 2 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 6. PLANNING REQUIREMENTS

SEC. 43. Section 41780 of the Public Resources Code is amended to read:

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 shall 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 of all solid waste 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.

SEC. 44. Section 41781 of the Public Resources Code is amended to read:

41781. (a) For the purpose of determining the base amount of solid waste from which source reduction, recycling, and composting 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, and which were disposed of at a landfill or transformation facility within the jurisdiction of a local agency as of January 1, 1990.

(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 any of the following:

(1) Agricultural wastes, except agricultural wastes which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, composed, or reused.

(2) Inert solids, including inert solids used for structural fill, except inert solids which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused for paving materials or other construction-related materials.

(3) Scrap metals, except scrap metals which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused.

(4) Discarded, white-coated major appliances, except those discarded, white-coated major appliances which were disposed of at

a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, or refurbished and reused.

(5) Sludge.

(6) Another waste product 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 and 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.

(e) On or before March 1, 1991, the board, in consultation and with the cooperation of the state water board and the State Department of Health Services, shall prepare and submit to the Legislature and the Governor a report on whether or not to include sludge in the waste diversion requirements established under Section 41780. The report shall include, but is not limited to, all of the following:

(1) A description and evaluation of the various options for disposal and reuse of sludge, including, but not limited to, composting, cocomposting, land application, incineration, ocean disposal, and landfill disposal.

(2) An evaluation of the environmental impacts of the various disposal and reuse options, including, but not limited to, impacts on surface, marine, and ground water quality and impacts on air quality.

(3) An evaluation of the public health impacts of the various disposal and reuse options, including impacts from ingestion of, and skin contact with, sludge.

(4) An evaluation of the adequacy of existing federal and state statutes and regulatory programs designed to regulate sludge disposal and reuse, including, but not limited to, adequacy of current funding levels for regulatory programs.

(5) Recommendations on the best available methods to dispose or reuse sludge to ensure the maximum protection of public health and the environment.

(f) This section shall remain in effect until October 1, 1991, and as of that date is repealed.

SEC. 45. Section 41781 is added to the Public Resources Code, to read:

41781. (a) For the purpose of determining the base rate of solid waste from which source reduction, recycling, and composting 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, and which were disposed of at a landfill or transformation facility within the jurisdiction of a local agency as of January 1, 1990.

(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 any of the following:

(1) Agricultural wastes, except agricultural wastes which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, composted, or reused.

(2) Inert solids, including inert solids used for structural fill, except inert solids which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused for paving materials or other construction-related materials.

(3) Scrap metals, except scrap metals which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused.

(4) Discarded, white-coated major appliances, except those discarded, white-coated major appliances which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, or refurbished and reused.

(5) Another waste product 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.

(e) This section shall become operative on October 1, 1991.

SEC. 46. Section 41786 of the Public Resources Code is amended to read:

41786. (a) Notwithstanding Section 41780, the board may reduce the source reduction, recycling, and composting 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 or refinance the transformation project, if the refinancing is done for the purpose of reducing debt service and not for the expansion of transformation facilities.

(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).

SEC. 47. The heading of the second Article 3 (commencing with Section 41825) of Chapter 7 of Part 2 of Division 30 of the Public Resources Code is amended and renumbered to read:

Article 4. Review and Enforcement

SEC. 48. The heading of Article 4 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of the Public Resources Code is amended and renumbered to read:

Article 5. Enforcement

SEC. 49. Section 41900 of the Public Resources Code is amended to read:

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 this part.

SEC. 50. Section 48000 of the Public Resources Code is amended to read:

48000. (a) 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.

(b) 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.

(c) For purposes of collection of the fees established pursuant to subdivision (a) during the 1990 calendar year, the state board shall bill operators which utilize parcel taxes, dwelling fees, or land use fees to fund solid waste services at the close of the third calendar quarter. The payment for the first three quarters of the 1990 calendar year shall be made within 25 days of the third calendar quarter. Thereafter, these operators shall remit payment to the state board

pursuant to subdivision (b).

(d) 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.

SEC. 51. Item 0860-001-387 is added to Section 2.00 of the Budget Act of 1989, to read:

0860-001-387—For support of the State Board of Equalization, for payment to Item 0860-001-001, payable from the Integrated Waste Management Account, Integrated Waste Management Fund	116,000

SEC. 52. Item 3380-002-387 is added to Section 2.00 of the Budget Act of 1989, to read:

3380-002-387—For support of the California Integrated Waste Management Board, payable from the Integrated Waste Management Account, Integrated Waste Management Fund		500,000
(a) 100000–Personal Services	50,000	
(b) 300000–Operating Expenses and Equipment	450,000	
(c) Of the amount appropriated in subdivision (b) of this item, one hundred thousand dollars ($100,000) shall be expended by the board for the disposal cost fee system report and model legislation required to be prepared pursuant to Section 40600 of the Public Resources Code. These funds shall be made available without regard to fiscal year.		

SEC. 53. 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 California Integrated Waste Management Board is in the process of adopting and revising regulations. Since the changes in law made by this act will affect the regulations, it is necessary that

these changes take effect immediately.

CHAPTER 146

An act to amend Section 4024.2 of the Penal Code, relating to prisoners, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(2) In addition, the sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "labor on levees or on the public works and ways" means manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that such persons wear clothing of a distinctive character while performing such work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake such person into custody to serve the balance of his or her sentence if such person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, which describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other such official to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing such assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

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:

Since several counties in the state are facing an immediate jail population crisis, it is necessary that this act take effect immediately.

CHAPTER 147

An act to amend Section 100161 of the Public Utilities Code, relating to the Santa Clara County Transit District.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 100161 of the Public Utilities Code is amended to read:

100161. (a) The district may acquire, construct, own, operate, control, or use rights-of-way, rail lines, buslines, stations, platforms, switches, yards, terminals, and any and all facilities necessary or convenient for transit service within or partly without the district, underground, upon, or above the ground and under, upon, or over public streets or other public ways or waterways, together with all physical structures, including parking lots and day care centers and related child care facilities, which are necessary or convenient for the access of persons or vehicles thereto. The district may acquire any interest in or rights to use or the joint use of any or all of those facilities.

(b) District installations in freeways shall be subject to the approval of the Department of Transportation. Installations in other state highways shall be subject to Article 2 (commencing with Section 670) of Chapter 3 of Division 1 of the Streets and Highways Code. Installations in county highways and city streets shall be subject to similar encroachment permits.

(c) The district shall not use any state transportation funds, including, but not limited to, money in the State Highway Account, or the Transportation Planning and Development Account, in the State Transportation Fund, and passenger rail and clean air bond act money to acquire, construct, or operate day care centers and related child care facilities.

CHAPTER 148

An act to amend Section 3003 of the Penal Code, relating to parole.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

For purposes of this subdivision, "county from which he or she was committed" means the county where the crime for which the inmate was convicted occurred and shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170 decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(6) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to within 20 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in subdivision (c) of Section 667.5, if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(d) An inmate may be paroled to another state pursuant to any other provision of law.

CHAPTER 149

An act to add Sections 1061 and 1062 to the Evidence Code, relating to trade secrets.

[Approved by Governor June 18, 1990 Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 1061 is added to the Evidence Code, to read:

1061. (a) In addition to Section 1062, the following procedure shall apply whenever the owner of a trade secret wishes to assert his or her trade secret privilege, as provided in Section 1060, during a criminal proceeding:

(1) The owner of the trade secret shall file a motion for a protective order, or the People may file the motion on the owner's behalf and with the owner's permission. The motion shall include an affidavit based upon personal knowledge listing the affiant's qualifications to give an opinion concerning the trade secret at issue, identifying, without revealing, the alleged trade secret and documents or articles which disclose the secret, and presenting evidence that the secret qualifies as a trade secret under either subdivision (d) of Section 3426.1 of the Civil Code or paragraph (9) of subdivision (a) of Section 499c of the Penal Code. The motion and affidavit shall be served on all parties in the proceeding.

(2) Any party in the proceeding may oppose the request for the protective order by submitting affidavits based upon the affiant's personal knowledge. The affidavits shall be filed under seal, but shall be provided to the owner of the trade secret and to all parties in the proceeding. Neither the owner of the trade secret nor any party in the proceeding may disclose the affidavit to persons other than to counsel of record without prior court approval.

(3) The movant shall, by a preponderance of the evidence, show that the issuance of a protective order is proper. The court may rule on the request without holding an evidentiary hearing. However, in its discretion, the court may choose to hold an evidentiary hearing on disputed items. If the court holds such a hearing, the parties' right to examine witnesses shall not be used to obtain discovery, but shall be directed solely toward the question of whether the alleged trade secret qualifies for protection.

(4) If the court finds that a trade secret may be disclosed during any criminal proceeding unless a protective order is issued and that the issuance of a protective order would not conceal a fraud or work an injustice, the court shall issue a protective order limiting the use and dissemination of the trade secret, including, but not limited to, documents and other physical articles. The protective order may, in the court's discretion, include the following provisions:

(A) That the trade secret may be disseminated only to counsel for

the parties, including their associate attorneys, paralegals, and investigators, and to law enforcement officials or clerical officials.

(B) That the defendant may view the secret only in the presence of his or her counsel, or if not in the presence of his or her counsel, at counsel's offices.

(C) That any party seeking to show the trade secret, or documents or other physical articles containing the trade secret, to any person not designated by the protective order shall first obtain court approval to do so.

(i) The court may require that the person receiving the trade secret do so only in the presence of counsel for the party requesting approval.

(ii) The court may require the person receiving the trade secret to sign a copy of the protective order and to agree to be bound by its terms. The order may include a provision recognizing the owner of the trade secret to be a third-party beneficiary of that agreement.

(iii) The court may require a party seeking disclosure to an expert to provide that expert's name, employment history, and any other relevant information to the court for examination. The court shall accept that information under seal, and the information shall not be disclosed by any court except upon termination of the action and upon a showing of good cause to believe the secret has been disseminated by a court-approved expert. The court shall evaluate the expert and determine whether the expert poses a discernible risk of disclosure. The court shall withhold approval if the expert's economic interests place the expert in a competitive position with the victim, unless no other experts are available. The court may interview the expert in camera in aid of its ruling. If the court rejects the expert, it shall state its reasons for doing so on the record and a transcript of those reasons shall be prepared and sealed.

(D) That all physical articles disclosing the trade secret, including, but not limited to, documents, may be admitted into evidence under seal and shall not be unsealed absent an order by a court upon a showing of good cause.

(E) Other orders as the court deems necessary to protect the integrity of the trade secret.

(b) A ruling granting or denying a motion for a protective order filed pursuant to subdivision (a) shall not be construed as a determination that the alleged trade secret is or is not a trade secret as defined by subdivision (d) of Section 3426.1 of the Civil Code or paragraph (9) of subdivision (a) of Section 499c of the Penal Code. Such a ruling shall not have any effect on any civil litigation.

(c) A protective order entered by a municipal court pursuant to this section shall remain in effect in a superior court unless that order is amended or vacated for good cause shown.

(d) This section shall have prospective effect only and shall not operate to invalidate previously entered protective orders.

SEC. 2. Section 1062 is added to the Evidence Code, to read:

1062. (a) Notwithstanding any other provision of law, in a

criminal case, the court, upon motion of the owner of a trade secret, or upon motion by the People with the consent of the owner, and upon a showing by a preponderance of the evidence, may exclude the public from any portion of a criminal proceeding where it is likely that the trade secret would otherwise be disclosed to the public during that proceeding, there is a substantial probability that the disclosure would cause serious harm to the owner of the secret, and there is no overriding public interest in an open proceeding. No evidence, however, shall be excluded during a criminal proceeding pursuant to this section if it would conceal a fraud, work an injustice, or deprive the People or the defendant of a fair trial.

(b) The motion made pursuant to subdivision (a) shall identify, without revealing, the trade secrets which would otherwise be disclosed to the public. A showing made pursuant to subdivision (a) shall be made during an in camera hearing with only the owner of the trade secret, the People's representative, the defendant, and defendant's counsel present. A court reporter shall be present during the hearing. Any transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at that hearing, shall be ordered sealed by the court and only a court may allow access to its contents upon a showing of good cause. The court, in ruling upon the motion made pursuant to subdivision (a), may consider testimony presented or affidavits filed in any proceeding held in that action.

(c) If, after the in camera hearing described in subdivision (b), the court determines that exclusion of trade secret information from the public is appropriate, the court shall close only that portion of the criminal proceeding necessary to prevent disclosure of the trade secret. Before granting the motion, however, the court shall find and state for the record that the moving party has met its burden pursuant to subdivision (b), and that the closure of that portion of the proceeding will not deprive the People or the defendant of a fair trial.

(d) The owner of the trade secret, the People, or the defendant may seek relief from a ruling denying or granting closure by petitioning a higher court for extraordinary relief.

(e) Whenever the court closes a portion of a criminal proceeding pursuant to this section, a transcript of that closed proceeding shall be made available to the public as soon as practicable. The court shall redact any information qualifying as a trade secret before making that transcript available.

(f) The court, subject to Section 867 of the Penal Code, may allow witnesses who are bound by a protective order entered in the criminal proceeding protecting trade secrets, pursuant to Section 1061, to remain within the courtroom during the closed portion of the proceeding.

(g) For purposes of this section and Section 1061, "trade secret" means "trade secret," as defined in subdivision (d) of Section 3426.1 of the Civil Code or paragraph (9) of subdivision (a) of Section 499c

of the Penal Code.

CHAPTER 150

An act to amend Sections 40802 and 42351.5 of the Health and Safety Code, relating to air pollution.

[Approved by Governor June 18, 1990 Filed with Secretary of State June 19, 1990]

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

SECTION 1. Section 40802 of the Health and Safety Code is amended to read:

40802. If the district board, in the case of a district with a population of less than 750,000, is unable to appoint a person with the qualifications specified in Section 40801 who is willing and able to serve, and for that reason a vacancy exists on the hearing board, the county district board may, in order to fill that vacancy, appoint any person to the hearing board.

SEC. 2. Section 42351.5 of the Health and Safety Code is amended to read:

42351.5. If a person granted a variance with a schedule of increments of progress files an application for modification of the schedule and is unable to notify the hearing board sufficiently in advance to allow the hearing board to schedule a public hearing on the application, the hearing board may grant no more than one interim authorization valid for not more than 30 days, to that person to continue operation pending the decision of the hearing board on the application. In districts with a population of less than 750,000, the chairman of the hearing board or any other member designated by the board may hear the application. If any member of the public contests such a decision made by a single member of the hearing board, the application shall be reheard by the full hearing board within 10 days of the decision. The interim authorization shall not be granted for a requested extension of a final compliance date or where the original variance expressly required advance application for the modification of an increment of progress.

CHAPTER 151

An act to amend Section 3 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of the 1952, First Extraordinary Session), relating to the Vallejo Sanitation and Flood Control District.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 3 of the Vallejo Sanitation and Flood Control District Act (Chapter 17 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 3. The Vallejo Sanitation and Flood Control District shall be governed by and under the control of five trustees to be selected as provided in this act, who shall constitute the board of trustees thereof. Each of the trustees shall be a resident of the district. Two of the trustees shall be City Councilmembers of the City of Vallejo, and two of the trustees shall be members of the Board of Supervisors of the County of Solano representing supervisorial districts one and two. The fifth trustee shall be appointed as provided in Section 4. Each one of the elected officials shall cease to be a trustee of the district and his or her office of trustee shall be vacant, at any time that he or she ceases to be that councilmember or supervisor. If one of the supervisors when elected is not a resident of the district, the supervisor shall not take office as a district trustee, and the other trustees shall appoint a member at large to fill the vacancy under the same terms, conditions, and provisions as to manner of appointment, term of office, and qualifications as provided in Section 4 for appointment of the fifth trustee.

CHAPTER 152

An act to repeal and add Section 5782.18 of the Public Resources Code, relating to recreation and park districts.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 5782.18 of the Public Resources Code is repealed.

SEC. 2. Section 5782.18 is added to the Public Resources Code, to read:

5782.18. The board may provide, by ordinance or resolution, that

each of its members may receive an amount, not to exceed one hundred dollars ($100) per day for each attendance at a meeting of the board. For purposes of this section, a meeting of the board includes, but is not limited to, closed sessions of the board, board field trips, district public hearings, or meetings of a committee of the board. The maximum compensation allowable to a board member on any given day shall be one hundred dollars ($100). No board member shall receive more than five hundred dollars ($500) compensation under this section in any one calendar month. A board member may elect to waive the compensation.

CHAPTER 153

An act to amend Section 24011 of the Government Code, relating to local government.

[Approved by Governor June 18, 1990 Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 24011 of the Government Code is amended to read:

24011. Notwithstanding the provisions of Section 24009:

(a) The boards of supervisors of Madera County, Mendocino County, and Lake County may, by ordinance, provide that the public administrator shall be appointed by the board.

(b) The boards of supervisors of Madera County, Mendocino County, and Lake County may appoint the same person to the offices of public administrator, veteran service officer, and public guardian.

(c) The boards of supervisors of Madera County, Mendocino County, and Lake County may separate the consolidated offices of district attorney and public administrator at any time in order to make the appointments permitted by this section. Upon approval by the board of supervisors, the officer elected to these offices at any time may resign, or decline to qualify for, the office of public administrator without resigning from, or declining to qualify for, the office of district attorney.

SEC. 2. The Board of Supervisors of Madera County desires, and has requested, the authority granted to it by Section 1 of this act in order to achieve governmental efficiency through combining certain county offices. The Legislature finds and declares that this limited authority necessitates a special act, and that a general act to accomplish this result cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 154

An act to amend Section 16 of Chapter 52 of the Statutes of 1941, relating to the Monterey Peninsula Airport District.

[Approved by Governor June 18, 1990. Filed with Secretary of State June 19, 1990.]

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

SECTION 1. Section 16 of Chapter 52 of the Statutes of 1941 is amended to read:

Sec. 16. In the erection, construction, improvement, and repair of all public buildings, structures, and airports of the district, and in supplying materials for those activities, when the expenditure in any such case exceeds the sum of five thousand dollars ($5,000) the contract shall be awarded by the board of directors to the lowest responsible bidder after notice by publication in a newspaper of general circulation printed, published, and circulated in the district under conditions which the board may specify. The detailed procedure for carrying out this section shall be prescribed by ordinance.

The board of directors may reject any and all bids presented, and may readvertise for other bids.

The board of directors may determine and declare by a four-fifths vote of all its members that the work or improvement in question may be more economically or satisfactorily performed as a project of the Works Projects Administration, or other agency of the federal or state government, and after the adoption of a resolution to that effect, it may proceed to have the work or improvement made through that administration or agency and need not follow the requirements imposed by this section.

CHAPTER 155

An act to amend Section 704.730 of the Code of Civil Procedure, relating to homesteads.

[Approved by Governor June 20, 1990. Filed with Secretary of State June 20, 1990]

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

SECTION 1. Section 704.730 of the Code of Civil Procedure is amended to read:

704.730. (a) The amount of the homestead exemption is one of the following:

(1) Fifty thousand dollars ($50,000) unless the judgment debtor or

spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) Seventy-five thousand dollars ($75,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled and as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than fifteen thousand dollars ($15,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than twenty thousand dollars ($20,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

CHAPTER 156

An act to amend Section 786 of the Penal Code, relating to crimes.

[Approved by Governor June 22, 1990. Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 786 of the Penal Code is amended to read:

786. When property taken in one jurisdictional territory by burglary, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.

CHAPTER 157

An act to amend Section 1916.5 of the Civil Code, relating to financial institutions.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, by a lender other than a supervised financial organization shall be valid unless that provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:

(1) A requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(2) The rate of interest shall change not more often than once during any semiannual period, and at least six months shall elapse between any two changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.

(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

(b) (1) This section shall be applicable only to a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section shall not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Savings and Loan Commissioner with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Savings and Loan Commissioner shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) "Supervised financial organization" means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, personal property broker, consumer finance lender, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.

(2) "Insurer" includes, but is not limited to, a nonadmitted insurance company.

(3) "Semiannual period" means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) "Security document" means a mortgage contract, deed of trust, or real estate sales contract.

(5) "Evidence of debt" means a note or negotiable instrument.

(e) This section shall be applicable only to instruments executed on and after the effective date of this section.

(f) This section shall not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.

SEC. 2. In order to accurately reflect the intent of the Legislature in enacting Assembly Bill 438 of the 1989–90 Regular Session as Chapter 188 of the Statutes of 1989, which was to exempt from the operation of Section 1916.5 of the Civil Code any security documents or evidences of indebtedness issued by state or federally regulated financial institutions under the authority of federal law, this act shall apply to any security document or evidence of debt issued on or after January 1, 1990.

CHAPTER 158

An act to amend Section 26802.5 of the Government Code, relating to county officers.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 26802.5 of the Government Code is amended to read:

26802.5. In a county of the 11th, 15th, 17th, or 22nd class, as ascertained and determined by Section 28020, a registrar of voters may be appointed by the board of supervisors in the same manner as other county officers are appointed. In those counties, the county clerk is not ex officio registrar of voters, and the registrar of voters shall discharge all duties vested by law in the county clerk which duties relate to and are a part of the election procedure.

CHAPTER 159

An act to amend Section 24304 of, and to repeal Sections 24304.5, 24304.7, 24304.8, 24304.9, and 24304.10 of, the Government Code, relating to local government.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 24304 of the Government Code is amended to read:

24304. Notwithstanding the provisions of Section 24300, in counties of the 13th to 57th classes, inclusive, the board of supervisors by ordinance may consolidate the duties of certain of the county offices in one or more of these combinations:

(a) Sheriff and tax collector.
(b) Auditor and recorder.
(c) County clerk, auditor, and recorder.
(d) County clerk and public administrator.
(e) County clerk and recorder.
(f) County clerk and auditor.
(g) Treasurer and tax collector.
(h) Treasurer and recorder.
(i) Treasurer and assessor.
(j) Treasurer and public administrator.
(k) Public administrator and coroner.
(*l*) District attorney and public administrator.
(m) District attorney and coroner.
(n) Sheriff and coroner.
(o) Sheriff and public administrator.
(p) County agricultural commissioner and county sealer of weights and measures.
(q) County clerk and tax collector.
(r) Treasurer, tax collector, and recorder.
(s) Sheriff, tax collector, and coroner.
(t) Coroner and health officer.
(u) Road commissioner and surveyor. A county may create an office entitled public works director, combining the duties of road commissioner and surveyor and any other compatible duties not legally required to be performed by another county officer.
(v) Sheriff, coroner, and public administrator.
(w) Treasurer, tax collector, and public administrator.
(x) County clerk, assessor, and recorder.
(y) Assessor and recorder.

SEC. 2. Section 24304.5 of the Government Code is repealed.

SEC. 3. Section 24304.7 of the Government Code is repealed.

SEC. 4. Section 24304.8 of the Government Code is repealed.

SEC. 5. Section 24304.9 of the Government Code is repealed.
SEC. 6. Section 24304.10 of the Government Code is repealed.

CHAPTER 160

An act to amend Section 7 of, and to add Section 7.5 to, Chapter 52 of the Statutes of 1941, relating to the Monterey Peninsula Airport District.

[Approved by Governor June 22, 1990. Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 7 of Chapter 52 of the Statutes of 1941 is amended to read:

Sec. 7. The officers of the district shall comprise the members of the board of directors, the secretary of the board, a district manager, an auditor, and district counsel. No member of the board of directors shall be qualified for election or appointment as a member unless he or she has been a qualified elector and a resident of the district for at least one year immediately prior to his or her election or appointment. The board of directors shall, by ordinance, prescribe the powers, duties, and compensation, of all officers, except where the same are prescribed by the provisions of this act and in those cases, may by ordinance, prescribe additional powers and duties for any officer consistent with the provisions of this act.

SEC. 2. Section 7.5 is added to Chapter 52 of the Statutes of 1941, to read:

Sec. 7.5. Each member of the board of directors shall receive compensation in an amount not to exceed one hundred dollars ($100) for attendance at each regular meeting of the board held within the district, which amount shall be fixed by the board from time to time. However, no director shall receive compensation for more than four meetings in any calendar month. Each director shall also be allowed, with the approval of the board, all travel and other expenses necessarily incurred by the member in the actual performance of the member's duties.

CHAPTER 161

An act to amend Section 214 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor June 22, 1990. Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses has not exceeded a sum equivalent to 10 percent of those operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization which meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the organization, are not subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code of 1986, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) which is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service which state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) shall also file duplicate copies of their most recently filed federal income tax returns.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive, of subdivision (a). The owner or the other organization also shall file with the assessor duplicate copies of valid, unrevoked letters or rulings from the Internal Revenue Service stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return.

Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for

fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organization in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational

institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. The amendment of this paragraph made at the 1983–84 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property which would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property which is equal to the percentage which the number of

low- and moderate-income elderly and handicapped families occupying the property is of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property in any year in which any of the following criteria are applicable:

(1) Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by Section 50053 of the Health and Safety Code.

(2) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(3) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is a deed restriction, agreement, or other legal document which restricts the project's usage and which provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property which would otherwise be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility which would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations which meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations which meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, educational purposes means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and shall not include those educational purposes and activities primarily for the benefit of an organization's shareholders. Educational activities shall include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

CHAPTER 162

An act to amend and repeal Section 1424 of the Health and Safety Code, relating to long-term health care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 1424 of the Health and Safety Code, as amended by Section 1 of Chapter 1141 of the Statutes of 1987, is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability or disorder.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(b) Class "AA" violations are violations which meet the criteria for a class "A" violation and which the state department determines to have been a direct proximate cause of death of a patient of a long-term health care facility. A class "AA" violation is subject to a civil penalty in the amount of not less than five thousand dollars ($5,000) and not exceeding twenty-five thousand dollars ($25,000) for each violation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

(1) The violation was a direct proximate cause of death of a patient.

(2) The death resulted from an occurrence of a nature which the regulation was designed to prevent.

(3) The patient suffering the death was among the class of persons for whose protection the regulation was adopted.

If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

For each class "AA" violation within a 12-month period which has become final, the state department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class "AA" violation in a facility within that 12-month period which has been sustained following a citation review conference, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(c) Class "A" violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class "A" violation. The condition or practice

constituting a class "A" violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. A class "A" violation is subject to a civil penalty in an amount not less than one thousand dollars ($1,000) and not exceeding ten thousand dollars ($10,000) for each and every violation.

If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

(d) Class "B" violations are violations which the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients, other than class "AA" or "A" violations. Unless otherwise determined by the state department to be a class "A" violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Administrative Code, which is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class "B" violation. A class "B" violation is subject to a civil penalty in an amount not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000) for each and every violation. A citation for a class "B" violation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

If a class "B" violation is corrected within the time specified, no civil penalties shall be imposed, unless it is a second or subsequent violation of the same regulation occurring within the period since and including the previous full annual licensing survey inspection or 12 months, whichever is greater. In no case, shall the period extend beyond 13 months. At the citation review conference, the director's designee may, utilizing the criteria set forth in subdivision (a), waive or reduce the penalty as specified in subdivision (a) of Section 1428, taking into consideration the seriousness of the previous and present violations, the similarity between the two violations, the extent to which there is a direct relationship to the health and safety or security of patients, and the good faith exercised by the licensee in correcting the problem. The decision to waive or not to waive these penalties shall not be reviewable. In the event of any violation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have the burden of proving that the

licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

(e) Any willful material falsification or willful material omission in the health record for a patient of a long-term health care facility is a violation. "Willful material falsification," as used in this section, means any entry in the patient health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of decubitus ulcers or contractures, or pertaining to tests and measurements of vital signs, or notations of input and output of fluids, which was made with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

"Willful material omission," as used in this section, means the willful failure to record any untoward event which has affected the health, safety, or security of the specific patient, and which was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided. A violation of this subdivision may result in a civil penalty not to exceed ten thousand dollars ($10,000), as specified in paragraphs (1) to (3), inclusive. However, in no case shall the civil penalty be trebled.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) or more than ten thousand dollars ($10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars ($2,500).

(2) Where the penalty assessed is one thousand dollars ($1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "B" violation, and shall include the right of appeal as specified in Section 1428 and the payment of the minimum fine as specified in subdivision (d) and in Section 1428.1. Where the assessed penalty is in excess of one thousand dollars ($1,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "A" violation, and shall include the right of appeal as specified in Section 1428 and the payment of the minumum fine as specified in Section 1428.1.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the state department from issuing a class "A" or class "B" citation for any violation which meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this

subdivision. However, no single act, omission, or occurrence may be cited both as a class "A" or class "B" violation and as a violation of this subdivision.

(f) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to patient safety or health.

SEC. 2. Section 1424 of the Health and Safety Code, as added by Section 2 of Chapter 1141 of the Statutes of 1987, is repealed.

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 a consistent statutory requirement for long-term health care facility licensees to sustain the burden of proving they acted reasonably to comply with regulations for these facilities, it is necessary that this act take effect immediately.

CHAPTER 163

An act relating to county government finance.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990.]

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

SECTION 1. On or before January 1, 1992, the Legislative Analyst, in cooperation with the involved state and local agencies, shall prepare a report for the Governor and the chairpersons of the fiscal committees of the Legislature regarding the implementation and effectiveness of Section 11019.5 of the Government Code, including findings and recommendations to provide state resources to help stabilize fiscal conditions in counties which qualify for the advance payment program.

CHAPTER 164

An act to amend Section 25501 of the Government Code, to amend Section 20120 of, to amend and repeal Section 20131 of, and to repeal Section 20133 of, the Public Contract Code, relating to county contracts.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 25501 of the Government Code is amended to read:

25501. The purchasing agent may:

(a) Purchase for the county and its offices all materials, supplies, furnishings, equipment, livestock, and other personal property.

(b) Rent for the county and its offices furnishings, equipment, and livestock.

(c) Contract for services pursuant to this article and contract for public works projects pursuant to Article 3.5 (commencing with Section 20120) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.

The purchasing agent shall make purchases, rentals and contracts only upon proper written requisition.

For purposes of this article, the population of a county shall be the most recent estimate determined by the Population Research Unit of the Department of Finance.

SEC. 2. Section 20120 of the Public Contract Code is amended to read:

20120. This article applies to public works contracts awarded by counties subject to Title 3 (commencing with Section 23000) of the Government Code. For purposes of this article, the population of a county shall be the most recent estimate determined by the Population Research Unit of the Department of Finance.

SEC. 3. Section 20131 of the Public Contract Code is amended to read:

20131. (a) Counties which employ purchasing agents may:

(1) Authorize the agent to employ state-licensed independent contractors and purchase materials, furnishings, and supplies used in the construction or repair of public works estimated as costing not more than six thousand five hundred dollars ($6,500) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article.

(2) In counties containing a population of 500,000 or more, authorize the agent to purchase materials and supplies used in the construction or repair of public works estimated as costing not more than three thousand five hundred dollars ($3,500) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article.

(3) In San Bernardino County authorize the agent to both employ state-licensed independent contractors and purchase materials and supplies used in the construction or repair of public works estimated as costing not more than thirty thousand dollars ($30,000) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article. The

purchasing agent shall obtain at least three written proposals for each project. If the purchasing agent is unable to obtain three written proposals, the agent shall document the attempts to obtain the written proposals. When advertising for the project begins, the purchasing agent shall send written notification to any party who has made a written request for that notification. The notification shall include, at a minimum, the information contained in the advertisement required by Section 20125.

(4) Authorize the agent to purchase or contract for medical or surgical equipment or supplies, or for professional services, for a county hospital without competitive bidding, so long as an appropriation for the costs of those purchases or contracts is included in the county budget.

As used in this subdivision, "medical or surgical equipment or supplies" means only equipment or supplies commonly, necessarily, and directly used by or under the direction of a physician and surgeon in caring for or treating a patient in a hospital.

(b) To encourage and allow San Bernardino County an opportunity to further consider joining the Uniform Public Construction Cost Accounting Act (Chapter 2 (commencing with Section 21000) of Part 3), the provisions of this section shall remain in effect only until June 30, 1992, and as of that date are repealed, unless a later enacted statute, which is chaptered before June 30, 1992, deletes or extends that date.

SEC. 4. Section 20133 of the Public Contract Code is repealed.

SEC. 5. San Bernardino is one of the fastest growing counties in the state, with a rapidly expanding population. These conditions require the completion of an unusually large number of public projects within a relatively short period of time, thus requiring a meaningful streamlining of procedures in conjunction with those projects. Due to these unique facts and circumstances applicable to San Bernardino County, 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, necessary, applicable to only San Bernardino County.

CHAPTER 165

An act to amend Sections 14509.5, 14542.5, 14551.5, 14560.5, and 14571.8 of the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990. Filed with Secretary of State June 22, 1990.]

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 refund value.

(d) The program submits information and data to the department, as required by this division.

SEC. 2. Section 14542.5 of the Public Resources Code is amended to read:

14542.5. If a redemption rate of 65 percent for any type of beverage container is not achieved by January 1, 1993, the Legislative Analyst shall, within 90 days, prepare and submit to the Legislature a report containing recommendations on how the 65 percent redemption rate and the 80 percent recycling rate can be achieved, including, but not limited to, recommendations on the desirability of increasing the refund value on that type of beverage container.

SEC. 3. Section 14551.5 of the Public Resources Code is amended to read:

14551.5. On or before August 31, 1990, and on or before each August 31 thereafter, each curbside program which receives refund values and administrative fees from certified processors, or refund values 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. 4. Section 14560.5 of the Public Resources Code is amended

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 redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall not combine or include the gross wholesale price with the redemption payment but shall separately state the gross amount of the redemption payment for each type of container included in each delivery.

(2) 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 redemption payment 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 redemption payment for each type of container included in each delivery.

(3) On and after July 1, 1990, the invoice or other form of accounting of the transaction submitted by a beverage distributor of wine or distilled spirit coolers shall separately identify the amount of any redemption payment 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 redemption payment for each type of container included in each delivery.

(4) Notwithstanding Section 14541, the department shall randomly inspect beverage distributor invoices or other forms of accounting to ensure compliance with this subdivision. However, an unintentional error in addition or subtraction on an invoice or other form of accounting by a route driver of a distributor shall not be deemed a violation of this subdivision.

(5) For the purposes of this subdivision, the term "type of container" includes the amount of the redemption payment on containers under 24 ounces and on containers 24 ounces or more.

(b) To the extent technically and economically feasible, a dealer may separately identify the amount of any redemption payment 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) A dealer shall separately identify the amount of any redemption payment 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 payment and a descriptive term, as described

in paragraph (2).

(C) The price of the beverage product plus the amount of the applicable redemption payment, a descriptive term, as described in paragraph (2), and the total of these two amounts.

(2) For purposes of paragraph (1), the redemption payment 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 redemption payment 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 redemption payment imposed by this division is subject to Section 25509 of the Business and Professions Code.

SEC. 5. Section 14571.8 of the Public Resources Code is amended to read:

14571.8. (a) If the department determines that Section 14571 cannot be fulfilled in a particular convenience zone due to local zoning or dealer's leasehold restrictions for leases in effect on January 1, 1987, and that these factors are beyond the control of the department and the dealer, the department may establish an alternative minimum convenience requirement for that convenience zone which shall not conflict with the purposes of this division. No lease entered into by a dealer after January 1, 1987, may contain a leasehold restriction that prohibits or results in the prohibition of the establishment of a recycling location.

(b) The director may grant an exemption to the requirements of Section 14571 for an individual convenience zone only if all of the following conditions are met:

(1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types.

(2) The volume of beverage containers redeemed in the convenience zone is below the statewide average of beverage containers redeemed in convenience zones receiving a convenience incentive payment.

(3) The exemption will further the purposes of this division.

(4) The department conducts a public hearing for purposes of taking testimony on whether or not to provide an exemption from Section 14571. The department shall develop and implement a public hearing process for the granting of exemptions pursuant to this subdivision. This process shall be designed by the department to

ensure that recycling locations and members of the public in the jurisdiction affected by the proposed exemption are aware of, and able to participate in, the exemption hearing process.

(5) The exemption will prevent the creation of excessive recycling locations.

(6) An alternative certified recycling center that redeems all types of beverage containers is located within two miles of the dealer which is located in the convenience zone proposed to be exempted. This paragraph does not apply to an exemption made pursuant to subdivision (c).

(c) Upon request of a city or county, the director may grant an exemption from the requirements of Section 14571 for the location of an individual nonprofit recycling center, or for a curbside recycling program, if the conditions established under subdivision (b) are met and, for an exemption granted for a curbside recycling program, the program recycles all types of beverage containers from households at least once every two weeks or twice monthly.

(d) Except as provided in subdivision (e), the total number of exemptions granted by the director under this section shall not exceed 15 percent of the total number of convenience zones identified by the department pursuant to this section.

(e) On and after June 1, 1991, the total number of exemptions granted by the director under this section shall not exceed 20 percent of the total number of convenience zones identified pursuant to this section.

(f) The department shall annually prepare and submit to the Governor and the Legislature a report on curbside recycling programs and on the potential need for exemption authority additional to that provided by subdivisions (d) and (e).

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 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 166

An act to amend Sections 50199.8, 50199.9, 50199.10, 50199.12, 50199.14, 50199.15, 50199.18, and 50199.20 of, to add Sections 50199.21 and 50199.22 to, to add, amend, and renumber Section 50199.7 of, and to repeal and add Sections 50199.11 and 50199.17 of, the Health and Safety Code, and to amend Sections 17058 and 23610.5 of, and to add Sections 17057.5 and 23610.4 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor June 22, 1990. Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 50199.7 is added to the Health and Safety Code, to read:

50199.7. The Legislature hereby finds and declares that Section 42 of the Internal Revenue Code has been modified by the federal Revenue Reconciliation Act of 1989 to require that the housing credit agency establish a qualified allocation plan which sets forth selection criteria to be used to determine housing priorities which are appropriate to local conditions and which gives preference in allocating housing credit dollar amounts to projects serving the lowest income tenants and projects obligated to serve low-income tenants for the longest periods.

The Legislature further finds that the qualified allocation plan shall encompass and incorporate the criteria and requirements set forth in Section 50199.14 of the Health and Safety Code.

The Legislature further finds that certain provisions of the California Tax Credit should be modified to conform to the changes to the federal low-income housing tax credit.

The Legislature further finds that the Mortgage Bond and Tax Credit Allocation Committee should, to the extent possible, allocate the California low-income housing tax credit using the same criteria and requirements used in allocating the federal tax credit.

The Legislature further finds and declares that the public interest is best served by the dissemination of information regarding the low-income housing tax credit program to all areas of the state, with special efforts in rural areas, to ensure greater knowledge and participation in the program.

SEC. 2. Section 50199.7 of the Health and Safety Code is amended and renumbered to read:

50199.6. The Legislature hereby finds and declares that the federal Tax Reform Act of 1986 (Public Law 99-514) and subsequent amendments to the Internal Revenue Code, including, but not limited to, the federal Revenue Reconciliation Act of 1989, establishes a low-income housing tax credit to stimulate the production and rehabilitation of shelter for lower income individuals

and families.

The Legislature further finds that the federal law allows credit of up to approximately 9 percent each year over a 10-year period for expenses for new construction and rehabilitation of each qualifying low-income unit. A credit up to approximately 4 percent each year over a 10-year period is provided for the expenses of the acquisition and rehabilitation of an existing building generally not placed in service within the last 10 years or rehabilitation of an existing building, and the construction and rehabilitation of each qualifying low-income unit financed with tax-exempt bonds or similar federal subsidies.

The Legislature further finds that the federal law limits the low-income housing tax credits that can be annually allocated by each state. This credit authorization is to be allocated by the state housing credit agency. Not less than 10 percent of that amount is required to be set aside for projects involving nonprofit organizations.

The Legislature further finds that federal law requires a plan for allocation of credit among projects, including selection criteria to be used to determine housing priorities which are appropriate to local conditions.

The Legislature further finds that federal law requires that the credit dollar amount allocated to a project not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

The Legislature further finds and declares that the credit agency is required to perform certain other functions under federal tax law to ensure the availability of the credits and to ensure compliance with federal tax law.

The Legislature further finds and declares that it is necessary to designate the state housing credit agency and to establish an allocation system for the low-income housing credit.

SEC. 3. Section 50199.8 of the Health and Safety Code is amended to read:

50199.8. This chapter is enacted to implement the low-income housing tax credit established by Section 42 of the Internal Revenue Code (26 U.S.C. Sec. 42) as it may be amended from time to time.

To the extent that any provision of this chapter is held to be inconsistent with, or repugnant to, federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with the federal law and inconsistency shall have no effect on the remaining provisions of this chapter.

SEC. 4. Section 50199.9 of the Health and Safety Code is amended to read:

50199.9. As used in this chapter:

(a) "Committee" means the Mortgage Bond and Tax Credit Allocation Committee. On and after July 1, 1990, the Mortgage Bond and Tax Credit Allocation Committee is renamed the California Tax

Credit Allocation Committee and thereafter, all references to "committee" shall mean the California Tax Credit Allocation Committee.

(b) "Housing credit" means the tax credit for low-income rental housing provided under Section 42 of the federal Internal Revenue Code (26 U.S.C. Sec. 42).

(c) "Housing credit applicant" means any owner or prospective owner of a qualifying low-income building or project who applies through the agency, the department, or a local agency for either of the following:

(1) An allocation of a portion of the current state housing credit ceiling.

(2) A reservation of a portion of the anticipated state housing credit ceiling of a subsequent year.

(d) "Housing credit ceiling" means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code. (26 U.S.C. Sec. 42(h)(3)(C)).

(e) "Local agency" means a city, county, or city and county.

(f) "Qualified low-income building" or "project" has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(c)(2)).

SEC. 5. Section 50199.10 of the Health and Safety Code is amended to read:

50199.10. (a) For purposes of allocating low-income housing credits, the committee is hereby designated as this state's only housing credit agency for purposes of Section 42(h) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(h)). The committee shall annually determine and shall allocate the state ceiling in accordance with this chapter and in conformity with federal law. The committee shall determine the housing credit ceiling as soon as possible following the effective date of this chapter and thereafter following the commencement of each calendar year. The committee shall undertake any and all responsibilities of housing credit agencies under Section 42 of Title 26 of the United States Code, including entering into regulatory agreements relating to projects that are granted awards.

(b) The committee shall develop and provide application forms for use by housing credit applicants. The committee shall adopt uniform procedures for submission and review of applications of housing credit applicants, including fees to defray the committee's costs in administering this chapter. In the committee's discretion, the fees shall be charged to a housing credit applicant as a condition of submitting an application or as a condition of receiving an allocation or reservation of the state's current or anticipated housing credit ceiling, or both.

(c) In addition to allocating the current housing credit ceiling, the committee may reserve a portion of the state's anticipated housing credit ceiling for a subsequent year for a housing credit applicant.

(d) As a condition to making an allocation of the housing credit

ceiling or a reservation of the anticipated housing credit ceiling for a subsequent year, the committee may require the housing credit applicant receiving the allocation or reservation to deposit with the committee an amount of money as a good-faith undertaking. The committee shall adopt policies for determining when deposits will be required, prescribing procedures for return of deposits, and specifying the circumstances under which the deposits will be forfeited in whole or in part for failure to timely utilize the allocation or reservation provided to the housing credit applicant.

(e) The committee may make any allocation or reservation of the state's housing credit ceiling to a housing credit applicant subject to terms and conditions in furtherance of the purposes of this part. The committee may condition an allocation or reservation on the execution of a contract between the housing credit applicant and the committee or the state or local agency through which the application was submitted, or both the committee and the state or local agency, requiring the housing credit applicant to comply with all the terms of Section 42 of the federal Internal Revenue Code, any applicable state laws, and any additional requirements which the committee deems necessary or appropriate to serve the purposes of this chapter, and providing for legal action to obtain specific performance or monetary damages for breach of contract.

No allocations or reservations shall be made, however, with respect to projects that do not meet the requirements of the qualified allocation plan, and no allocations or reservations shall be made in amounts that do not meet the requirements of paragraph (2) of subsection (m) of Section 42 of Title 26 of the United States Code.

SEC. 6. Section 50199.11 of the Health and Safety Code is repealed.

SEC. 7. Section 50199.11 is added to the Health and Safety Code, to read:

50199.11. The committee may also contract with other entities, including the department and the agency, to aid in the processing and review of applications.

SEC. 8. Section 50199.12 of the Health and Safety Code is amended to read:

50199.12. The committee shall adopt and supply forms for eliciting information for purposes of this chapter from housing credit applicants, and, when appropriate, from the department, agency, and local agencies. The department, agency, local agencies, and housing credit applicants shall provide the committee with any information requested by the committee in performing its duties and responsibilities under this chapter.

SEC. 9. Section 50199.14 of the Health and Safety Code is amended to read:

50199.14. (a) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing

deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, or the adoption of rules or regulations, or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(b) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(c) In order to promote the provision of affordable low-income housing within and throughout the state, the committee shall allocate housing credits in accordance with the qualified allocation plan and regulations which shall include the following provisions:

(1) All housing sponsors, as defined by paragraph (3) of subdivision (a) of Section 17058 of the Revenue and Taxation Code, shall demonstrate at the time the application is filed with the committee, that the project meets the following threshold requirements:

(A) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(B) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(C) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(D) The housing sponsor shall have and maintain control of the site for the project.

(E) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(F) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(G) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(2) The committee shall give a preference to those projects satisfying all of the threshold requirements of paragraph (1) if:

(A) The project serves the lowest income tenants at rents affordable to those tenants; or

(B) The project is obligated to serve qualified tenants for the longest period.

(3) In addition to the provisions of paragraphs (1) and (2) of subdivision (c), the committee shall use the following criteria in allocating housing credits:

(A) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(B) Projects providing single room occupancy units serving very low income tenants.

(C) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c) of Section 17058 of the Revenue and Taxation Code.

(D) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(E) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(F) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(d) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(e) The committee shall allocate credits to a project under this section prior to allocating credit to that project under Sections 17058 and 23610.5 of the Revenue and Taxation Code.

(f) The committee shall allocate credits to a project only if the housing sponsor enters into a regulatory agreement that provides for an "extended use period" as defined in subparagraph (D) of paragraph (6) of subsection (h) of Section 42 of the Internal Revenue Code which shall terminate on the date specified in the regulatory agreement or the date the project is acquired in foreclosure, including any instrument in lieu of foreclosure, whichever occurs first and subclause (II) of subparagraph (E) of clause (i) of paragraph (6) of subsection (*l*) of Section 42 shall not apply. The extended use period shall be subject to the following limitations:

(1) If, after the first 18 years of the extended use period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of subsection (g) of Section 42 of the Internal Revenue Code as is necessary for the project to become economically feasible, provided

that, once a project is again economically feasible, the housing sponsor designates the next available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(2) For purposes of paragraph (1), "economically feasible" means that project revenue equals or exceeds project operating expenses, excluding any return on investment.

(3) For purposes of paragraph (2), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for rehabilitation of the project.

SEC. 10. Section 50199.15 of the Health and Safety Code is amended to read:

50199.15. (a) The committee shall annually submit to the Legislature by April 1 of each year a report specifying, with respect to its activities under this chapter during the previous calendar year, (1) the total amount of low-income housing credits allocated by the committee, (2) the total number of units assisted by the credit that are occupied by households whose income is 60 percent or less of area median gross income, (3) the amount of the credit allocated to each project, the other financing available to the project, and the number of units therein occupied by households whose income is 60 percent or less of area median gross income, and (4) sufficient information to identify the project.

(b) The committee shall also include in its annual report to the Legislature, an aggregation of the information which shall be submitted annually by housing sponsors for all projects which have received an allocation in previous years, specifying all of the following:

(1) Information sufficient to identify the project.

(2) The total number of units in the project.

(3) The total number of units assisted by the credit that are required to be occupied by households whose income is 60 percent or less of the area median gross income as a condition of receiving a tax credit.

(4) The total number of units assisted by the credit that are occupied by households whose income is 60 percent or less of the area median gross income.

(c) The committee shall also include in its annual report to the Legislature, any recommendations for improvement in the low-income housing tax credit.

SEC. 11. Section 50199.17 of the Health and Safety Code is repealed.

SEC. 12. Section 50199.17 is added to the Health and Safety Code,

to read:

50199.17. (a) The committee may adopt, amend, or repeal rules and regulations for the allocation of housing credits pursuant to this chapter and Sections 17058 and 23610.5 of the Revenue and Taxation Code without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as described in subdivision (b).

(b) The committee shall provide a notice of proposed action as described in Section 11346.5 of the Government Code. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the committee shall schedule at least one public hearing as described in Section 11346.8 of the Government Code before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3 of the Government Code. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (b) of Section 11346.7 of the Government Code.

(c) These rules and regulations shall be effective immediately upon adoption by the committee.

(d) The committee may also adopt, amend, or repeal emergency rules and regulations pursuant to this chapter and pursuant to Sections 17058 and 23610.5 of the Revenue and Taxation Code. 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.

SEC. 13. Section 50199.18 of the Health and Safety Code is amended to read:

50199.18. This chapter shall remain in effect only until January 1, 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. However, repeal of this chapter shall not invalidate or in any way affect the duration of any previously allocated low-income tax credits.

SEC. 14. Section 50199.20 of the Health and Safety Code is amended to read:

50199.20. Not less than 20 percent of the federal ceiling on low-income housing tax credits shall be set aside for allocation to rural areas as defined in Section 50199.21. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project if there are eligible rural applications pending on October 31.

SEC. 15. Section 50199.21 is added to the Health and Safety Code, to read:

50199.21. "Rural area" for the purpose of this chapter and Sections 17058 and 23610.5 of the Revenue and Taxation Code, means an area, which, on January 1 of any calendar year satisfies any of the following criteria:

(a) The area is eligible for financing from the United States Farmers Home Administration under its Section 515 program, or successor program.

(b) The area is located in a nonmetropolitan area as defined in Section 50090.

(c) The area is an incorporated city having a population of 40,000 or less as identified in the most recent Report E published by the Demographic Research Unit of the Department of Finance or is located in the unincorporated area which adjoins that city, provided that the city and its adjoining unincorporated area are not designated as an urbanized area by the United States Census Bureau or are not part of such an urbanized area. With respect to areas eligible under subdivision (a), the committee shall rely upon determinations made by the United States Farmers Home Administration. At the committee's request, the department shall prepare and recommend a list of eligible and ineligible areas under subdivision (b) and this subdivision, including a list of census tracts for the unincorporated areas described in this subdivision. With respect to areas eligible under subdivision (b) and this subdivision, the committee may rely upon the recommendations made by the department. Any inconsistencies between areas eligible under subdivisions (a) and (b), and this subdivision, shall be resolved in favor of considering the area a rural area. Lists of eligible and ineligible areas need not be established by regulation.

SEC. 16. Section 50199.22 is added to the Health and Safety Code, to read:

(a) Upon being informed that information, supplied by an applicant pursuant to this chapter or Section 17058 or 23610.5 of the Revenue and Taxation Code, is false or is no longer true at the time an allocation is requested, the committee shall investigate the information and take appropriate action, including cancellation of the reservation, upon a finding that false information has been submitted or the information submitted is no longer true.

(b) If the committee has made the allocation before notification that information supplied by the applicant is false or was no longer true when the allocation was made, and finds that the project is not in compliance with the provisions of Sections 17058 or 23610.5 of the Revenue and Taxation Code or with the conditions under which the allocation was made, the committee may bring a judicial action to enjoin the use of the state tax credit.

(c) If the committee has made the allocation before notification that the information supplied by the applicant is false or was no longer true when the allocation was made, the committee may in addition to the procedure provided in subdivision (b) investigate the information and disqualify the applicant and its principals from filing

applications with the committee for a one-year period after the committee finds either that the applicant submitted false information or that information was no longer true when the allocation was made.

(d) The committee shall report promptly, in writing, to the Internal Revenue Service and the Franchise Tax Board, any noncompliance with federal and state requirements or misrepresentations which the committee finds were made by the applicant pursuant to subdivision (a), (b), or (c).

SEC. 17. Section 17057.5 is added to the Revenue and Taxation Code, to read:

17057.5. It is the intent of the Legislature that the amount of the state low-income housing tax credit allocated to a project pursuant to Section 17058 shall not exceed an amount in addition to the federal tax credit that is necessary for the financial feasibility of the project and its viability throughout the compliance period.

SEC. 18. Section 17058 of the Revenue and Taxation Code is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, including the amendments contained in the Technical and Miscellaneous Revenue Act of 1988 and in the federal Revenue Reconciliation Act of 1989, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h) (4) (B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to

Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means either of the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally

subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash flow from those units in the building that are not low-income units. For purposes of computing cash flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under

paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 23610.5 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section

42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the net available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(7) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(8) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(9) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation

Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the compliance period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect

long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 23610.5 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 23610.5 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 23610.5 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of 1990 a state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements

of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

SEC. 19. Section 23610.4 is added to the Revenue and Taxation Code, to read:

23610.4. It is the intent of the Legislature that the amount of the state low-income housing tax credit allocated to a project pursuant to Section 23610.5 shall not exceed an amount in addition to the federal tax credit that is necessary for the financial feasibility of the project and its viability throughout the compliance period.

SEC. 20. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, including the amendments contained in the Technical and Miscellaneous Revenue Act of 1988 and the federal Revenue Reconciliation Act of 1989, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means either of the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of

conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate

to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 17058 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an

allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the next available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or

former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(G) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(H) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(I) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the

United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a) of Section 17058, shall demonstrate that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the compliance period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined

by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 17058 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 17058 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section

prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

SEC. 21. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 167

An act to add Section 6306 to the Food and Agricultural Code, relating to pests, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 6306 is added to the Food and Agricultural Code, to read:

6306. Unless otherwise permitted by law, any person who willfully and knowingly imports into, or who willfully and knowingly transports or ships within, this state, a Mediterranean fruit fly is guilty of a felony.

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. 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 public health and safety, as soon as possible, by deterring the importation into, or transportation within this state, of the Mediterranean fruit fly, it is necessary that this act take effect immediately.

CHAPTER 168

An act to amend Sections 5 and 29 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), and to repeal Chapter 330 of the Statutes of 1961, relating to tidelands and submerged lands, to convey certain tidelands and submerged lands to the San Diego Unified Port District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Chapter 330 of the Statutes of 1961 is repealed.

SEC. 2. There is hereby granted and conveyed in trust to the San Diego Unified Port District, all the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all of the certain tide and submerged lands under the waters of the Pacific Ocean, whether filled or unfilled, to be held by the district and its successors in trust in accordance with Section 87 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), which are described as follows:

Being the most northerly portion of those tidelands and submerged lands granted to the City of Imperial Beach, as shown on the State Lands Commission Map of the Grant to the City of Imperial Beach, filed as Miscellaneous Map 431, November 23, 1962, as Document 200792, San Diego County Records, bounded as follows: on the north by the northerly corporate limits of the City of Imperial Beach extended westerly from mean high tide station number 40, as shown on Map 431; on the east by the mean high tide line established in June 1959, as shown on Map 431; on the south by a line lying parallel with the northerly corporate limits and extended westerly from mean high tide line station number 24, as shown on sheet 4 of 6 on Map 431; on the west by the westerly limits of the lands as shown on Map 431, containing approximately 403 acres, more or less.

SEC. 3. Section 5 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 5. The area to be embraced in the district shall include all of the corporate area of each of the cities of San Diego, Chula Vista,

Coronado, National City, and Imperial Beach which establish the district as provided in this act, and any unincorporated territory in the County of San Diego contiguous thereto, which is economically linked to the development and operation of the Bay of San Diego, included in the district by the board of supervisors of the county as provided in this act.

The jurisdiction of the district to exercise its powers shall extend only over the following areas:

(a) The tidelands and submerged lands granted to the district pursuant to this act or any other act of the Legislature.

(b) Any airport or airports now or hereafter owned and operated by any of the above-named cities which establish the district, or San Diego County, and which conveyed to the district by such city or cities or San Diego County.

(c) Any other lands conveyed to the district by any city or by the County of San Diego.

SEC. 4. Section 29 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 29. The district may issue bonds, borrow money, and incur indebtedness as authorized by law or in this act provided. The district may also refund any indebtedness as provided in this act or in any other applicable law, and may also refund, by the issuance of the same type of obligations as those refunded and following the same procedure as at that time may be applicable to the issuance of those obligations, and may retire any indebtedness or lien that may exist against the district or its property.

The district may retire any indebtedness which is outstanding as of the effective date of the act amending this section enacted at the 1989-90 Regular Session of the Legislature, which has been incurred by the City of Imperial Beach for the construction or reconstruction of the Imperial Beach pier located upon tide and submerged lands granted to the district by the Legislature pursuant to that act.

SEC. 5. The City of Imperial Beach may convey to the San Diego Unified Port District the paper street east of the tide and submerged lands granted to the district by Section 2 of the act. The lands granted or conveyed to the San Diego Unified Port District pursuant to this act shall be held, administered, and regulated by the San Diego Unified Port District in accordance with the provisions of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session).

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide necessary protection and development to tidelands and submerged lands within the City of Imperial Beach at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 169

An act to add Section 25257.7 to the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 25257.7 is added to the Vehicle Code, to read:

25257.7. (a) A schoolbus may be equipped with a white strobe light mounted so as to be visible from the front, sides, or rear of the bus. The strobe light may only be lighted when visibility is reduced to 500 feet or less due to atmospheric conditions including, but not limited to, fog, rain, snow, smoke, or dust. Reduced visibility due to atmospheric conditions does not include the time of darkness from one-half hour after sunset to one-half hour before sunrise.

(b) The type and mounting requirements of strobe lights authorized by subdivision (a) shall be established by regulations adopted by the department by April 1, 1991. No schoolbus shall be equipped with a strobe light until the regulations are adopted.

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 safety of persons on the streets and highways at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 170

An act to amend Section 40000.11 of, and to add Sections 13004.1 and 14610.1 to, the Vehicle Code, relating to identification documents.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 13004.1 is added to the Vehicle Code, to read:

13004.1. (a) No person shall manufacture or sell an identification document of a size and form substantially similar to the identification cards issued by the department.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than five hundred dollars ($500).

SEC. 2. Section 14610.1 is added to the Vehicle Code, to read:

14610.1. (a) No person shall manufacture or sell an identification document of a size and form substantially similar to the drivers' licenses issued by the department.

(b) A violation of this section is a misdemeanor punishable by a fine of not less than five hundred dollars ($500).

SEC. 3. Section 40000.11 of the Vehicle Code is amended to read:

40000.11. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

(b) Section 12500, subdivision (a), relating to unlicensed drivers.

(c) Section 12515, subdivision (b), relating to persons under 21 years of age driving, and the employment of those persons to drive, vehicles engaged in interstate commerce or transporting hazardous substances or wastes.

(d) Section 12517, relating to a special driver's certificate to operate a schoolbus or school pupil activity bus.

(e) Section 12519, subdivision (a), relating to a special driver's certificate to operate a farm labor vehicle.

(f) Section 12804, subdivision (d), relating to medical certificates.

(g) Section 12951, subdivision (b), relating to refusal to display license.

(h) Section 13004, relating to unlawful use of identification card.

(i) Section 13004.1, relating to identification documents.

(j) Section 14601, relating to driving when suspended.

(k) Section 14601.1, relating to driving when suspended.

(*l*) Section 14601.2, relating to driving when suspended.

(m) Section 14610, relating to unlawful use of driver's license.

(n) Section 14610.1, relating to identification documents.

(o) Section 15501, relating to use of false or fraudulent license by minor.

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 171

An act to amend Section 41320 of the Education Code, and to repeal Section 2 of Chapter _____ of the Statutes of 1990, as added by Assembly Bill 1273 of the 1989–90 Regular Session, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990. Filed with Secretary of State June 22, 1990.]

I am reducing the appropriation contained in Section 3 of Assembly Bill No. 1202 by $4,475,000

This bill would provide a $14,000,000 emergency apportionment to the Richmond Unified School District for various expenditures, including meeting the school district's June payroll obligation This bill would also establish conditions for the repayment of the loan

Any appropriation contained in this bill would be considered an advance in the 1989/90 current year, and is chargeable as an expenditure against the General Fund for the 1990/91 Fiscal Year. Thus, any appropriation occurs at the expense of other worthy programs, budget demands and priorities in the 1990/91 Fiscal Year

I am approving an appropriation of $9,525,000, which is sufficient for the Richmond School District to meet its June payroll obligation It is inappropriate, however, to approve additional apportionments in advance of other more pressing state demands that are currently being considered in the Budget

With this reduction, I approve Assembly Bill No 1202

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 41320 of the Education Code is amended to read:

41320. As a condition to any emergency apportionment to be made pursuant to Section 41310, the following requirements shall be met:

(a) The district requesting the apportionment shall submit to the county superintendent of schools having jurisdiction over the district a report issued by an independent auditor approved by the county superintendent of schools on the financial conditions and budgetary controls of the district, a written management review conducted by a qualified management consultant approved by the county superintendent of schools, and a fiscal plan adopted by the governing board to resolve the financial problems of the district.

(b) The county superintendent of schools shall review, and provide written comment on, the independent auditor's report, the management review, and the district plan. That written comment shall include the county superintendent's approval or disapproval of the district plan. In the event the county superintendent disapproves the plan, the governing board shall revise the district plan to respond to the concerns expressed by the county superintendent.

(c) Upon his or her approval of the district plan, the county superintendent of schools shall submit copies of the report, review, plan, and written comments specified in subdivision (b) to the Superintendent of Public Instruction, the Auditor General, the Joint

Legislative Budget Committee, the Director of Finance, and the Controller.

(d) The Superintendent of Public Instruction shall review the reports and comments submitted to him or her by the county superintendent of schools and shall certify to the Director of Finance that the action taken to correct the financial problems of the district is realistic and will result in placing the district on a sound financial basis.

(e) The district shall develop a schedule to repay the emergency loan and submit it to the county superintendent of schools. The county superintendent of schools shall review and comment on the repayment schedule and submit it to the Superintendent of Public Instruction for approval or disapproval. Upon the approval of the repayment schedule, and of the other reports, reviews, plans, and the appointment of the trustee required by this article, the Superintendent of Public Instruction shall request the Controller to disburse the proceeds of the emergency loan to the district.

(f) The district requesting the apportionment shall reimburse the county superintendent of schools for the costs incurred by the superintendent pursuant to this section.

SEC. 2. Section 2 of Chapter _____ of the Statutes of 1990, as added by Assembly Bill 1273 of the 1989–90 Regular Session, is repealed.

SEC. 3. (a) The sum of fourteen million dollars ($14,000,000) is hereby appropriated from the Special Account for Capital Outlay to Section A of the State School Fund without regard to fiscal year for apportionment by the Superintendent of Public Instruction to the Richmond Unified School District for the purpose of an emergency loan. In order to qualify for that loan, the district shall comply with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code and the other conditions stipulated in this act.

(b) The Richmond Unified School District shall develop a schedule to repay the emergency loan consistent with subdivision (e) of Section 41320 of the Education Code. Notwithstanding Section 41323 of the Education Code, the repayment schedule shall not begin before July 1, 1991, and shall not extend beyond June 30, 1998. With the exception of funds that may be needed by the district to meet its cash obligations, as described later in this section, no funds shall be disbursed from the proceeds of the loan until the repayment schedule, and the reports, reviews, plans, and the appointment of the trustee required by Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code have been approved by the Superintendent of Public Instruction.

(c) Based on the needs of the district to meet its cash obligations, the Superintendent of Public Instruction may direct the Controller to disburse, on a monthly basis, specific amounts of the emergency loan prior to the approval of all the conditions established by this act. The emergency loan shall be repaid to the state with interest at a rate based on the most current investement rate of the Pooled Money

Investment Account as of the date of the disbursement of funds to the district.

SEC. 4. Due to unique circumstances relating to fiscal emergency in the Richmond Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 5. (a) The Controller shall transfer from the General Fund to the Special Account for Capital Outlay an amount equal to the sum appropriated to Section A of the State School Fund pursuant to Section 3 of this act.

(b) This section shall become operative July 1, 1990.

SEC. 6. Notwithstanding any other provision of law, all amounts appropriated under subdivision (a) of Section 2 of Assembly Bill 1273 of the 1989–90 Regular Session shall be deemed to constitute an advance in the 1989–90 fiscal year for expenditures chargeable against the General Fund for the 1990–91 fiscal year.

SEC. 7. (a) Section 1 of this act shall not become operative if Assembly Bill 1273 is enacted and becomes effective on or before January 1, 1991.

(b) Section 2 of this act shall become operative only if Assembly Bill 1273 is enacted and becomes effective on or before January 1, 1991.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain revisions in a timely manner to the accounting of a designated appropriation of General Fund moneys, it is necessary that this act take effect immediately.

CHAPTER 172

An act to add Section 2676.7 to the Labor Code, relating to labor.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990]

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

SECTION 1. Section 2676.7 is added to the Labor Code, to read:

2676.7. Any local agency which issues business licenses or permits shall require, as a condition of issuing any business license or permit for a garment manufacturing business, proof that the person applying for the license or permit is registered pursuant to this chapter. The official Division of Labor Standards Enforcement registration form issued pursuant to Section 2675 shall constitute proof of registration.

A person may apply for a business license or permit prior to registration with the commissioner.

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 173

An act to amend Section 44975 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 June 22, 1990 Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 44975 of the Food and Agricultural Code is amended to read:

44975. (a) Each handler of avocados shall pay to the director an inspection and certification fee each month. The fee shall be based on the number of pounds certified as determined by the director. However, in no event shall the fee be greater than twenty-five cents ($0.25) per hundredweight of pounds prepared for market for the period of July 1, 1990 through June 30, 1991. Commencing July 1, 1991, the fee shall be not greater than eighteen cents ($0.18) per hundredweight of pounds prepared for market. The number of pounds certified shall be reported monthly to the director, and these reports shall include all information required by the director. The fee required by this section shall be paid no later than the 10th day of the month following the month for which the fee is payable. Any handler who fails to pay the fee within the time required shall pay the director a penalty of 10 percent of the amount determined to be due, and, in addition, 1½ percent interest per month on the unpaid balance. The director may adjust the fee from time to time and reduce it whenever he finds the cost of administering this article may be defrayed from revenue derived from lower fees.

(b) Notwithstanding subdivision (a), whenever the fees derived from pounds certified do not cover the cost of inspection, the

director may establish hourly and mileage rates for inspection and certification of avocados based upon the cost of providing that inspection and certification. However, alternatively, a handler may present his or her avocados for inspection and certification on a date, time, and location specified by the director and pay the fees charged pursuant to subdivision (a).

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

In order to provide adequate funding for avocado inspection activities, the inspection and certification fee must be increased not later than the beginning of the 1990–91 fiscal year. Any delay beyond this date will cause the state to significantly reduce inspection activities. Therefore, it is necessary that this act take effect immediately.

CHAPTER 174

An act to amend Section 7102 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990 Filed with Secretary of State June 22, 1990.]

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

SECTION 1. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, and pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the 4¾-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(2) All revenues, less refunds, derived under this part at the 4¾-percent rate, resulting from increasing after December 31, 1989,

the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the 4¾-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Transportation Planning and Development Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period December 1, 1989, to June 5, 1990, inclusive, shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(5) All revenues, less refunds, derived under this part from a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of tangible personal property other than fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(6) All revenues, less refunds, derived under this part from a rate of more than 4¾ percent pursuant to Sections 6051.1 and 6201.1 for the period June 6, 1990, to December 31, 1990, inclusive, which is attributable to the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), shall be transferred to the Disaster Relief Fund created by Section 16419 of the Government Code.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be made quarterly.

(d) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

SEC. 2. In 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. 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:

Chapter 14 of the Statutes of 1989 First Extraordinary Session provided for a temporary increase in state sales and use taxes to fund disaster relief efforts associated with the Loma Prieta earthquake in northern California. Chapter 105 of the Statutes of 1989 provided for a transfer to a special fund account of sales and use tax revenues derived from the imposition of the 4¾-percent rate, resulting from specified increases, operative after December 31, 1989, in the rate of tax imposed on gasoline pursuant to the Motor Vehicle Fuel License Tax Law. Proposition 116, approved by the voters at the June 5, 1990, direct primary election, made changes to the statute allocating sales and use tax revenues so that, among other things, on and after June 6, 1990, the revenues affected by those chapters, will be transferred to the General Fund instead of the Disaster Relief Fund created by Chapter 14 of the Statutes of 1989 First Extraordinary Session or the Transportation Planning and Development Account as provided in Chapter 105 of the Statutes of 1989. In order to restore the previous disposition of those revenues at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 175

An act to amend Sections 53313, 53313.5, and 53321.5 of, and to add Sections 53314.6 and 53314.7 to, the Government Code, relating to community facilities districts, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State June 26, 1990]

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

SECTION 1. Section 53313 of the Government Code is amended to read:

53313. A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, and the operation and maintenance of parks, parkways, open space, and museums and cultural facilities. A special tax may be levied for this purpose only upon approval of the voters as specified in subdivision (b) of Section 53328. However, the requirement contained in subdivision (b) of Section 53328 that a certain number of persons have been registered to vote for each of the 90 days preceding the close of the protest hearing does not apply to an election to enact a special tax for recreation program services, library services, and the operation and maintenance of parks and parkways subject to subdivision (c) of Section 53326.

(d) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems.

(e) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meanings set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least 30 days prior to commencement of the activity.

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services may not supplant services already available within that territory when the district was created.

SEC. 2. Section 53313.5 of the Government Code is amended to read:

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work which is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities which it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the

authority of, the local agency. For example, a community facilities district may finance facilities, including, but not limited to, the following:

(a) Local park, recreation, parkway, and open-space facilities.

(b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.

(e) The district may also finance the construction or undergrounding of natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. If the facilities are conveyed to the public utility, the agreement shall provide for a refund by the public utility to the district or improvement area thereof for the cost of the facilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

(f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes described in subdivision (e) of Section 53313.

(g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to repay or defease any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness.

(h) Any other governmental facilities which the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivision (d), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

SEC. 3. Section 53314.6 is added to the Government Code, to read:

53314.6. (a) In connection with the financing of services and facilities pursuant to subdivision (e) of Section 53313 and subdivision

(f) of Section 53313.5, the legislative body may establish a revolving fund to be kept in the treasury of the district. Except as provided in subdivision (b) of this section, moneys in the revolving fund shall be expended solely for the payment of costs with respect to those services and facilities. The revolving fund may be funded from time to time with moneys derived from any of the following:

(1) Proceeds of the sale of bonds issued pursuant to Article 5 (commencing with Section 53345), notwithstanding any limitation contained in Section 53345.3.

(2) Any taxes or charges authorized under this chapter.

(3) Any other lawful source.

(b) Subject to the provisions of any resolution, trust agreement or indenture providing for the issuance of district bonds for the purposes set forth in subdivision (f) of Section 53313.5, the legislative body may withdraw money from the revolving fund whenever and to the extent that it finds that the amount of money therein exceeds the amount necessary to accomplish the purposes for which the revolving fund was established. Any moneys withdrawn from the revolving fund shall be used to redeem bonds of the district issued for the purposes set forth in subdivision (f) of Section 53313.5 or shall be paid to taxpayers in the district in amounts which the legislative body determines.

SEC. 4. Section 53314.7 is added to the Government Code, to read:

53314.7. (a) Any responsible party as defined by subdivision (a) of Section 25323.5 of the Health and Safety Code shall be liable to the district for the costs incurred in the removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. The amount of the costs shall include interest on the costs accrued from the date of expenditure. The interest shall be calculated based on the average annual rate of return on the district's investment of surplus funds for the fiscal year in which the district incurred the costs. Recovery of costs by a community facilities district under this section shall be commenced before or immediately upon completion of the removal or remedial action, and payments received hereunder by the district shall be deposited in the revolving fund in accordance with Section 53314.6.

(b) To expedite cleanup, this section is intended to provide local jurisdictions an alternative method of financing the cost of removal or remedial action for the cleanup of any hazardous substance through the issuance of voter-approved limited obligation bonds. The provisions of this section shall not affect or limit the provisions of any other law establishing the liability of any person for, or otherwise regulating, the generation, transportation, storage, treatment, or disposal of hazardous substances. The scope and standard of liability for any costs recoverable pursuant to Section 53314.7 shall be the scope and standard of liability set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 6901 et seq.), or any

other provision of state or federal law establishing responsibility for cleanup of hazardous waste sites.

SEC. 5. Section 53321.5 of the Government Code is amended to read:

53321.5. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the legislative body containing a brief description of the public facilities and services by type which will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the legislative body shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. If removal or remedial action for the cleanup of any hazardous substance is proposed, the legislative body shall (a) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in subdivision (c) of Section 25356.1 of the Health and Safety Code or (b) determine, on the basis of the particular facts and circumstances, which shall be comparable to those described in subdivision (g) of Section 25356.1 of the Health and Safety Code, that the remedial action plan is not required. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

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:

Uncontrolled hazardous waste sites pose a threat to the public health and safety, and delays in cleanup of these sites due to the difficulty of obtaining financing of cleanup activities may result in more widespread contamination, including pollution of drinking water sources. In order to enhance the ability of local governments to finance these activities without delay, it is necessary that this act take effect immediately.

CHAPTER 176

An act to add Section 2887 to the Public Utilities Code, relating to public utilities.

[Approved by Governor June 26, 1990. Filed with Secretary of State June 27, 1990]

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

SECTION 1. The Legislature finds and declares that the evolving telephone systems in this country, while providing new services and opportunities for callers, are also continuing to create unfamiliar new situations for telephone customers, and that sometimes changes are based on arbitrary decisions. New technologies and the desire for additional phone lines are causing the need to create new telephone numbers through the creation of new area codes. Los Angeles County, which added an "818" area code in 1984, will become the only area in the nation to have three area codes with the addition of a "310" area code in 1992. With the addition of the new area code, several communities in the Los Angeles area, including Beverly Hills, Culver City, Bell Gardens, West Hollywood, Inglewood, Hawthorne, Southgate, and the City of Commerce, will have their territory divided among area codes. Therefore, it is the intent of the Legislature, by the enactment of Section 2887 of the Public Utilities Code, to ensure that area code boundaries are initially established to coincide, to the extent practicable, with local city boundaries and jurisdictions.

SEC. 2. Section 2887 is added to the Public Utilities Code, to read:

2887. (a) Whenever a telephone corporation initially establishes the boundaries for a new area code, the boundaries shall coincide with the boundaries of a city, or, if the area code is to include less than the entire area of a city, the corporation shall consider, among other things, the criteria set forth in Section 35101 of the Elections Code in determining those boundaries.

(b) All local exchange telecommunications corporations shall provide notice to all of their California subscribers of the creation of a new area code within a reasonable time period prior to the implementation of the new area code.

CHAPTER 177

An act to amend Sections 11106, 12076, 12077, 12078, 12280, 12285, and 12290 of the Penal Code, to amend Section 8103 of the Welfare and Institutions Code, and to amend Section 2 of Chapter 1180 of the Statutes of 1988, relating to firearms, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 26, 1990 Filed with Secretary of State June 27, 1990.]

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

SECTION 1. Section 11106 of the Penal Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry concealed weapons, dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm.

A violation of this subdivision is a misdemeanor.

SEC. 2. Section 12076 of the Penal Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

12076. (a) The purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing an incorrect birth date, or other information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(b) Two copies of the original sheet of the register shall, on the date of sale, be placed in the mail, postage prepaid, and properly

addressed to the Department of Justice at Sacramento. The third copy of the original shall be mailed, postage prepaid, to the chief of police, or other head of the police department, of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department, the third copy of the original sheet shall be mailed to the sheriff of the county wherein the sale is made.

The third copy for firearms, other than pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of receipt and no information shall be compiled therefrom.

(c) If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer of that fact.

If the department determines that the copies of the register submitted to it pursuant to subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (d) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (d), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(d) The Department of Justice may charge the dealer a fee sufficient to reimburse both of the following:

(1) The department for the cost of furnishing this information. All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by the amendments to Section 8103 of the Welfare and Institutions Code, made by the act which also added this paragraph.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department and the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by the act which added paragraph (2) of this subdivision.

SEC. 3. Section 12077 of the Penal Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

12077. (a) (1) The Department of Justice shall prescribe the

form of the register described in Section 12074. There shall be two forms of the register with the format set forth in paragraph (2) of this subdivision for pistols, revolvers, and other firearms capable of being concealed upon the person and the format set forth in paragraph (3) of this subdivision for all firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person.

(2) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, purchaser's status as a mental patient, or whether purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly affixing an incorrect birth date or other information required to be provided for the register is guilty of a misdemeanor.

(3) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a

felony as described in Section 12021 or an offense described in Section 12021.1, purchaser's status as a mental patient, or whether purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly affixing an incorrect birth date or other information required to be provided for the register is guilty of a misdemeanor.

(b) (1) The original of each dealer's record of sale of a firearm document shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General or agents of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification.

(2) Dealers shall use ink to complete each document.

(3) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(4) Each original shall contain instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(5) One firearm transaction shall be reported on each record of sale document.

SEC. 4. Section 12078 of the Penal Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

12078. (a) The preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties, nor to deliveries, transfers, or sales of firearms made to authorized representatives of cities, cities and counties, counties, state or federal governments for use by those governmental agencies. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser is employed, identifying the purchaser as a peace officer who is authorized to carry firearms while in the performance of his

or her duties, and authorizing the purchase. The certification shall be delivered to the seller at the time of purchase and the purchaser shall identify himself or herself as the person authorized in the certification. On the day the sale, delivery, or transfer is made, the dealer shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the buyer and the firearm as is indicated in Section 12077.

(b) Section 12070 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in such business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) Subdivision (d) of Section 12072 shall not apply to infrequent transfers of firearms by gift, bequest, intestate succession, or other means by one individual to another where both individuals are members of the same immediate family.

As used in this subdivision, "immediate family member" includes the third lineal degree of consanguinity.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent and temporary loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for repair.

(f) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than pistols, revolvers, or other firearms capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

SEC. 5. Section 12280 of the Penal Code 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.

(e) Subdivision (b) does not apply to the possession of an assault weapon by any person during the 1990 calendar year if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon by January 1, 1991.

(2) The person lawfully possessed the particular assault weapon described in paragraph (1) prior to June 1, 1989.

(3) The person is otherwise in compliance with this chapter.

SEC. 6. Section 12285 of the Penal Code is amended to read:

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, with the Department of Justice pursuant to those procedures which the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and any other information as the department may deem appropriate. The department may charge a fee for registration of up to twenty dollars ($20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(b) No assault weapon possessed pursuant to this section may be

sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (c) of Section 12290, or as provided in Section 12288. Any person who (1) obtains title to an assault weapon registered under this section by bequest or intestate succession, (2) moves into the state in lawful possession of an assault weapon, or (3) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, shall, within 90 days, either render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm which was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(c) A person who has registered an assault weapon under this section may possess it only under the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While transporting the assault weapon between any of the places mentioned in this subdivision, or to any licensed gun dealer, as defined in subdivision (c) of Section 12290, for servicing or repair pursuant to subdivision (b) of Section 12290, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1 of this code, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

SEC. 7. Section 12290 of the Penal Code is amended to read:

12290. (a) Any licensed gun dealer, as defined in subdivision (c),

who lawfully possesses an assault weapon pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the weapon between dealers or out of the state, display it at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286. Any transporting allowed by this section must be done as required by Section 12026.1.

(b) (1) Any licensed gun dealer, as defined in subdivision (c), may take possession of any assault weapon for the purposes of servicing or repair from any person to whom it is legally registered or who has been issued a permit to possess it pursuant to this chapter.

(2) Any licensed gun dealer may transfer possession of any assault weapon received pursuant to paragraph (1), to any gunsmith in his or her employ or with whom he or she has contracted for gunsmithing services, for purposes of accomplishing servicing or repair. Transfers are permissible only to gunsmiths who hold a dealer's license issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and regulations issued pursuant thereto, and who hold any business license required by a statute or local governmental entity.

(c) The term "licensed gun dealer," as used in this article means a person who has a federal firearms license, any business license required by a state or local governmental entity, and a seller's permit issued by the State Board of Equalization.

SEC. 8. Section 8103 of the Welfare and Institutions Code, as amended by Chapter 9 of the Statutes of 1990, is amended to read:

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

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

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

of the Vehicle Code, or any dwelling house, 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, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States which includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

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

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

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

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

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

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

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

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

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

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

(2) For each person subject to the provisions of this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information which includes, but is not

limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm. The state summary criminal history may state that the person is prohibited from owning, possessing, controlling, receiving, or purchasing a firearm under this subdivision or any other provision of law.

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

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in Section 8103 with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. Notwithstanding any other provision of law, declarations, police reports, including criminal history information, and any other material and relevant evidence which is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(g) (1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or

purchase any firearm for a period of five years.

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

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

(3) Upon certification for intensive treatment, the facility, shall inform the person of that information specified in paragraph (3) of subdivision (f).

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

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

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

SEC. 9. Section 2 of Chapter 1180 of the Statutes of 1988 is amended to read:

Sec. 2. The Legislature declares the following to be the public policy of this state:

(a) No person who buys or is transferred a firearm that was conducted through a person acting under Section 12082 of the Penal Code shall incur any civil liability for any illicit use or possession of the firearm prior to his or her taking possession of the firearm if the person had no knowledge of that conduct.

(b) No person holding a license under Section 12071 of the Penal Code when transferring firearms pursuant to Section 12082 of the Penal Code shall assume any civil liability beyond that existing at the time of the effective date of this section when the person sells or transfers any firearms out of his or her own stock, if that person otherwise complies with Section 12082 of the Penal Code. No person acting as a dealer pursuant to Section 12071 of the Penal Code who is transferring firearms for third parties pursuant to Section 12082 of the Penal Code and which firearms are not out of his or her own stock shall assume any civil liability for any defects in those firearms unless he or she has actual knowledge of the defect.

(c) No person who transfers a firearm through a dealer licensed

pursuant to Section 12071 of the Penal Code in accordance with Section 12082 of the Penal Code and otherwise complies with the provisions of Article 3 (commencing with Section 12070) of Chapter 1 of Title 2 of Part 4 of the Penal Code shall incur any civil liability for subsequent misuse of the firearm by the transferee of that firearm if he or she had no knowledge of the misuse prior to the transfer.

(d) The declarations contained in this section are declaratory of existing law.

SEC. 10. 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. 11. This act shall be known and may be cited as "The Prohibition Against Rifle and Shotgun Registration Act of 1990."

SEC. 12. Sections 1 to 4, inclusive, and Sections 8 and 9 of this act shall become operative on January 1, 1991.

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:

Due to some confusion in the implementation of certain provisions of the Roberti-Roos Assault Weapons Control Act of 1989, it is essential that this act take effect immediately in order that those provisions may be clarified at the earliest possible time.

CHAPTER 178

An act to amend Section 7108.5 of the Business and Professions Code, relating to contractors.

[Approved by Governor June 26, 1990 Filed with Secretary of State June 27, 1990.]

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

SECTION 1. Section 7108.5 of the Business and Professions Code is amended to read:

7108.5. A prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil, administrative, or criminal.

This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

CHAPTER 179

An act to amend Sections 972 and 972.1 of the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990]

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

SECTION 1. Section 972 of the Military and Veterans Code is amended to read:

972. The board of supervisors may provide the county veteran service officer with any assistance and facilities which it determines to be necessary. If such a position is created and filled, the compensation and expenses of the county veteran service officer shall be a county charge, but the Department of Veterans Affairs, out of state moneys available therefor, shall pay each county a portion of those costs in an amount determined by the department, conditioned upon the observance of standards and regulations adopted by, and in compliance with the direction of, the department and its authorized representatives. State money available for paying counties any portion of the cost of the compensation and expenses of county veteran service officers shall not include any funds of the Veterans' Farm and Home Building Fund of 1943. Contributions by the department to any county toward the payment of the salary of the county veteran service officer who is not employed in that capacity on a full-time basis shall not exceed the sum of seventy-five dollars ($75) per month.

SEC. 2. Section 972.1 of the Military and Veterans Code is amended to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for

purposes of funding the activities of county veteran service officers pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties which have established and maintain a county veteran service officer in accordance with the staffing level and workload of each county veteran service officer under a formula based upon performance which shall be developed by the Department of Veterans Affairs for these purposes, and which allocate county funds in any fiscal year for county veterans service officers in an amount not less than the amount allocated in the 1988–89 fiscal year.

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

In order to as quickly as possible provide flexibility in the state funding program for county veteran service officers and to delete an unfunded requirement which will otherwise divert scarce resources of the Department of Veterans Affairs from assisting and supporting the activities of county veteran service officers, it is necessary that this act take effect immediately.

CHAPTER 180

An act to amend Sections 5357, 5358, and 5358.2 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990]

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

SECTION 1. Section 5357 of the Welfare and Institutions Code is amended to read:

5357. All conservators of the estate shall have the general powers specified in Chapter 6 (commencing with Section 2400) of Part 4 of Division 4 of the Probate Code and shall have such additional powers specified in Article 11 (commencing with Section 2590) of Chapter 6 of Part 4 of Division 4 of the Probate Code as the court may designate. The report shall set forth which, if any, of the additional powers it recommends. The report shall also recommend for or against the imposition of each of the following disabilities on the proposed conservatee:

(a) The privilege of possessing a license to operate a motor vehicle. If the report recommends against this right and if the court follows the recommendation, the agency providing conservatorship investigation shall, upon the appointment of the conservator, so notify the Department of Motor Vehicles.

(b) The right to enter into contracts. The officer may recommend against the person having the right to enter specified types of transactions or transactions in excess of specified money amounts.

(c) The disqualification of the person from voting pursuant to Section 707.5 of the Elections Code.

(d) The right to refuse or consent to treatment related specifically to the conservatee's being gravely disabled. The conservatee shall retain all rights specified in Section 5325.

(e) The right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. The court shall make a specific determination regarding imposition of this disability.

(f) The disqualification of the person from possessing a firearm pursuant to subdivision (e) of Section 8103.

SEC. 2. Section 5358 of the Welfare and Institutions Code is amended to read:

5358. (a) When ordered by the court after the hearing required by this section, a conservator appointed pursuant to this chapter shall place his or her conservatee in the least restrictive alternative placement, as designated by the court. That placement may include a medical, psychiatric, nursing, or other state-licensed facility, or a state hospital, county hospital, hospital operated by the Regents of the University of California, a United States government hospital, or other nonmedical facility approved by the State Department of Mental Health or an agency accredited by the State Department of Mental Health, or in addition to any of the foregoing, in cases of chronic alcoholism, to a county alcoholic treatment center.

(b) A conservator shall also have the right, if specified in the court order, to require his or her conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled, or to require his or her conservatee to receive routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. Except in emergency cases in which the conservatee faces loss of life or serious bodily injury, no surgery shall be performed upon the conservatee without the conservatee's prior consent or a court order obtained pursuant to Section 5358.2 specifically authorizing that surgery.

(c) If the conservatee is not to be placed in his or her own home or the home of a relative, first priority shall be to placement in a suitable facility as close as possible to his or her home or the home of a relative. For the purposes of this section, suitable facility means the least restrictive residential placement available and necessary to achieve the purposes of treatment. At the time that the court considers the report of the officer providing conservatorship investigation specified in Section 5356, the court shall consider available placement alternatives. After considering all the evidence the court shall determine the least restrictive and most appropriate alternative placement for the conservatee. The court shall also

determine those persons to be notified of a change of placement. The fact that a person for whom conservatorship is recommended is not an inpatient shall not be construed by the court as an indication that the person does not meet the criteria of grave disability.

If requested, the local mental health director shall assist the conservator or the court in selecting a placement facility for the conservatee. When a conservatee who is receiving services from the local mental health program is placed, the conservator shall inform the local mental health director of the facility's location and any movement of the conservatee to another facility.

(d) The conservator may transfer his or her conservatee to a less restrictive alternative placement without a further hearing and court approval. In any case in which a conservator has reasonable cause to believe that his or her conservatee is in need of immediate more restrictive placement because the condition of the conservatee has so changed that the conservatee poses an immediate and substantial danger to himself or herself or others, the conservator shall have the right to place his or her conservatee in a more restrictive facility or hospital. Notwithstanding Section 5328, if the change of placement is to a placement more restrictive than the court-determined placement, the conservator shall provide written notice of the change of placement and the reason therefor to the court, the conservatee's attorney, the county patient's rights advocate and any other persons designated by the court pursuant to subdivision (c).

SEC. 3. Section 5358.2 of the Welfare and Institutions Code is amended to read:

5358.2. If a conservatee requires medical treatment and the conservator has not been specifically authorized by the court to require the conservatee to receive medical treatment, the conservator shall, after notice to the conservatee, obtain a court order for that medical treatment, except in emergency cases in which the conservatee faces loss of life or serious bodily injury. The conservatee, if he or she chooses to contest the request for a court order, may petition the court for hearing which shall be held prior to granting the order.

CHAPTER 181

An act to add Article 5 (commencing with Section 9225) to Chapter 2 of Part 1 of Division 2 of Title 2 of the Government Code, relating to legislative employees.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990.]

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

SECTION 1. Article 5 (commencing with Section 9225) is added to Chapter 2 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 5. Child Care

9225. (a) The Joint Rules Committee shall include, in planning the Legislature's new building to be located at the corner of 10th Street and "N" Street in Sacramento, child care services and limited school age child care services, as prescribed in this subdivision, to be made available to all legislative officers and employees who perform the majority of their work in Sacramento, excluding district office employees, and shall notify these legislative officers and employees about the availability of these services. The child care services shall be made available during regular legislative work hours and, in addition, during extended legislative work hours on weekends and nights. School age child care services shall be available during extended legislative work hours on weekends and nights.

(b) It is the intent of the Legislature that the child care program established by the Joint Rules Committee shall serve as a model program to demonstrate to the private sector the manner in which child care programs should be organized and implemented.

(c) To reimburse, fully or partially, the cost of the child care services and the limited school age child care services, as prescribed in subdivision (a), the Joint Rules Committee shall establish a sliding fee scale based on income of the legislative employees or officers electing to use the child care services or school age child care services, or both. The costs incurred due to the requirements of this article shall be paid from the Senate Operating Fund and the Assembly Operating Fund.

(d) As used in this section:

(1) "Child care services" means nonmedical care to children from infancy to kindergarten who are in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for protection of the individual on less than a 24-hour basis.

(2) "School age child care services" means nonmedical care to children from kindergarten to age 12 who are in need of personal services, supervision, or assistance essential for sustaining the

activities of daily living or for protection of the individual on a less than 24-hour basis.

(e) On or before June 1, 1992, the Senate Committee on Rules and the Assembly Committee on Rules shall consider establishing similar child care programs for district office employees if the committee determines that the program established pursuant to subdivision (a) provides a valuable service.

CHAPTER 182

An act to amend Sections 56028, 56050, 56156, and 56200 of the Education Code, to add Section 7579.5 to the Government Code, and to amend Sections 245.5 and 361 of the Welfare and Institutions Code, relating to special education.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990]

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

SECTION 1. Section 56028 of the Education Code is amended to read:

56028. "Parent," includes any person having legal custody of a child. "Parent," in addition, includes any adult pupil for whom no guardian or conservator has been appointed and the person having custody of a minor if neither the parent nor legal guardian can be notified of the educational actions under consideration. "Parent" also includes a parent surrogate. "Parent" does not include the state or any political subdivision of government.

SEC. 2. Section 56050 of the Education Code is amended to read:

56050. (a) For the purposes of this article, "surrogate parent" shall be defined as it is defined in the federal regulations adopted pursuant to Public Law 94-142.

(b) A surrogate parent may represent an individual with exceptional needs in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in other matters relating to the provision of a free appropriate education to the individual.

(c) A surrogate parent shall be held harmless by the State of California when acting in his or her official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

(d) A surrogate parent shall also be governed by Section 7579.5 of the Government Code.

SEC. 3. Section 56156 of the Education Code is amended to read:

56156. (a) Each court, regional center for the developmentally disabled, or public agency that engages in referring children to, or

placing children in, licensed children's institutions shall report to the special education administrator of the district, special education local plan area, or county office in which the licensed children's institution is located any referral or admission of a child who is potentially eligible for special education.

(b) At the time of placement in a licensed children's institution or foster family home, each court, regional center for the developmentally disabled, or public agency shall identify all of the following:

(1) Whether the courts have specifically limited the rights of the parent or guardian to make educational decisions for a child who is a ward or dependent of the court.

(2) The location of the parents, in the event that the parents retain the right to make educational decisions.

(3) Whether the location of the parents is unknown.

(c) Each person licensed by the state to operate a licensed children's institution, or his or her designee, shall notify the special education administrator of the district, special education local plan area, or county office in which the licensed children's institution is located of any child potentially eligible for special education who resides at the facility.

(d) The superintendent shall provide each county office of education with a current list of licensed children's institutions in that county at least biannually. The county office shall maintain the most current list of licensed children's institutions located within the county and shall notify each district and special education local plan area within the county of the names of licensed children's institutions located in the geographical area of the county covered by the district and special education local plan area. The county office shall notify the director of each licensed children's institution of the appropriate person to contact regarding individuals with exceptional needs.

SEC. 4. Section 56200 of the Education Code is amended to read:

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

(a) Compliance assurances, including general compliance with Public Law 94-142, Section 504 of Public Law 93-112, and this part.

(b) Description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(c) (1) Description of the governance and administration of the plan.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56170, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of

special education in coordinating the administration of the local plan.

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56170.

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(g) Description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(h) A description of the process being utilized to meet the requirements of Section 56303.

SEC. 5. Section 7579.5 is added to the Government Code, to read:

7579.5. (a) A surrogate parent shall not be appointed for a child who is a dependent or ward of the court unless the court specifically limits the right of the parent or guardian to make educational decisions for the child. A surrogate parent shall not be appointed for a child who has reached the age of majority unless the child has been declared incompetent by a court of law.

(b) A local educational agency shall appoint a surrogate parent for a child under one or more of the following circumstances:

(1) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to a local educational agency for special education and related services, or in cases where the child already has a valid individualized education program.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal

Regulations. The surrogate parent may represent the child in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child.

(d) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(e) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, shall not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

(f) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. The surrogate parent shall not be an employee of a public or private agency that is involved in the education or care of the child. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the local educational agency shall terminate the appointment and appoint another surrogate parent.

(g) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions which are found to have been wanton, reckless, or malicious.

(h) Nothing in this section shall be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(i) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-890 of the Budget Act.

SEC. 6. Section 245.5 of the Welfare and Institutions Code is amended to read:

245.5. In addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or for the rehabilitation of the minor. These orders may concern the care, supervision, custody, conduct, maintenance, and support of the minor, including education and medical treatment.

SEC. 7. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor has been sexually abused by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision

(b), whether it was reasonable under the circumstances not to make any such efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parents or guardians and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 8. On or before July 1, 1991, the Superintendent of Public Instruction, in consultation with local educational agencies and others deemed appropriate by the superintendent, including agencies and organizations knowledgeable of children's disabilities, shall develop policies, procedures, and a basic training package for surrogate parents.

SEC. 9. 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 183

An act to repeal Section 66799.3 of the Government Code, and to repeal and add Article 2 (commencing with Section 46020) of Chapter 1 of Part 6 of Division 30 of the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990.]

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

SECTION 1. Section 66799.3 of the Government Code, as amended by Chapter 72 of the Statutes of 1989, is repealed.

SEC. 2. Article 2 (commencing with Section 46020) of Chapter 1 of Part 6 of Division 30 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is repealed.

SEC. 3. Article 2 (commencing with Section 46020) is added to Chapter 1 of Part 6 of Division 30 of the Public Resources Code, to read:

Article 2. Definitions

46020. Unless the context otherwise requires, the definitions in this article govern the construction of this part.

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 Maintenance Advisory Committee.

46024. "Corrective action" means any action, required or approved by an enforcement agency, 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, a facility which receives only nonhazardous wood waste derived from timber production or wood product manufacturing, or a cemetery which disposes onsite only the grass clippings, floral wastes, or soil resulting from activities on the grounds of that cemetery.

46028. "State board" means the State Board of Equalization.

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

In order for the exemption provided by this law to be effective

before the requirements for solid waste landfills are enforced on the deposits of natural materials by cemeteries, it is necessary that this act take effect immediately.

CHAPTER 184

An act to amend Sections 56440 and 56448 of the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990. Filed with Secretary of State June 29, 1990]

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

SECTION 1. Section 56440 of the Education Code is amended to read:

56440. (a) Each special education local plan area shall submit a plan to the superintendent by September 1, 1987, for providing special education and services to individuals with exceptional needs, as defined by the State Board of Education, who are between the ages of three and five years, inclusive, who do not require intensive special education and services but who would be eligible for special education and services under Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and 1419).

(b) The superintendent shall provide for a five-year phase-in of the individuals with exceptional needs qualifying for special education and services under Public Law 99-457, who do not require intensive special education and services, through an application process to be developed by the superintendent.

(c) All individuals with exceptional needs between the ages of three and five years, inclusive, identified in subdivision (a) shall be served by the districts and county offices within each special education local plan area by June 30, 1992, to the extent required under federal law and pursuant to the local plan and application approved by the superintendent.

(d) Individuals with exceptional needs between the ages of three and five years, inclusive, who are identified by the district, special education local plan area, or county office as requiring intensive special education and services, as defined by the State Board of Education, shall be eligible for special education and services pursuant to this part and shall not be subject to any phase-in plan.

(e) In special education local plan areas where individuals with exceptional needs between the ages of three and five, inclusive, who do not require intensive special education and services, are expected to have an increased demand on school facilities as a result of projected growth, pursuant to this chapter, the special education

local plan area director shall submit a written report on the impacted local educational agencies to the State Allocation Board by December 1, 1987. The State Allocation Board shall assess the situation and explore ways of resolving the school facilities impaction situation.

(f) The superintendent shall provide technical assistance to local educational agencies in order to help identify suitable alternative instructional settings to alleviate the school facilities impact situation. Alternative instructional settings may include, but are not limited to, state preschool programs, or the child's home. Nothing in this chapter shall cause the displacement of children currently enrolled in these settings.

(g) This chapter applies to all individuals with exceptional needs between the ages of three and five, inclusive.

SEC. 2. Section 56448 of the Education Code is amended to read:

56448. If the amount of funding provided by the federal government pursuant to Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and 1419) for the 1990–91 fiscal year, or any fiscal year thereafter, is not sufficient to fund the full costs of the programs and services required pursuant to this chapter, for pupils identified pursuant to subdivision (g) of Section 56440, except for those pupils identified pursuant to paragraph (2) of subdivision (c) of Section 56026, as it read on January 8, 1987, and that lack of federal funding would require any contribution from the General Fund or any contribution from a local educational agency in order to fund those costs, California shall terminate its participation in that program. The voluntary contribution by a local educational agency of funding for any of the programs or services required pursuant to this chapter shall not constitute grounds for terminating California's participation in that federal program. It is the intent of the Legislature that if the program terminates, the termination shall be carried out in an orderly manner with timely notification of parents and certificated personnel, as prescribed by statute.

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 prevent special education programs for individuals with exceptional needs between the ages of three and five years, inclusive, from terminating on June 30, 1990, it is necessary that this act take effect immediately.

CHAPTER 185

An act to add Section 25191.2 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor June 29, 1990. Filed with Secretary of State June 29, 1990.]

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

SECTION 1. Section 25191.2 is added to the Health and Safety Code, to read:

25191.2. Actions pursuant to Sections 25189.5, 25189.6, 25189.7, 25190, and 25191 may be brought by any city attorney.

CHAPTER 186

An act to amend Sections 5506.5, 5506.6, 5514, and 5538.5 of, and to add Section 5526.1 to, the Public Resources Code, relating to open-space districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990]

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

SECTION 1. Section 5506.5 of the Public Resources Code is amended to read:

5506.5. (a) If the exterior boundaries of a proposed district are coterminous with the exterior boundaries of the County of Marin or the County of Sonoma, proceedings for formation of that district may, in lieu of a petition, be initiated by resolution of the board of supervisors of the county.

(b) The resolution may specify that the board of supervisors shall act, ex officio, as the governing body for a district formed in Marin County. For a district formed in Sonoma County, the board of supervisors shall act, ex officio, as the governing body of the district. In those cases, the provisions of this article pertaining to the election of district directors shall not apply and all powers and authority of the district shall be vested in the board of supervisors of the county in its capacity as the governing body of the district.

(c) The resolution adopted by the Board of Supervisors of the County of Sonoma shall do all of the following:

(1) Name the district, and state the reasons for forming it.

(2) Describe the methods by which the district will be financed.

(3) 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 formation of the district is not subject to the Cortese-Knox Local Government Reorganization Act of 1985 Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(4) Include any other matters necessary to the formation of the district.

SEC. 2. Section 5506.6 of the Public Resources Code is amended to read:

5506.6. The governing body of a district formed pursuant to Section 5506.5 may, by resolution, change the legal name of the district to the "Marin County Open Space District" or the "Sonoma County Agricultural Preservation and Open Space District," as appropriate.

SEC. 3. Section 5514 of the Public Resources Code is amended to read:

5514. (a) The board of supervisors of the county having the largest area within the proposed district shall, if the petition, after the hearing, has been approved, in whole or in part, have jurisdiction to proceed further with the calling of an election within the boundaries of the proposed district as described in the resolution passed at the conclusion of the hearing, and shall, either as a part of the same resolution or by a later resolution, call an election within the proposed district for the purpose of determining whether the district shall be created and established and for the purpose of electing the first board of directors therefor in case the district is created.

(b) In a district proposed to be formed pursuant to Section 5506.5, the resolution calling the election may provide for a single ballot measure or separate ballot measures on the question of formation, establishment of an appropriations limit authorized by Section 4 of Article XIII B of the California Constitution, the authority to tax pursuant to Section 5566, and the authority to sell bonds pursuant to Section 5568, or any combination of those questions.

SEC. 4. Section 5526.1 is added to the Public Resources Code, to read:

5526.1. Any action or proceeding in a district formed pursuant to Section 5506.5, in Sonoma County, in which the validity of the imposition of any tax authorized by this article or the issuance of any bonds under this article or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any such action brought pursuant to Section 863 of the Code of Civil Procedure shall be commenced within 180 days of the levy of the contested tax or the authorization of the bond sale. Otherwise, the taxes and bonds and all proceedings in relation thereto, including the adoption and approval of ordinances, shall be held to be valid and in every respect legal and incontestable.

SEC. 5. Section 5538.5 of the Public Resources Code is amended

to read:

5538.5. If the Board of Supervisors of the County of Marin or the Board of Supervisors of the County of Sonoma acts as the governing body of a district pursuant to Section 5506.5, the respective officers of that county shall act, ex officio, as officers and employees of the district and discharge the authority and responsibility specified in this article.

SEC. 6. Notwithstanding Section 5542 of the Public Resources Code, a district formed in Sonoma County pursuant to this act shall not exercise the power of eminent domain. This section shall not be construed to diminish either the power of eminent domain of the County of Sonoma nor the authority of the County of Sonoma to convey interests in real property to a district formed in Sonoma County pursuant to Section 5506.5 of the Public Resources Code under such terms as may be agreed upon.

SEC. 7. The Legislature hereby finds and declares that there are unique problems involved in meeting the open-space needs of Sonoma County and therefore a general law cannot be made applicable and the enactment of Sections 1 to 6, inclusive, applicable only to Sonoma County is necessary.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to be in effect for the November 6, 1990, general election it is necessary that this act take effect immediately.

CHAPTER 187

An act to amend Sections 68540, 68540.5, 68540.7, 68541, 68542, 68542.5, 68543, 68543.5, 71601.3, and 77205.3 of the Government Code, and to amend Section 830.36 of the Penal Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990 Filed with Secretary of State June 29, 1990.]

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

SECTION 1. Section 68540 of the Government Code is amended to read:

68540. (a) Whenever a judge of a superior court is assigned by the Chairperson of the Judicial Council to sit in a superior court in another county, the receiving county shall pay the state 50 percent of the judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as

provided in Section 77205.3.

(b) The state shall pay the additional compensation of a judge of a municipal or justice court, assigned to a superior court, and the receiving county shall pay the state 50 percent of a superior court judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary, except as provided in Section 68541. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

SEC. 2. Section 68540.5 of the Government Code is amended to read:

68540.5. Whenever a judge of a municipal court or a judge of a justice court who receives the same annual salary as a judge of a municipal court is assigned by the Chairperson of the Judicial Council to a justice court or municipal court in another county, the receiving county shall pay the state 50 percent of a municipal court judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

SEC. 3. Section 68540.7 of the Government Code is amended to read:

68540.7. Any judge assigned to a court wherein a judge's compensation is greater than his or her own shall receive while sitting therein the compensation of a judge thereof. The extra compensation shall be paid in such manner as may be provided by law.

SEC. 4. Section 68541 of the Government Code is amended to read:

68541. (a) The compensation of a judge of a justice court who receives a part-time salary sitting in another court under assignment made by the Chairperson of the Judicial Council shall be paid by the state, and the receiving county shall pay the state 50 percent of the judge's full salary for the time the judge served the receiving court. If the county is an option county, as defined by Section 77004, the amount due shall be paid as provided in Section 77205.3.

(b) If a justice court judge is assigned to another justice court, except for exchange assignments as defined by rules adopted by the Judicial Council, the salary of the office to which he or she is assigned shall, for purposes of Section 68540.7, be deemed to be equivalent to the salary paid a justice court judge certified pursuant to Section 68202.5 of the Government Code.

SEC. 5. Section 68542 of the Government Code is amended to read:

68542. The expenses for travel, board, and lodging of each judge assigned to a superior, municipal, or justice court in a county other than that in which he or she regularly sits shall be paid by the state, and the receiving county shall reimburse the state for these expenses. If the county is an option county, as defined in Section

77004, the amount due shall be paid as provided in Section 77205.3. The expenses for travel, board, and lodging shall be paid by the state under the rules adopted by the Board of Control which are applicable to officers of the state provided for in Article VI of the Constitution while traveling on official state business.

SEC. 6. Section 68542.5 of the Government Code is amended to read:

68542.5. Any judge of a superior, municipal, or justice court sitting in another court in the same county under assignment by the Chairperson of the Judicial Council shall receive from such county the amount of actual and necessary traveling expenses incurred while traveling between home and the courtroom unless the courtrooms are within five miles of each other.

SEC. 7. Section 68543 of the Government Code is amended to read:

68543. The extra compensation and expenses for travel, board, and lodging of judges sitting in the Supreme Court and courts of appeal under assignments made by the Chairperson of the Judicial Council shall be paid by the state under the rules adopted by the Board of Control which are applicable to officers of the state provided for in Article VI of the Constitution while traveling on official state business.

SEC. 8. Section 68543.5 of the Government Code is amended to read:

68543.5. Whenever a judge retired as such under the Judges' Retirement Law is assigned to sit in a court, he or she shall be compensated while so sitting at a rate equal to 92 percent of the full compensation of a judge of the court to which he or she is assigned unless the judge waives compensation under this section. A retired judge of a justice court who is not under the Judges' Retirement Law and who is assigned to sit in a court shall be compensated while so sitting at the full compensation of a judge of the court to which he or she is assigned, or the compensation specified in Section 68541, whichever is greater. The compensation shall be chargeable for the period specified in Section 68547 the same as provided by law with respect to the compensation of a judge of the court to which he or she is assigned and the compensation is payable out of any appropriation for extra compensation of judges assigned by the Chairperson of the Judicial Council.

If the compensation is greater than the judge's retirement allowance, the state shall pay the judge the difference between the compensation and the retirement allowance. The state shall reimburse the Judges' Retirement Fund for the retirement allowance paid to the judge while sitting on assignment, except that if no allowance has been paid because the judge has taken deferred retirement, no reimbursement shall be paid to the Judges' Retirement System. The receiving county shall pay the state 50 percent of the judge's full salary for the time the judge served the receiving court. If the county is an option county, as defined in

Section 77004, the amount due shall be paid as provided in Section 77205.3.

If the compensation would be less than his or her retirement allowance, the retirement allowance shall continue to be paid in lieu of the compensation. The state shall reimburse the Judges' Retirement Fund in the amount of the compensation which would otherwise have been paid to the judge while sitting on assignment. The receiving county shall pay the state 50 percent of the full salary of a judge of the court to which the retired judge is assigned for the time the judge serves the receiving court. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

If a judge retired under the Judges' Retirement Law is assigned to sit in a court, the 8-percent difference between the compensation of the retired judge while so assigned and the compensation of a judge of the court to which assigned shall be paid to the Judges' Retirement Fund.

During the period of assignment, a retired judge shall be allowed expenses for travel, board, and lodging incurred in the discharge of the assignment. When assigned to sit in the county in which he or she resides, the judge shall be allowed expenses for travel, and board incurred in the discharge of the assignment. The expenses for travel, board, and lodging shall be paid by the state under the rules adopted by the Board of Control which are applicable to officers of the state provided for in Article VI of the Constitution while traveling on official state business. The receiving county shall reimburse the state for these expenses. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

Notwithstanding the above provisions pertaining to compensation, a retired judge on senior judge status shall receive compensation from the state as provided in Sections 75028 and 75028.2, and shall be allowed expenses for travel, board, and lodging incurred in the discharge of the assignment as provided in this section.

The receiving county shall pay the state 50 percent of the full salary of a judge of the court to which the retired judge is assigned for the time the judge serves the receiving court. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

SEC. 9. Section 71601.3 of the Government Code is amended to read:

71601.3. Upon receipt of a request from a board of supervisors pursuant to Section 71180.4, the Chair of the Judicial Council shall designate a superior court judge to act as chair of an oral examining board of three members for the purpose of interviewing candidates for the office of judge of a justice court. The chair of the oral board shall appoint two residents of the county to serve with him or her as members of the board. Members of the boards shall receive no compensation for their services, but shall receive their expenses for

travel, board, and lodging under rules adopted by the Board of Control which are applicable to officers of the state provided for in Article VI of the Constitution while traveling on official state business. These expenses shall be paid from the funds appropriated to the use of the council.

SEC. 10. Section 77205.3 of the Government Code is amended to read:

77205.3. Amounts due the state as provided in Article 2 (commencing with Section 68540) of Chapter 2 of Title 8 shall be deducted from block grants each quarter. The Judicial Council shall certify the net amount due to the state, and the Controller shall deduct the amount certified from the grant paid to each county. The amounts so deducted by the Controller shall be credited to the appropriation available to the Judicial Council for the assignment of judges, in augmentation of the Budget Act.

Any additional amounts owing by the state to an option county pursuant to Article 2 (commencing with Section 68540) of Chapter 2 of Title 8 shall be paid by the Judicial Council from the funds made available to the Judicial Council for the assignment of judges. The payments shall be made at the same time quarterly block grants are paid to such counties.

SEC. 11. Section 830.36 of the Penal Code is amended to read:

830.36. 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) The Sergeant-at-Arms of each house of the Legislature, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(b) Bailiffs of the Supreme Court and of the courts of appeal and coordinators of security for the judicial branch, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(c) Court service officer in a county of the second class and third class, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 12. This act shall become operative on July 1, 1990.

SEC. 13. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution for option counties under the Brown-Presley Trial Court Funding Act because those counties will receive funding under that act in lieu of such reimbursement. With regard to any other counties, 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. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the changes made by this act become operative on the same date as Chapter 1389 of the Statutes of 1989, to ensure that the state follows a single standard for payment of assigned judges' compensation, and to include coordinators of security for the judicial branch as peace officers at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 188

An act relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990. Filed with Secretary of State June 29, 1990]

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

SECTION 1. The Legislature finds that due to the uncertainties in the ability of the state to fund all programs fully because of an expected budget shortfall, the Aid to Families With Dependent Children program, in-home supportive services program, and county health services cost-of-living adjustments which would otherwise go into effect on July 1, 1990, should be delayed until the Legislature has more time to consider the related problems.

SEC. 2. Notwithstanding the provisions of any other law including Sections 11450, 11452, 11453, 12303.5, 12303.7, 12304, and 16702 of the Welfare and Institutions Code, the cost-of-living adjustments that would otherwise go into effect on July 1, 1990, for the amounts under Chapter 2 (commencing with Section 11200), and

Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, and Part 4.5 (commencing with Section 16700) of Division 9 of, the Welfare and Institutions Code, shall be delayed and shall take effect August 1, 1990, unless another act which becomes effective prior to August 1, 1990, shortens or extends the suspension period imposed by this act, except that any assistance unit which receives a grant for August 1990 pursuant to Chapter 2 (commencing with Section 11200) and received a grant for July 1990, shall receive, in addition to their grant for August, a supplement in an amount equal to the cost-of-living adjustment which would have otherwise been included had the cost-of-living adjustment provided in Section 11453 of the Welfare and Institutions Code not been delayed.

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

In order that the Legislature may have sufficient time in which to take proper action regarding the effects of the expected state budget shortfall, it is necessary that this act take effect immediately.

CHAPTER 189

An act to amend Section 2982 of, and to repeal Section 2982.05 of, the Civil Code, relating to contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990. Filed with Secretary of State June 29, 1990]

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

SECTION 1. Section 2982 of the Civil Code is amended to read:

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document preparation fees,

taxes imposed on the sale, pollution control certification fees, and the amount charged for a service contract.

(B) The fee to be retained by the seller for document preparation.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) Taxes imposed on the sale.

(E) The amount charged for a service contract.

(F) The total cash price, which is the sum of subparagraphs (A) to (E), inclusive.

(2) An itemization of the amounts to be paid to any public officer for license, certificate of title, and registration.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the foregoing items.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The net agreed value of the property being traded in.

(B) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.

(C) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(D) The remaining amount paid or to be paid by the buyer as a downpayment.

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.

(f) (1) Where the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a

statement of the amount or method of computation of any charge that may be deducted from the amount of any such unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) Where the contract includes a finance charge which is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) Where the contract includes a finance charge which is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point bold type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) Where the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point bold type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is $1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) Where the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a

notice, in at least 10-point bold type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point bold type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or the Department of Motor Vehicles, Division of Compliance, 2570 24th Street, Sacramento, California 95818, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

_____

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance (other than for credit life or disability) is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) The dollar amount of the disclosed finance charge shall not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars ($225), 1⅙ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars ($225) as does not exceed nine hundred dollars ($900), ⅚ of 1 percent on so much of the unpaid balance in excess of nine hundred dollars ($900) as does not exceed one

thousand six hundred fifty dollars ($1,650), and 13/24 of 1 percent on that portion of the unpaid balance which exceeds one thousand six hundred fifty dollars ($1,650), or

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars ($25); or

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars ($25) if the unpaid balance does not exceed one thousand dollars ($1,000), (ii) fifty dollars ($50) if the unpaid balance exceeds one thousand dollars ($1,000) but does not exceed two thousand dollars ($2,000), or (iii) seventy-five dollars ($75) if the unpaid balance exceeds two thousand dollars ($2,000).

(2) The holder of the contract shall not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars ($5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars ($75), provided that the sum of any such administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) When a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in

default. Payments timely received by the seller under an extension or deferral agreement shall not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(*l*) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. Where the amount of the refund credit is less than one dollar ($1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which such payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession

of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2); provided further that the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. Nothing in this chapter prohibits the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.

(o) No seller may impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a five-dollar ($5) fee for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

SEC. 2. Section 2982.05 of the Civil Code is repealed.

SEC. 2.5. Section 1 of this act shall become operative January 1, 1991.

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 dealers of motor vehicles, and financial institutions which purchase conditional sale contracts from dealers, are not exposed to unintended liability, it is necessary that Section 2982.05 of the Civil Code be repealed, and conforming changes made, before Section 2982.05 becomes operative on July 1, 1990.

CHAPTER 190

An act to add Section 45133 to the Education Code, relating to school employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1990. Filed with Secretary of State June 29, 1990.]

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

SECTION 1. Section 45133 is added to the Education Code, to read:

45133. (a) Notwithstanding Sections 45127 and 45131, a governing board of a school district or a county superintendent of schools may establish a 9-hour-per-day, 80-hour-per-2-week work schedule, provided the establishment of the work schedule has the concurrence of the employee organization, or in the absence of an employee organization, the concurrence of the affected employee.

(b) When a 9-hour-per-day, 80-hour-per-2-week work schedule is established, it shall consist of nine work days, eight of which shall be nine-hour days, and one of which shall be an eight-hour day. The overtime rate shall be paid for all hours worked in excess of the required work day, which shall not exceed nine hours, at a rate equal to one and one-half times the regular rate of pay for the employee designated and authorized to perform the work.

(c) When a 9-hour-per-day, 80-hour-per-2-week work schedule is established, the workweek shall be defined in either of two ways, as follows:

(1) The workweek shall begin on noon Friday and will end at noon the following Friday, with the employee working nine hours each day except on alternate Thursdays when the employee will work eight hours, and on alternate Fridays when the employee will not work; or,

(2) The workweek shall begin at noon on any other day of the week and shall be defined so that no employee will be required to work more than 40 hours during any given workweek.

(d) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

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 certain school districts to comply, by July 1, 1990, with mandated reduction of average vehicle ridership imposed on these districts to meet air pollution standards, it is necessary that this act take effect immediately.